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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2022: ALRC FINANCIAL SERVICES INTERIM REPORT RECOMMENDATIONS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AIA	<i>Acts Interpretation Act 1901</i>
ALRC	Australian Law Reform Commission
ALRC Review	Review of the Legislative Framework for Corporations and Financial Services Regulation
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	Treasury Laws Amendment (Measures for consultation) Bill 2022: ALRC Financial Services Interim Report Recommendations
Corporations (Review Fees) Act	<i>Corporations (Review Fees) Act 2003</i>
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Crimes Act	<i>Crimes Act 1914</i>
Criminal Code	Schedule to the <i>Criminal Code Act 1995</i>
Interim Report A	Interim Report A of the ALRC Review (ALRC Report 137)
Interim Report B	Interim Report B of the ALRC Review (ALRC Report 139)

Glossary

SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
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Interim Report Recommendations

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Outline of chapter

- 1.1 This chapter outlines how Schedule 1 to the Bill simplifies and improves the navigability of Australia’s corporations and financial services laws.

Context of amendments

- 1.2 In September 2020, the then Attorney-General asked the ALRC to inquire into the potential simplification of laws regulating Australian financial services as part of the Government’s response to the 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Hayne Royal Commission).
- 1.3 The ALRC found that the law is challenging to navigate and complex for individuals and businesses and that it needs to be simplified to ensure its intent is met.
- 1.4 The ALRC’s Interim Report A focused on the use of definitions. It found that complexity could be reduced by only using defined terms where this reduces repetition and enhances readability, improving the design of definitions and using defined terms consistently throughout the corporations law. The ALRC

- made 13 recommendations, along with 24 proposals and questions for further consideration.
- 1.5 In Interim Report B, the ALRC focussed on design choices relevant to determining where material is located in the legislative hierarchy. It found that the particular design choices made in relation to the Corporations Act are a significant source of complexity. The ALRC made a further six recommendations, largely centred around opportunities for technical simplification, and raised 18 proposals for further consideration.
 - 1.6 In November 2022, the Government introduced the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022, which contained a first tranche of amendments to implement recommendations from Interim Report A and other easily implementable opportunities to improve the law.
 - 1.7 This Bill implements a further two recommendations from Interim Report A and partially implements three recommendations from Interim Report B.
 - 1.8 The Interim Reports' recommendations, as opposed to their proposals and questions, were designed for immediate implementation. They address technical aspects of the legislation, do not raise significant policy issues and had broad support from stakeholders. The Government is progressing these amendments as part of its ongoing commitment to practical and effective stewardship of Treasury laws.
 - 1.9 The recommendations primarily address unnecessary complexity in the corporations and financial services law. They unfreeze the AIA, create a single glossary of terms, remove redundant definitions and make other simplifications to improve the navigability and clarity of the law.
 - 1.10 This Bill is part of an ongoing program of an ongoing Law Improvement Program that is designed to ensure that Treasury laws remain current and fit-for-purpose.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

<i>New law</i>	<i>Current law</i>
The AIA, as in force at the relevant point in time, applies to the ASIC Act, Corporations	The AIA, as in force on 1 January 2005, applies to the ASIC Act, Corporations Act

New law	Current law
Act and all instruments made under those Acts.	and certain legislative instruments made under those Acts.
The Corporations Act contains all rules relevant to the calculation of time. These rules state that the first day is counted when calculating the number of days before or after another day, but periods of time otherwise exclude the first day of the period.	The corporations law applies bespoke rules for reckoning time which apply in addition to the rules in the frozen AIA. These rules state that the first day is counted when calculating the number of days before or after another day, but periods of time otherwise exclude the first day of the period.
Section 9 of the Corporations Act contains a single glossary for all defined terms used in the Corporations Act (apart from the Schedules to the Act, the transitional provisions and just-in-time definitions). The glossary either contains the definition of the term, or if the definition is long and complex, signposts to the relevant section that contains the definition.	There is no single location for all defined terms in the Corporations Act. Definitions are scattered throughout the Corporations Act and there are multiple dictionary sections.
Terms are only defined in the Corporations Act if they are subsequently used throughout the Act.	Some terms are defined in the Corporations Act, but are not subsequently used in the Act or only used on one occasion.
Terms that carry their ordinary meanings are not defined in the Corporations Act.	The Corporations Act contains definitions for terms that carry their ordinary meaning.
Headings for definition provisions are consistent and draw attention to the use of defined terms.	Definitions provisions do not have clear or consistent headings.
The definitions of ‘triggering event’, ‘relevant day’, ‘authorised ASIC officer’ and ‘crossing [of section 1020B products]’ do not contain substantive obligations or content.	The definitions of ‘triggering event’, ‘relevant day’, ‘authorised ASIC officer’ and ‘crossing [of section 1020B products]’ contain substantive obligations or content.

Detailed explanation of new law

- 1.11 Schedule 1 to the Bill improves the navigability and readability of the corporations and financial services law by:

- Implementing two further recommendations from the ALRC’s Interim Report A to:
 - unfreeze the AIA so that the current version of the AIA applies to the Corporations Act and ASIC Act (recommendation 5); and
 - create a single glossary of defined terms in section 9 of the Corporations Act (recommendation 7).
- Partially implementing three recommendations from the ALRC’s Interim Report B to:
 - repeal definitions that are no longer used, cross-references to repealed provisions and other redundant provisions (recommendation 14);
 - amend the law to address unclear or incorrect provisions (recommendation 16); and
 - simplify unnecessarily complex provisions in the law, with a particular focus on terms defined as having more than one meaning, definitions containing substantive obligations and definitions that contain the phrase ‘in relation to’ (recommendation 17).

Unfreezing the AIA

- 1.12 Section 5A of the ASIC Act and section 5C of the Corporations Act apply the version of the AIA in force on 1 January 2005 to those Acts, that is, they freeze the AIA. This means that amendments to the AIA made after 1 January 2005 date do not apply.
- 1.13 Freezing the AIA has created practical complications for Corporations Act and ASIC Act readers, who must locate the historic version of the AIA.
- 1.14 Additionally, whenever the AIA is amended, those amendments must be replicated in the Corporations Act and ASIC Act, if the amendments are intended to apply to those Acts. For example, the Corporations Act now includes a definition of ‘document’ to replicate the technology neutral definition inserted into the AIA after 2005.
- 1.15 Freezing the AIA has also created uncertainty about which version of the AIA applies to delegated legislation made under the Corporations Act. This is because the AIA is frozen only for the purposes of ‘this Act’ and the definition of ‘this Act’ does not include ASIC instruments. However, the definition applies subject to any contrary intention. ‘This Act’ is frequently used in a

manner that differs to the definition, making it unclear whether there is a contrary intention.

1.16 Schedule 1 implements the ALRC’s recommendation 5 to unfreeze the AIA so that the version of the AIA that is in force at the relevant point in time applies to both Acts. This:

- restores the original intent of the AIA as an Act of general application across all Commonwealth laws;
- reduces complexity and improves navigability of the corporations and financial services law; and
- removes the duplication of provisions across the Commonwealth statute book.

[Schedule 1, item 1, section 5A of the ASIC Act; item 13, section 5C of the Corporations Act]

1.17 Unfreezing the AIA does not change existing policy settings.

1.18 The most significant change to the AIA since 1 January 2005 relates to the calculation of time.

- The frozen AIA calculates a period of time exclusive of the first day of that period whereas the unfrozen version includes the first day.
- Further, the frozen AIA states that if the last day for doing a thing falls on a Saturday, Sunday, ‘public holiday or bank holiday’, it may be done on the next day. The unfrozen AIA refers generally to ‘holidays’ which includes a day on which the place where the thing is to be done is closed.

1.19 The corporations law also contains bespoke rules for calculating time. When calculating how many days a particular day is before or after another day, the first day is to be counted but not the other day. Further, the definition of ‘business day’ includes ‘bank holidays’. These bespoke rules are in the Corporations Act but they also apply to the ASIC Act due to section 5 of the ASIC Act.

1.20 The Bill amends the bespoke rules for calculating time in the Corporations Act to ensure that the rules in the frozen AIA (as modified by the Corporations Act) continue to apply. The Bill also clarifies that this approach applies to instruments made under the Corporations Act.

[Schedule 1, item 15, section 105 of the Corporations Act]

1.21 The bespoke rules in the Corporations Act relating to reckoning time also apply to the ASIC Act due to subsection 5(3) of the ASIC Act.

1.22 Other differences between the frozen and unfrozen AIA are minor and technical. These are outlined in Table 1.2.

Table 1.2 Comparison of frozen and unfrozen AIA

<i>Issue</i>	<i>Frozen AIA</i>	<i>Unfrozen AIA</i>
Effect of delegations	Delegations are only valid in relation to functions and powers existing at the time of delegation. Delegations do not extend to powers that come into effect after the delegation is made.	A delegation is taken to include additional functions, duties or powers which are provided following an amendment to the Act under which the delegation has been made.
Commencement	Acts and instruments come into operation immediately on the previous day's expiration .	Acts come into operation at the start of that day .
Amended or re-enacted laws	Where an Act refers to another Act's short title as originally enacted, it is taken to refer to the second Act as enacted and amended from time to time.	Where an Act refers to another Act's short title as originally enacted, it is also taken to refer to any provisions in the second Act that have been repealed and re-enacted .
Headings and examples	Headings are not part of the Act. A provision prevails over an example in the event of any inconsistency.	Headings are part of the Act. Examples may extend a provision's operation.
Alphabetical insertion	Definitions are to inserted in appropriate alphabetical position.	New items inserted into existing lists or tables are inserted in the appropriate alphabetical position.
Purposive construction	Prefer a construction that promotes the Act's purpose.	Prefer a construction that ' best achieves ' the Act's purpose.
References to Minister	N/A	Allows for retrospective orders substituting a reference to a Minister with a reference to a different Minister.
Calendar month	'Month' means the period between the day of one month and the corresponding date of the next month.	'Calendar month' means one of the 12 months of the year. 'Month' means the period between the day of one month and the corresponding date of the next month.

<i>Issue</i>	<i>Frozen AIA</i>	<i>Unfrozen AIA</i>
Meaning of <i>document</i>	N/A	The definition of ‘document’ explicitly includes a map, plan, drawing or photograph.
Other definitions	<p><i>Court of summary jurisdiction</i> includes a reference to Commonwealth magistrates</p> <p><i>Gazette</i> includes a reference to a previous name of the Gazette.</p> <p><i>Minister or Minister of State</i> means one of the King’s Ministers of State for the Commonwealth.</p> <p><i>Territory, Territory of the Commonwealth, Territory under the authority of the Commonwealth or Territory of Australia</i> includes ‘a Territory administered by the Commonwealth under a Trusteeship Agreement’</p>	<p><i>Court of summary jurisdiction</i> means any justice of the peace, or magistrate of a State or Territory</p> <p><i>Gazette</i> means the <i>Commonwealth of Australia Gazette</i>.</p> <p><i>Minister or Minister of State</i> means one of the Ministers of State for the Commonwealth</p> <p><i>Territory, Territory of the Commonwealth, Territory under the authority of the Commonwealth or Territory of Australia</i> means a territory referred to in the Constitution</p>
New definitions	N/A	<i>Administrative Arrangements Order, Australian citizen, contiguous zone, continental shelf, exclusive economic zone, legislative instrument, notifiable instrument, penalty unit, Standards Australia, territorial sea</i>
Powers and functions	Part 7 refers to powers and functions.	Part 7 refers to powers, functions and <i>duties</i> .
Power to make	Power to make includes repealing in a like manner and subject to like conditions.	Also allows for repeal when ongoing conditions ceases to be satisfied.
Acts done by persons acting under appointment	N/A	Acts done by a person purporting to act under an appointment are not invalid merely because the person was not properly appointed.
Acting in offices or positions	Where an Act confers a power to appoint a person to act in a particular office, this includes the power to appoint a person to act in that position.	Where an Act provides for a person to act in an office, the Act or any other Act applies in relation to the person as if the person were the holder of the office.

<i>Issue</i>	<i>Frozen AIA</i>	<i>Unfrozen AIA</i>
Meetings	Members may participate in meetings by telephone or any other means of communication.	In meetings, members participating by phone or other means of communication will form part of any quorum.
References to and citation of Acts	Details how to refer to an Act of the Commonwealth, United Kingdom or a State.	Details how to refer to an Act of the Commonwealth, United Kingdom, or a State or Territory.
Construction of instruments	Expressions in non-legislative instruments have the same meaning as the enabling legislation. Non-legislative instruments can be disallowable, if provided for in the enabling provision.	Expression in instruments that are non-legislative, and not notifiable instruments , have the same meaning as in the enabling legislation as in force from time to time.
Oaths	Various persons may administer an oath.	Various persons may administer an oath or affirmation.

- 1.23 The amendments repeal the definition of ‘modifications’ in the Corporations Act and ASIC Act and the definitions of ‘affidavit’, ‘document’ and ‘territorial sea’ in the Corporations Act. As the AIA already contains these definitions, their inclusion in the Corporations Act and the ASIC Act is unnecessary. The amendments also substitute the terms ‘Judge’ and ‘Judges’ in the Corporations Act with ‘judge’ and ‘judges’ so the AIA definitions apply to the terms.
[Schedule 1, item 2, subsection 12GNA(4) (definition of modifications) of the ASIC Act ; items 14, 16, 19 and 20, section 9 and subsections 581(1), 1044B(4) (definition of modifications), 1057A(2) and 1057A(3) of the Corporations Act]
- 1.24 Similarly, the Bill repeals sections in the Corporations Act and ASIC Act that relate to acting positions. These sections replicate the content in the unfrozen AIA. The Bill inserts a note directing readers to the relevant provision in the AIA.
[Schedule 1, items 5, 6, 7, 8, 10 and 11, subsections 208(4), 208A(1), 208A(2), 236D(4) and 236H(4) and sections 116, 117, 118, 182 and 245 of the ASIC Act]
- 1.25 The Corporations Act and ASIC Act are internally inconsistent in their treatment of oaths and affirmations. Newer provisions refer to both ‘oaths and affirmations’ whereas older provisions do not. This reflects a change in drafting conventions, rather than a deliberate policy distinction. To bring relevant provisions of the Corporations Act and ASIC Act in line with modern

drafting practices and ensure consistency with the unfrozen AIA, the Bill inserts references to ‘affirmation’ into relevant provisions. *[Schedule 1, items 3, 4, and 9, paragraph 19(2)(b) and subsections 58(5) and 218(5) of the ASIC Act; item 17, paragraph 596D(1)(b) of the Corporations Act]*

- 1.26 The amendments update outdated references to the AIA in the Corporations Act.
[Schedule 1, items 12 and 18, subsection 3(2) and section 1020AE (note 2) of the Corporations Act]

Single Glossary

- 1.27 The Bill implements recommendation 7 from the ALRC’s Interim Report A to create a single glossary of defined terms in the Corporations Act.
- 1.28 The Corporations Act does not have a single comprehensive dictionary and the main dictionary in section 9 includes some, but not all, defined terms. Other dictionaries are scattered throughout the different Chapters, Parts, Divisions and Subdivisions. Further, section 9 sometimes refers readers to a Chapter or Part where a substantial definition is located, but not the specific provision. This makes it harder for readers to find the meaning of defined terms.
- 1.29 Implementing the ALRC’s recommendation to create a single glossary improves the Corporations Act’s navigability by listing all defined terms in section 9, either in the form of a real definition or as a ‘signpost’ (i.e. a cross-reference) to the precise provision that contains the real definition.
- 1.30 The Bill applies six key principles to ensure a consistent approach to implementing the recommendation to create a single glossary.
- 1.31 A discussion of the key principles is below. Attachment A lists the defined terms that apply each principle, along with the corresponding section references in the Bill.

Principle 1 – Terms that can be understood according to their ordinary meaning should not be defined

- 1.32 The Bill deletes definitions that replicate the ordinary meaning of the defined term. There is a common law rule of interpretation that terms that are not defined carry their ordinary meaning. Therefore definitions that replicate the ordinary meaning are redundant and unnecessarily add to the length and complexity of the law.
- 1.33 Deleting redundant definitions also improves navigability as it removes the need for readers to regularly refer back to the single glossary in section 9 to determine the meaning of a term.

- 1.34 This principle also partially implements the ALRC’s recommendation 14 in Interim Report B to repeal redundant provisions.

Principle 2 – Terms used infrequently should not be defined

- 1.35 The Bill deletes definitions for terms that are only used once or a small number of times throughout the Corporations Act and incorporates the substance of the definition into the relevant section(s). This is consistent with the ALRC’s Interim Report A finding that terms should only be defined if it enhances readability or significantly reduces the need to repeat text.
- 1.36 However, the Bill does not delete the definitions for a small number of infrequently used terms where the definition is particularly long and complex. This is because incorporating long and complex definitions into the only provisions in which they are used would significantly add to the length and complexity of the law.

Principle 3 – Defined terms should be listed in section 9

- 1.37 The Bill creates a single glossary in section 9 that contains a complete list of all defined terms used in the main body of the Corporations Act.
- 1.38 Consistent with the ALRC’s recommendation, terms only used in transitional provisions (i.e. Chapter 10) are not included in section 9. Transitional provisions only apply to a small part of the regulated community for a restricted period of time. Including terms used in the transitional provisions in section 9 would increase the length of section 9 and detract from its utility for other users of the law. It would also necessitate further amendments to section 9 when the transitional provisions become redundant and are repealed.
- 1.39 Similarly, terms used only in a Schedule to the Corporations Act are not included in section 9. The ALRC found that including these terms in section 9 would have negligible benefit in terms of enhancing navigability and it would be a significant undertaking.
- 1.40 Terms defined for the purposes of a single section in the Corporations Act (just in-time definitions) are also excluded from section 9. It is more reader-friendly for these definitions to be located in or near the section that uses the term. This eliminates the need for the reader to refer back to section 9, improving navigability.

Full definition versus sign-posting

- 1.41 Defined terms are listed in section 9 either in full or as a cross-reference (a ‘sign-post’) to the provisions where the full definition can be found.

- 1.42 A defined term is signposted in section 9 with a cross-reference to the relevant section containing the definition (rather than listed, along with its actual definition in section 9) if:
- the definition is particularly long or elaborate in its structure, as including these in section 9 would increase the length and complexity of the single glossary;
 - defining the word in another part of the Act better supports the narrative flow and makes it easier to understand the operative provisions; or
 - the definition is only used for the purposes of a particular Chapter, Part, Division or Subdivision, as it is more reader-friendly to locate the definition close to the use of the term.
- 1.43 Where a signpost is included in section 9, the signpost refers to the precise provision that contains the defined term (rather than cross-referencing an entire Chapter or a provision which itself contains another cross-reference). This enhances navigability by allowing the reader to quickly locate the definition.

Defined terms listed in dictionaries other than section 9

- 1.44 The Corporations Act currently includes dictionaries scattered throughout different Chapters, Parts, Divisions and Sub-divisions. For simplicity, these other dictionaries are referred to as Chapter-specific dictionaries in this explanatory memorandum.
- 1.45 Chapter-specific dictionaries hinder navigability as it is not intuitive which dictionary contains each definition and readers may need to refer to multiple dictionaries to find the definition. Chapter-specific dictionaries also increase the risk of one word carrying multiple definitions in different parts of the Act.
- 1.46 Where possible within existing policy settings, the Bill gives terms in Chapter-specific dictionaries Act-wide application and lists them in section 9. This has been done where the term:
- is used outside the Chapter with the same meaning as in the Chapter; or
 - is not currently used outside the Chapter.
- 1.47 Clarifying the scope of such defined terms to make clear they apply for the purposes of the whole Act reduces the risk that in the future the defined term may take on different meanings. This future-proofs the Corporations Act and eliminates a potential future source of complexity.
- 1.48 If a term is used outside the Chapter with a different meaning, the term is listed in section 9, but section 9 makes it clear that the definition only applies for the

purposes of a particular Chapter. This ensures that readers can quickly locate the definition by referring to the single glossary, while also preserving the existing policy settings.

- 1.49 Terms are listed in full in section 9 unless they are:
- used only for the purposes of a particular chapter;
 - used outside the chapter with a different meaning; or
 - the definition is particularly long or elaborate in structure (refer to the discussion under the heading ‘Full definition versus sign-posting’ above).
- 1.50 In the above three scenarios, section 9 includes a cross-reference to the section that contains the definition.
- 1.51 The Bill also deletes any terms or signposts from the Chapter-specific dictionary that are redundant, either because:
- the term has been moved into section 9 with its full definition; or
 - the Chapter-specific dictionary only included a signpost to another section and the signpost now appears in section 9.
- 1.52 The Bill makes consequential amendments to the Corporations Act and ASIC Act to accurately reflect the new location of relevant definitions that have been moved to sit within the section 9 single glossary, or which have been given Act-wide application.
- 1.53 Table 1.2 summarises how the principles apply to terms in Chapter-specific dictionaries.

Table 1.3 : Approach for terms in Chapter-specific dictionaries

	<i>When sub-principle applies</i>	<i>Does the term apply Act-wide?</i>	<i>What should be in section 9?</i>	<i>What should be in the Chapter-specific dictionary?</i>
3.1	Term is <u>not</u> used outside the Chapter	Yes	Signpost to the section containing the definition (either the Chapter-specific dictionary or another section).	If the dictionary contains a signpost, delete it. If the dictionary contains the full definition, retain it.
3.2	Term <u>is</u> used outside the	No	Signpost to the section containing the	If the dictionary contains a signpost, delete it.

	Chapter with a <u>different meaning</u>		definition (either the Chapter-specific dictionary or another section). Note the term's limited application.	If the dictionary contains the full definition, retain it.
3.3	Term <u>is</u> used outside the Chapter with the <u>same</u> meaning	Yes	Include the full definition in section 9 unless the definition is long and elaborate.	Delete the signpost or full definition.

Terms remaining in Chapter-specific dictionaries

- 1.54 The Bill also repeals the dictionaries in section 601WAA (dictionary for Division 1 of Part 5D.6), section 960 (dictionary for Part 7.7A), section 1011B (dictionary for Division 2 of Part 7.9), section 1023B (dictionary for part 7.9A), section 1276 (dictionary for Division 1 of Part 9.2), subsection 1317DAA(1) (dictionary for Part 9.4AA), section 1363 (dictionary for Part 9.12) because only one or two defined terms remained in them after applying the above principles. There is little benefit retaining Chapter-specific dictionaries with only one or two definitions as it leads to unnecessary complexity.
[Schedule 2, items 104, 404, 430, 466, 527, 535, 538, Division 1 of Part 9.2, sections 601WAA, 960, 1011B, 1023B and 1363, and subsection 1317DAA(1) of the Corporations Act]
- 1.55 The defined terms remaining in the repealed dictionary are moved to section 9 or a stand-alone section according to the principles outlined above.
[Schedule 2, items 92, 218, 213, 430, 466, 533, 534, 535, sections 9, 1011B, 1023B, 1317DAA (heading), 1317DAAA, subsection 1317DAA(1) of the Corporations Act]

Principle 4 – Headings for provisions containing defined terms should be consistent and intuitive

- 1.56 The Bill implements recommendation 9 from Interim Report A to use consistent headings for provisions containing definitions.
- 1.57 Provisions which contain defined terms are not signposted with clear and consistent headings. For example, section 9 is headed 'Dictionary', sections 9A to 9C are headed 'Meaning of [defined term]' and section 46 is headed 'What is a [defined term]'. Some provisions with defined terms do not even have a heading that indicates that there is a definition. This makes it difficult for

readers to easily locate defined terms. It also means digital search tools, which can assist readers to locate definitions, are of limited use.

- 1.58 To assist readers to locate definitions more readily, the Bill amends relevant headings so that they use the phrase ‘Meaning of [defined term]’.
- 1.59 The Bill also amends headings to ensure they are intuitive. Intuitive headings provide readers with a clearer indication of a provision’s contents, improving clarity.

Principle 5 – Labels for defined terms should be intuitive

- 1.60 The Bill omits references to multiple defined terms used in the Corporations Act and ASIC Act and replaces them with more intuitive labels.
- 1.61 Intuitive labels help readers understand and recall the content of the definition, which improves the law’s readability. This is consistent with the ALRC’s finding that labels should be intuitive.

Principle 6 – Bold italics should only be used when creating defined terms

- 1.62 The Corporations Act uses bold italics inconsistently. The amendments rationalise the use of bold italics so it is only used when a new term is defined, including in just-in-time definitions and section specific definitions (internal tags).
- 1.63 The amendments remove bold italics from terms that are not used in a defined sense, including in provisions that merely contain application rules.
- 1.64 By applying bold italics consistently throughout the Corporations Act, the Bill makes it easier for readers to identify provisions that create definitions.

Other Amendments

Interim Report B recommendations

- 1.65 The Bill partially implements three recommendations from Interim Report B to:
- repeal unused definitions and other redundant or unnecessary provisions;
 - address unclear or incorrect provisions; and

- simplify unnecessarily complex provisions, including terms defined as having more than one meaning and definitions that contain substantive obligations.
- 1.66 The Bill repeals the definitions of ‘financial benefit’ and ‘transitional period’. Both terms are redundant. The term ‘financial benefit’ is not used or defined in the Act and the provision that uses the term ‘transition period’ is spent. The Bill also repeals section 7 which provides for the location of interpretation provisions. The creation of the single glossary makes this redundant.
[Schedule 2, items 2, 412, section 7, Division 7 of Part 7.7A of the Corporations Act]
- 1.67 The amendments also fix an erroneous reference in the ASIC Act so the correct provision is referenced.
[Schedule 2, item 115, paragraph 43(1)(e) of the ASIC Act]
- 1.68 In some cases, section 9 contains identical labels for terms that have different meanings. The Bill merges the different definitions so they both sit underneath the same label, but retains the limited application for each to its specific context. This reduces complexity for readers who may not know which of the two definitions to apply when one label is used.
[Schedule 2, items 57, 58, 116 and 117, section 9 (definition of eligibility criteria) (first occurring), section 9 (definition of eligibility criteria) (second occurring), section 9 (paragraph (b) of the definition of enter into), section 64 of the Corporations Act]
- 1.69 The Bill removes substantive obligations from definitions (‘authorised ASIC officer’, ‘crossing [of section 1020B products]’, ‘triggering event’ and ‘relevant day’) and locates them in new standalone provisions. This is consistent with the ALRC’s finding that defined terms should not contain substantive obligations or powers because it increases complexity. The Bill also makes consequential amendments following the removal of substantive obligations from definitions sections.
[Schedule 2, items 63, 74, 75, 85, 86, 104, 107, 108, 109 and 459, section 9, section 489F, before subsection 500AA, subsection 598(5) (definition of relevant day), At the end of section 590, section 601WAA, subsection 601WCA(1), subparagraph 601WCB(b)(i), subparagraph 601WCC(1)(b)(i), section 1020A of the Corporations Act]

Miscellaneous amendments to improve clarity, consistency and navigability

Clarity

- 1.70 The Bill amends expressions that are unclear. In particular, it replaces references to compensation arrangements with ‘arrangements for compensation’ to avoid using shorthand. It also avoids using a defined term

where the term is not intended to be understood in its defined sense.

[Schedule 2, items, 374, 397 and 398, section 912B (heading) and subsections 923C(10) and 923C(10) (note) of the Corporations Act]

- 1.71 The Bill makes minor amendments to remove unnecessary words, where doing so improves clarity. However, it also adds additional words in some limited circumstances to explain certain concepts more clearly. In particular, the phrase ‘under any law of the Commonwealth or a State or Territory’ is inserted in relation to the availability of infringement notices to make clear that both Commonwealth and State or Territory legislation can impose infringement notices.

[Schedule 2, items 36, 444, 528 and 536, section 9, subsection 1017BB(6) (definition of small APRA fund), paragraphs 1311E(3)(a) and (b), subsection 1317DAG(3)(heading) of the Corporations Act]

Consistency

- 1.72 The Bill updates definitions that rely on defined terms located in other Acts, so they use consistent labels. It repeals the definition of ‘BAS agent’ in the Corporations Act and replaces it with a composite definition of ‘registered tax agent or BAS agent’ to reflect the definition provided for in the *Tax Agent Services Act 2009*.

[Schedule 2, item 218, section 9 of the Corporations Act]

- 1.73 The Bill also removes the phrase ‘as defined in’ from some signposts and replaces it with the phrase ‘see’. This makes the language in the Corporations Act more consistent and uses more direct language.

[Schedule 2, item 99, paragraph 601RAB(2A)(e) of the Corporations Act]

- 1.74 The Bill defines ‘public sector superannuation scheme’ as having the same meaning as in the *Superannuation Industry Supervision Act 1993*. This is consistent with the treatment of similar terms that are also defined in the SIS Act.

[Schedule 2, items 201, 214, 215 218 and 261, section 9 (paragraph (h) of the definition of managed investment scheme), section 9 (paragraph (b) of the definition of professional investor), section 9 (paragraph (d) of the definition of professional investor), section 9, subparagraph 761G(6)(c)(i) of the Corporations Act]

Navigability

- 1.75 The Bill improves the use of simplified outlines in the Corporations Act. Simplified outlines assist readers to navigate the law and understand the substantive provisions (but are not intended to be comprehensive). Simplified outlines also need to be clearly identifiable. The Bill inserts a new outline for Part 1.2 and updates the formatting of the outline for Part 2D so that it is in a

box as per modern drafting conventions.

[Schedule 2, items 1 and 44, sections 6A and 179 of the Corporations Act]

- 1.76 The Bill also makes it easier for readers to ascertain when a form needs to be lodged in a prescribed form. Lodge is defined for the purposes of Chapter 7 to mean ‘lodge with ASIC in a prescribed form’. However, readers are often unaware that the term is defined. To avoid this confusion, the Bill repeals the definition of ‘lodge’ from the Chapter 7 dictionary and instead uses the phrases ‘in a prescribed form’ wherever required.

[Schedule 2, items 243, 299, 300, 302, 303, 308, 309, 311, 312, 316, 324, 327, 328, 388, 361, 362, 377, 380 to 386, 389, 392, 419-420 and 437, section 761A to 761B, 793D(1) and (3), 913A, 913B(3) to (4B), subsections 793D(1) and (3), 795A(1), 797A(1), 822D(1) and (3), 824A(1), 826A(1), 851D(4), 884B(2), 890G(1) and 908BD(1) and (2), 913B(3) and (4B), 914B(3) and (6), 915A(1), 915C(5), 916F(1), 989B(2), 990K(1) and 1015B(1), paragraphs 796A(2(b)), 825A(2)(b), 882B(2)(b), 884C(2)(b), 912DAC(1)(a), 914A(2)(b), 915B(1)(e), 915B(2)(d), 915B(3)(e), 915B(4)(d), 916F(1) and 920D(2)(b) of the Corporations Act]

- 1.77 Further, the Bill amends vague language, such as ‘in such cases as are prescribed’ and replaces it with ‘in such cases as are specified in the regulations’. The Bill also inserts references to the regulations in relation to publishing. These changes make clear to readers that they need to look to the regulations, which improves clarity and navigability.

[Schedule 2, items 106, 111, 539, section 1367, subsection 601WGA(3), paragraph 601WBH(b) of the Corporations Act]

Substantive amendments to other Acts

- 1.78 The Bill repeals the definition of ‘corporations’ law’ in the SIS Act as the term is not used in that Act.

[Schedule 2, item 630, subsection 10(1) (definition of Corporations Law) of the Superannuation Industry (Supervision) Act 1993]

- 1.79 The amendments repeal the definition of ‘financial services business’ from the *Security of Critical Infrastructure Act 2018*. This Act relies on the definition of ‘financial services business’ in the Corporations Act. However, the Bill repeals this definition from the Corporations Act, as the term is defined as meaning ‘a business providing financial services’, which does not add anything to the ordinary meaning of the term (see principle 1 above). The Bill also amends the only reference to this definition in the *Security of Critical Infrastructure Act 2018* to ensure that Act continues to operate as intended.

[Schedule 2, item 627, section 5 (definition of financial services business) of the Security of Critical Infrastructure Act 2018]

- 1.80 The Bill repeals the reference to section 769 of the Corporations Act in the *Income Tax Assessment Act 1997*, as it is redundant. Section 769 of the

Corporations Act has been repealed and the definition of ‘approved stock exchange’ in the Corporations Act now directs the reader to the meaning of the phrase in the *Income Tax Assessment Act 1997*. The phrase ‘approved stock exchange’ is defined as ‘a stock exchange named in regulations made for the purposes of this definition’ in the *Income Tax Assessment Act 1997*. The Bill substitutes the reference to section 769 of the Corporations Act with the defined term ‘approved stock exchange’.

[Schedule 2, item 575, paragraph 115-290(1)(b) of the Income Tax Assessment Act 1997]

Consequential amendments to other Acts and Regulations

- 1.81 The Bill makes consequential amendments to Acts which rely on definitions in the Corporations Act that are affected by this Bill.
- 1.82 In most cases, where the Bill relocates a definition and that definition is relied on by a provision of another Act, the Bill amends the provision in the other Act to remove any reference to a specific chapter, part, division or provision of the Corporations Act. This ensures the reference to a definition in the Corporations Act in a provision outside of the Corporations Act is not affected by changes to the location of the definition within the Corporations Act. It also brings the drafting into line with modern conventions.
- 1.83 This principle is applied in the following Acts:
 - *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018*
[Schedule 2, item 543, section 4 of the Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018]
 - *Administrative Decisions (Judicial Review) Act 1977*
[Schedule 2, item 544, paragraph (hba) of Schedule 1 of the Administrative Decisions (Judicial Review) Act 1977]
 - *Aged Care Act 1997*
[Schedule 2, item 545, subsection 52N-1(3) of the Aged Care Act 1997]
 - *Anti Money Laundering and Counter Terrorism Financing Act 2006*
[Schedule 2, items 546 to 549, section 5 of the Anti Money Laundering and Counter Terrorism Financing Act 2006]
 - *ASIC Supervisory Cost Recovery Levy Act 2017*
[Schedule 2, items 551 and 552, section 7 of the ASIC Supervisory Cost Recovery Levy Act 2017]

- *Australian Defence Force Cover Act 2015*
[Schedule 2, item 553, subsection 57(2) (note) of the Australian Defence Force Cover Act 2015]
- *Banking Act 1959*
[Schedule 2, items 555, 556 and 558, subsection 5(1) and section 11CAA of the Banking Act 1959]
- *Clean Energy Finance Corporation Act 20128*
[Schedule 2, item 559, section 4 of the Clean Energy Finance Corporation Act 2012]
- *Commonwealth Inscribed Stock Act 1911*
[Schedule 2, item 560, subsection 3(1) of the Commonwealth Inscribed Stock Act 1911]
- *Corporations (Aboriginal and Torres Strait Islander) Act*
[Schedule 2, items 561 to 563, paragraph 26-15(b), 694-75(1)(e) and (2)(e) and section 700-1 of the Corporations (Aboriginal and Torres Strait Islander) Act]
- *Emergency Response Fund Act 2019*
[Schedule 2, item 565, section 4 of the Emergency Response Fund Act 2019]
- *Financial Sector (Collection of Data) Act 2001*
[Schedule 2, item 566 to 568, subparagraphs 5(2)(e)(i) and 13(4F)(c)(ii) of the Financial Sector (Collection of Data) Act 2001]
- *Financial Transaction Reports Act 1988*
[Schedule 2, items 569 to 571, subsections 3(1) and 9(4) of the Financial Transaction Reports Act 1988]
- *Future Drought Fund Act 2019*
[Schedule 2, item 572, section 5 of the Future Drought Fund Act 2019]
- *Future Fund Act 2006*
[Schedule 2, item 573, section 5 of the Future Fund Act 2006]
- *Income Tax Assessment Act 1936*
[Schedule 2, item 574, subparagraph 128AE(2)(e)(iii) of the Income Tax Assessment Act 1936]
- *Income Tax Assessment Act 1997*
[Schedule 2, items 575 to 583, section 292-330 (note), subsections 275-10(5), 275-35(2), 275-35(3), 995-1(1), paragraphs 115-290(1)(b), 275-15(b) and 275-20(5)(c) and subparagraphs 275(1)(a)(i) and (ii) of the Income Tax Assessment Act 1997]

- *Income Tax Rates Act 1986*
[Schedule 2, item 584, subparagraph 23AB(2)(a)(iv) of the Income Tax Rates Act 1986]
- *Insurance Act 1973*
[Schedule 2, items 585 to 590, subsection 3(1) and paragraph 3A(2)(a) of the Insurance Act 1973]
- *Insurance Contracts Act 1984*
[Schedule 2, items 591 to 592, subsections 14A(2) and (3) of the Insurance Contracts Act 1984]
- *Interactive Gambling Act 2001*
[Schedule 2, item 593, paragraph 5(3)(b) of the Interactive Gambling Act 2001]
- *Life Insurance Act 1995*
[Schedule 2, item 594 to 597, section 230AAB and Dictionary of the Life Insurance Act 1995]
- *Medibank Private Sale Act 2006*
[Schedule 2, items 598 and 599, clause 1 and subclause 6(8) of Schedule 2 of the Medibank Private Sale Act 2006]
- *Medical Indemnity Act 2002*
[Schedule 2, item 600, subsection 4(1) of the Medical Indemnity Act 2002]
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
[Schedule 2, item 601, subsection 4(1) of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2002]
- *Medical Research Future Fund Act 2015*
[Schedule 2, item 602, section 5 of the Medical Research Future Fund Act 2015]
- *National Broadband Network Companies Act 2011*
[Schedule 2, items 603-605 to 2, section 5, subsection 55(8) and paragraph 60(1)(c) of the National Broadband Network Companies Act 2011]
- *National Consumer Credit Protection Act 2009*
[Schedule 2, items 606 to 609, subsections 5(1) and 204(1) and paragraph 47(1) of the National Consumer Credit Protection Act 2009]

- *Payment Systems and Netting Act 1998*
[Schedule 2, items 610 to 614, section 5 and paragraph 10(2)(f) of the Payment Systems and Netting Act 1998]
- *Personal Property Securities Act 2009*
[Schedule 2, item 615, section 10 of the Payment Systems and Netting Act 1998]
- *Retirement Savings Accounts Act 1997*
[Schedule 2, items 616 to 619, subsections 95(1A), 163(12), 182(1A) and paragraph 47(1)(a) of the Retirement Savings Accounts Act 1997]
- *Security of Critical Infrastructure Act 2018*
[Schedule 2, items SC11 to SC17, section 5 of the Security of Critical Infrastructure Act 2018]
- *Superannuation Contributions Tax (Assessment and Collection) Act 1997*
[Schedule 2, item 628, section 24 (note) of the Superannuation Contributions Tax (Assessment and Collection) Act 1997]
- *Superannuation Industry (Supervision) Act 1993*
[Schedule 2, items 629 to 643, section 38A, subsections 10(1), 29SAC(2), 66(5), 101(1), 101(3) and 242C(2) of the Superannuation Industry (Supervision) Act 1993]
- *Taxation Administration Act 1953*
[Schedule 2, items 646 to 656, section 155-190 (note), subsections 133-120(2) (note), 133-140(1) (note), 355-65(3) (note), 390-5(1) (note 2) and subparagraph 426-120(2)(b(ii)) of Schedule 1, paragraphs 396-65(1)(b) and 396-65(2)(b) subparagraphs 396-65(1)(b)(i), 396-65(2)(b)(i), subsections 10(1), 29SAC(2), 66(5), 101(1), 101(3) and 242C(2) of the Taxation Administration Act 1953]
- *Telstra Corporation Act 1991*
[Schedule 2, item 657 to 659, subsection 8AJA(8) and paragraph 8AR(1)(c) of the Telstra Corporation Act 1991]

1.84 The Bill relocates the definition of ‘securities’ in the Corporations Act from section 761A to subsection 92(5). Where an Act relies on the definition of ‘securities’ provided by current section 761A of the Corporations Act, this Bill amends that Act to refer to new subsection 92(5) of the Corporations Act.
[Schedule 2, item 550, section 5 of the Anti-Money Laundering and Counter Terrorism Financing Act 2006; item 599, subclause 6(8) of Schedule 2 of the Medibank Private Sale Act 2006; item 611, section 5 of the Payment Systems and Netting Act 1998]

- 1.85 The *Superannuation Industry (Supervision) Act 1993* contains a provision which defines the term ‘regulated superannuation fund’ with reference to the definition of ‘regulated superannuation fund’ in Chapter 7 of the Corporations Act. The Bill amends this provision to remove this reference to the Corporations Act while incorporating the substance of the definition from the Corporations Act into the relevant provision of the *Superannuation Industry (Supervision) Act 1993*.
[Schedule 2, items 640 to 641, subsections 101(1) and 101(3) of the Superannuation Industry (Supervision) Act 1993 being amended]
- 1.86 Consequential amendments to Regulations are being progressed as a separate tranche of work. They will be released for consultation in early 2023.

Commencement, application, and transitional provisions

- 1.87 The Bill ensures ASIC instruments continue to operate as intended notwithstanding the amendments to definitions in the Corporations Act and the ASIC Act made by the Bill. In particular, references in ASIC instruments to
- definitions that are moved or amended by the Bill are treated as referring to the new definition; and
 - repealed definitions (that are not moved or replaced) are treated as continuing to have effect for the purposes of the instrument as though they had not been repealed.
- [Schedule 2, item 541, sections 344B, 344C and 344D of the ASIC Act; item 2005, sections 1698B, 1698C, 1698D and 1698E of the Corporations Act]**
- 1.88 The Bill also includes a savings provision to ensure that the amendments relating to the AIA do not alter the calculation of time for periods which starts before the commencement of the Bill. This is significant for time periods in ASIC instruments. It has no practical effect for time periods in the ASIC Act, Corporations Act or regulations made under those Acts as the amendments in this Bill preserve the status quo.
[Schedule 2, item 542, sections 344B, 344C and 344D of the ASIC Act; item 2005, sections 1698B, 1698C, 1698D and 1698E of the Corporations Act]
- 1.89 Treasury welcomes feedback from stakeholders on any other matters that may require consequential or savings provisions.

Contingent amendments

- 1.90 Prior to introduction to Parliament, the Bill will be updated to include contingent amendments. These will detail how the amendments in this Bill interact with amendments in other Treasury Laws Amendment Bills that are before the Parliament at the time of this Bill's introduction.
- 1.91 Contingent amendments will be drafted closer to the time of introduction, once Treasury has a clearer idea of what Bills will remain before the Parliament at the time this Bill is introduced.