



20 September 2022

Legislation Policy and Delivery Branch

Law Division

The Treasury

Submitted via email to: lawimprovement@treasury.gov.au

To whom it may concern,

TREASURY CONSULTATION ON IMPROVING CORPORATIONS AND FINANCIAL SERVICES LAW

The Australian Finance Industry Association (AFIA)¹ appreciates the opportunity to respond to the Treasury Consultation on Improving Corporations and Financial Services Law.²

AFIA is the only peak body representing the entire finance industry in Australia. We represent 158 members, including bank and non-bank lenders, neobanks, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry.

We are the voice for advancing a world-class finance industry, with our members who are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes, and create a resilient, inclusive and sustainable future.

¹ www.afia.asn.au.

² [Improving Corporations and Financial Services Law | Treasury.gov.au](https://www.treasury.gov.au/consultations/consultation-on-improving-corporations-and-financial-services-law).

OUR SUBMISSION

AFIA supports the proposed [draft legislation](#), to be known as the Treasury Laws Amendment (Measures for Consultation) Bill 2022: ALRC Financial Services Interim Report ('the Bill'), and the accompanying [draft regulations](#).³

These measures are the product of a substantial program of work from the Australian Law Reform Commission (ALRC), following a reference on the simplification of corporations and financial services law by the former Attorney-General on 11 September 2020.⁴

We recognise the draft legislation and regulations are the product of wide consultation. They partially implement the recommendations of the ALRC's Interim Report A on Financial Services Legislation ('ALRC Report A').⁵

AFIA notes the full 664-page Report was tabled in the Australian Senate by the former Attorney General on 30 November 2021.⁶ Consultation on the Report was open until 25 February 2022.⁷ The ALRC also received 58 submissions, including from: the Australian Banking Association, the NSW Bar, ANZ Banking Group, Allens and MinterEllison.⁸

AFIA commends the ALRC and Treasury on such a methodical and detailed approach to consultation on these matters.

AFIA sees these proposed regulatory changes, summarised in **Attachment A**, as an important first step towards simplifying the complex structure of the *Corporations Act 2001* (Cth) ('the *Corporations Act*') and Australian financial services law more broadly.

The 2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('[The Hayne Royal Commission](#)'), found the complex and convoluted nature of our current corporations and financial services laws can impede compliance.⁹

³ To be known as the *Treasury Laws Amendment (Measures for Consultation) Regulations 2022*.

⁴ Attorney General of Australia, Terms of Reference for the Review of the Review of the Legislative Framework for Corporations and Financial Services Regulation (11 September 2020): www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/terms-of-reference.

⁵ Australian Law Reform Commission, *Financial Services Legislation: Interim Report A (ALRC Report 137)*: www.alrc.gov.au/publication/fsl-report-137.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Australian Law Reform Commission, *Submissions to ALRC Report 137*: www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/submissions.

⁹ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 5[1.4].

Simplification of the *Corporations Act* and broader regulatory regime will lead to greater ease of compliance. It will ensure the rights and obligations of all involved are clearer, simpler, and easier to understand and follow.

This is especially urgent given the overly complex state of the regime at present. The *Corporations Act* is over 3,900 pages long, and the accompanying *Corporations Regulations 2001* ('the Regulations') add an additional 1,300 pages of compliance burdens.¹⁰ There are also over 270 ASIC legislative instruments, 200 regulatory guides and 200 information statements, further complicating this field.¹¹

Former Chief Justice of the High Court of Australia, Sir Anthony Mason, once described Australian corporations law as having a confounding 'Byzantine complexity'.¹² Leading academic and former Justice of the Supreme Court of New South Wales, Dr Robert Austin, once criticised the *Corporations Act* as representing a 'devastatingly comprehensive abandonment of the principles of simplification'.¹³

Given near universal agreement on the need for simplification in this area, these proposals represent a positive start on the journey towards greater refinement of the relevant regulatory settings.

Table 1 in Attachment A summaries the proposed changes, which AFIA supports. AFIA particularly welcomes, as outlined in **Table 1**, the repeal of 14 redundant definitions, further rationalisation of 15 definitions, and 71 amendments ensuring more consistent use of headings to enhance readability and ease of use throughout the *Corporations Act*.

AFIA recommends Treasury continue to implement, as appropriate, further recommendations and suggestions from the ALRC and others that simplify this area of law.

We also note two further ALRC Interim Reports in this area are due to be delivered in September 2022 and August 2023 respectively, preceding a Final Report due on 30 November 2023.¹⁴

¹⁰ William Isdale and Christopher Ash, Australian Law Reform Commission, *Undue complexity in Australia's corporations and financial services legislation* (30 November 2021): [Undue complexity in Australia's corporations and financial services legislation | ALRC](#).

¹¹ *Ibid.*

¹² Stephen Bottomley, 'Corporate Law, Complexity and Cartography' (2020) 35(2) *Australian Journal of Corporate Law* 142, 1.

¹³ Isdale and Ash (n 4).

¹⁴ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 6[1.5].

We urge that any regulatory change flowing from these reports should continue to simplify and streamline this complex legal regime. Focusing on ensuring regulation is clear, balanced, appropriate and fit for purpose.

CLOSING COMMENTS

Should you wish to discuss our submission, or require additional information, please feel free to contact our Executive Director of Policy and Strategy, Roza Lozusic, on 0431 261 201 or at roza.lozusic@afia.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Reinehr', is displayed within a white rectangular box.

Sebastian Reinehr
Senior Policy Adviser

ATTACHMENT A: DETAILED DISCUSSION OF THE PROPOSED CHANGES

Table 1 summarises the important changes flowing from the proposed Bill and Regulations.

AFIA supports these changes.

Table 1: Summary of Changes

1 – Redundant definitions	<ul style="list-style-type: none">• Repeals an incorrect reference to the non-existent Part 1.3 of the <i>Corporations Act</i>.¹⁵• Repeals 14 redundant definitions from the <i>Corporations Act</i> and moves them to the Regulations where appropriate.¹⁶
2 – Uniform headings	<ul style="list-style-type: none">• 71 amendments designed to ensure consistency of headings where a provision contains a definition.¹⁷• 15 accompanying changes in the Regulations.¹⁸
3 – Rationalisation & streamlining	<ul style="list-style-type: none">• Moves the 12 definitions from the Dictionary in s 9 of the Act to more appropriate places.¹⁹• Streamlines the definitions of ‘participant’,²⁰ ‘recognised affiliate’,²¹ ‘funeral expenses facility’²² and being ‘connected’²³ to a ‘body corporate’ without changing their legal meaning.
4 – Special and extraordinary resolutions	<ul style="list-style-type: none">• Amends the definitions of ‘special’ and ‘extraordinary’ resolution, so substantive obligations are placed in new operative provisions.²⁴
5 – Plain English	<ul style="list-style-type: none">• Removes 5 definitions which add nothing to the ordinary meaning of their words.²⁵
6 – Review fees	<ul style="list-style-type: none">• Amends the definition of ‘review fee’ to refer consistently to the correct provision of the <i>Corporations (Review Fees) Act 2003</i>.²⁶
7 – Rules of court	<ul style="list-style-type: none">• Amends the definitions of ‘rules’ so it consistently refers to the ‘rules of court’ for the appropriate jurisdiction.²⁷
8 – Use of the term ‘body’	<ul style="list-style-type: none">• Amends inconsistent uses of the terms: ‘body’, ‘body corporate’ and ‘exempt body’.²⁸
9 – Transitional provisions	<ul style="list-style-type: none">• Standard transitional provisions.²⁹

¹⁵ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 8[1.9].

¹⁶ Ibid, 8[1.9].

¹⁷ Ibid, 9[1.12]-[1.14].

¹⁸ Explanatory Statement, *Treasury Laws Amendment (Measures for Consultation) Regulations 2022*, 3.

¹⁹ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 9-10[1.15]-[1.17].

²⁰ Treasury Laws Amendment (Measures for Consultation) Bill 2022, Schedule 1, Items 82, 93 and 95-96.

²¹ Ibid, Schedule 1, Items 93, 95-96

²² Ibid, Schedule 1, Items 92-94.

²³ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 11[1.22], see Schedule 1, Item 78.

²⁴ Ibid, 11[1.24]-[1.25].

²⁵ Ibid, 12[1.28]-[1.29].

²⁶ Ibid, 13[1.32]-[1.33].

²⁷ Ibid, 13[1.34]-[1.35].

²⁸ Ibid, 14[1.37]-[1.38]. See too Treasury Laws Amendment (Measures for Consultation) Bill 2022, Schedule 1, Items 135-136, 140-142 and 144-148.

²⁹ Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2022, 15[1.40]-[142].