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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

TREASURY LAWS AMENDMENT BILL 2025: FINANCIAL REPORTING
SYSTEM REFORM

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AASB	Australian Accounting Standards Board
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
The Act	<i>Australian Securities and Investments Commission Act 2001</i>
AUASB	Auditing and Assurance Standards Board
The Bill	Treasury Laws Amendment Bill 2025: Financial Reporting System Reform
Corporations Act	<i>Corporations Act 2001</i>
FRC	Financial Reporting Council
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
PS Act	<i>Public Service Act 1999</i>

Chapter 1: External Reporting Australia

Outline of chapter

- 1.1 Legislative references in this Chapter are to the *Australian Securities and Investments Commission Act 2001* (the Act) unless otherwise specified.

Context of amendments

- 1.2 The AASB, AUASB and FRC are together responsible for setting and overseeing accounting, auditing and assurance, and sustainability standards in Australia:
- The AASB and AUASB have functions and powers in relation to the making and formulation of accounting standards, auditing and assurance standards, and sustainability standards.
 - The FRC has a broad oversight function in relation to the processes for setting these standards in Australia and for giving the Minister reports and advice. It is also responsible for providing strategic policy advice in relation to the quality of audits conducted by Australian auditors.
- 1.3 These institutional arrangements constitute the financial reporting system which is established under Part 12 of the Act.
- 1.4 In December 2022, feedback was sought on various structural options for the setting of standards to support the introduction of climate-related financial disclosure reporting requirements. Subsequently in November 2023, the Government announced that it had decided to reform Australia's financial reporting system by combining the AASB, AUASB and FRC into a single entity.
- 1.5 This reform aims to create more flexible institutional arrangements for standard setting, not only to accommodate the development and ongoing maintenance of the new sustainability standards, but also to position the financial reporting system to respond to standard setting needs that may similarly arise in the future.
- 1.6 In January 2025, the Government released a consultation paper outlining a proposed model for the new combined body to assume responsibility for all key standard setting functions currently performed by the FRC, AASB and AUASB, including standard setting, international monitoring and engagement

and strategic advice and reporting. The model was centred around balancing three key design principles:

- flexibility – removing structural barriers and improving the capacity to leverage existing governance frameworks so that future standard setting needs arising in response to developments and challenges over time can be more readily accommodated.
- preserving what works – in so far as is practicable in the context of the changes necessitated by a shift to a single body, seeking to maintain key benefits of the existing structure, including in particular maximising the technical expertise brought to bear in standard setting.
- accountability – ensuring workable and appropriate governance arrangements are in place, including alignment between responsibility for the body's performance and the capacity to address issues when they arise, while at the same time managing conflicts of interest.

1.7 Feedback was received from a range of stakeholders – including the financial reporting bodies, professional accounting bodies, public and private sector accountants, industry associations, sustainability experts, academics, and investors. Stakeholders expressed general support for the proposed model.

1.8 The Bill gives effect to the combination of the responsibilities in External Reporting Australia for setting accounting, auditing and assurance, and sustainability standards in Australia. External Reporting Australia will have a Governing Council, with members of the Governing Council to be appointed by the Minister. To enable the continuation of technical standard setting by appropriately skilled professionals, while at the same time allowing External Reporting Australia to operate flexibly to meet current and future standard -setting needs, the Governing Council will be required to create, and appoint members to, a number of standard-setting boards by legislative instrument. Each standard-setting board will be responsible for one or more kinds of standards coming within the functions and remit of External Reporting Australia.

Summary of new law

1.9 Schedule # to the Bill makes amendments to Part 12 of the Act to combine the core functions and powers of the AASB, the AUASB, their respective offices, and the FRC into a single entity (External Reporting Australia).

1.10 External Reporting Australia's responsibilities include performing standard -setting functions for accounting, auditing and assurance, or sustainability standards and any other kind of standard specified by Ministerial instrument or future legislative amendments.

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- 1.11 The Governing Council is the accountable authority for External Reporting Australia, with members of the Governing Council including the Council Chair to be appointed by the Minister. As accountable authority, the Governing Council will have responsibilities for the proper use and management of External Reporting Australia's resources as a whole (including duties relating to overall planning, budgeting and performance) as set out in the PGPA Act.
- 1.12 The Governing Council will be empowered to create a number of standard-setting boards and appoint members to each board. It will do so by way of determinations (legislative instruments) that will be able to set out matters such as the kind of standards the board is responsible for, how the board is to make decisions as well as consultation requirements and the broad strategic direction that must be followed.
- 1.13 The Governing Council will be required to establish at least one board for each of the three 'categories' of standards the legislation empowers External Reporting Australia to make and formulate: accounting, auditing and assurance, and sustainability standards.¹ Once constituted, such a board:
- will be authorised to perform certain functions and exercise certain powers of External Reporting Australia relevant to the kind of standards they are responsible for (including making and formulating those standards); and
 - may be authorised by the Governing Council to perform other incidental functions as set out in the determination.
- 1.14 The Minister will also be able to give External Reporting Australia additional functions, for example, the function of formulating a new kind of standard. Should it choose to do so, the Governing Council would then be able to establish additional standard -setting boards which it authorises to carry out that function on behalf of External Reporting Australia or expand the remit of an existing board by making a new determination.

¹ References in this explanatory memorandum to a 'category' of standard should be taken to be a reference to these three core kinds of standard set out in the legislation in order to distinguish them from kinds of standards generally, including any additional kinds of standard that the Minister may give External Reporting Australia the function of formulating in the future.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
A single entity, External Reporting Australia, will be responsible for all relevant standard setting functions. External Reporting Australia, led by a Governing Council, will establish internal boards that are authorised to exercise its powers and perform its functions in relation to standard setting within the accountability framework of a single entity. The Minister will also be able to give External Reporting Australia responsibility for formulating new kinds of standards in response to future needs.	Various responsibilities in relation to accounting, auditing and assurance and sustainability standard setting are split across five separate statutory entities: the AASB, the AUASB, their respective Offices, and the FRC.
External Reporting Australia will be required to establish boards that are authorised to make and formulate either accounting standards or sustainability standards but not both. That is, at least two separate boards will need to be established to make and formulate the kinds of standards the AASB is able to at present – one for accountability standards and one for sustainability standards. However, External Reporting Australia will be able to establish a single board that is authorised to make and formulate the same kinds of standards as the AUASB is able to at present (i.e. auditing and assurance standards – including in relation to auditing and assurance of sustainability reports).	The AASB is responsible for making and formulating both accounting standards and sustainability standards. The AUASB is responsible for making and formulating auditing and assurance standards (including in relation to auditing and assurance of sustainability reports).
External Reporting Australia will not have the function of providing strategic policy advice and reports in relation to the quality of audits conducted by Australian auditors, or corresponding mandatory investigation powers.	The FRC has a function of giving strategic policy advice and reports, to the Minister and the professional accounting bodies, in relation to the quality of audits conducted by Australian auditors. This function is supported by mandatory information gathering powers with respect to the professional accounting bodies.

<i>New law</i>	<i>Current law</i>
The Governing Council of External Reporting Australia will be its accountable authority and accordingly responsible for approving External Reporting Australia's corporate plan, setting its priorities and ensuring appropriate management of its budget and resources. The Chair of the Governing Council will have responsibility for employing staff under the PS Act as Head of Statutory Agency.	The Chairs of the AASB and AUASB are separately responsible for managing the Offices of the AASB and AUASB respectively – including approving their boards' priorities, business plans and procedures and the Offices' budgets and staffing arrangements (including employing staff). The FRC has a role providing advice and feedback to the Chairs in carrying out these responsibilities and determining the boards' broad strategic direction.
The Minister appoints the Chair and other members of the Governing Council of External Reporting Australia. The Governing Council is to consist of between 5 and 9 members (including the Chair). The Governing Council appoints the Chairs and members of the standard-setting boards. The Governing Council is free to determine the appropriate size of the boards.	The Minister appoints the Chairs of the AASB, AUASB and FRC as well as the other members of the FRC. The FRC appoints other members of the AASB and AUASB. There are no requirements in the Act relating to the size of the AASB, AUASB or FRC.
The same eligible fields will apply to appointments to the Governing Council and standard-setting boards – with the addition of the fields of governance (Governing Council only), financial markets and any other field appropriate to any additional function conferred on External Reporting Australia by the Minister. In making appointments to the Governing Council the Minister will need to have regard to the principle that the Governing Council should contain an appropriate level of representation of persons who are, and are seen to be, independent from Australian auditors. The Governing Council in making appointments to the standard-setting boards will be required to ensure, to the extent practicable, that the composition of a standard-setting board reflects an appropriate mix of persons with experience reflecting both the standards the board issues, and reports prepared in accordance with those standards.	Appointees to the AASB must be appropriately qualified in the field of business, accounting, law, government, science, sustainability or climate change. The same fields apply for appointments to the AUASB with the addition of auditing. No specific qualifications are set out for appointments to the FRC.

<i>New law</i>	<i>Current law</i>
The Bill contains various provisions governing procedural matters relating to the Governing Council – including quorum requirements, how meetings are to be convened, how votes are taken and the process for making decisions without a meeting. Procedural and other matters governing decision-making by standard-setting boards may be set out in the determination establishing the board. Meetings (or parts of meetings) of the Governing Council and standard-setting boards concerning the contents of particular standards must be held in public.	Generally, the AASB, AUASB and FRC are able to determine their own procedural rules. However, meetings of the AASB and AUASB must be held in public if the meeting or a part of it concerns the contents of standards.
Members of the Governing Council (as members of an accountable authority) and members of standard-setting boards (as appointed officials to a committee, council or other body) will be required under the PGPA Rule to disclose any material personal interests that relate to the affairs of External Reporting Australia - and if the interest relates to a matter being considered at a meeting - must not be present during consideration of, or vote on, the matter. Other members (and in the case of the Governing Council members – the Minister) can declare the relevant member may be present or vote. The disclosure must include details of the nature and extent of the interest and how the interest relates to the affairs of the entity. The disclosure requirements in the PGPA Rule are extended under the new law so that disclosure of material personal interests must be made as soon as practicable after the member become aware rather than at a meeting of the relevant Council or board.	Members of the AASB and AUASB who have or acquire any direct or indirect pecuniary interest that conflicts or could conflict with the proper performance of their functions or have such an interest in a matter to be considered at a meeting must disclose that interest. They must not be present for or take part in a decision with respect to the matter they have an interest in unless determined by the Chair (or the Minister if the person with the interest is the Chair of the relevant board). The Act does not contain similar rules with respect to the FRC.

Detailed explanation of new law

External Reporting Australia

- 1.15 The Bill combines the existing institutions within the financial reporting system into a single entity, External Reporting Australia, which consists of the Governing Council of External Reporting Australia (Governing Council), each standard-setting board and staff employed under the PS Act or under contract. ***[Schedule #, items 2 and 10, subsection 5(1) (definition of Governing Council) and subsection 225(2)]***
- 1.16 To achieve this, the Bill continues the existence of the Office of the Australian Accounting Standards Board and renames it as External Reporting Australia. The amendments abolish the AASB, AUASB, Office of the AUASB and FRC. ***[Schedule #, item 10, subsection 225(1)]***
- 1.17 External Reporting Australia is a listed entity, with the Governing Council as the accountable authority for the purposes of the finance law within the meaning of the PGPA Act. ***[Schedule #, item 10, subsection 225(3)]***
- 1.18 Given the Governing Council is intended to be made up of persons with backgrounds from various sectors and areas of expertise, it is appropriate to designate the whole of the Governing Council as the accountable authority for External Reporting Australia. Providing for the Governing Council to act collectively is intended to promote confidence that standard setting will not be overly influenced by the perspectives of any individual member or the interests of any particular sector, group or industry. This was a key concern at the time of the CLERP 1 reforms of 2000 in which the current institutional arrangements for standard setting have their origin.²
- 1.19 The Bill's overall objectives for the Australian financial reporting system are generally consistent with the existing objectives as set out for Part 12 of the Act. In addition, a new objective has been included to reflect that the Minister will be able to confer additional functions on External Reporting Australia in the future including responsibility for formulating additional kinds of standards and guidance to support the evolving needs of markets, investors, businesses, consumers and other participants in the Australian economy and community. ***[Schedule #, item 9, paragraph 224(ab)]***

² The CLERP 1 reforms were enacted by the *Corporate Law Economic Reform Program Act 1999* and were informed by consultation undertaken by Treasury in 1997: see <<https://treasury.gov.au/publication/clerp-paper-no-1-proposals-for-reform-accounting-standards>>.

Functions of External Reporting Australia

1.20 The functions of External Reporting Australia are:

- to make accounting, auditing and sustainability standards under the Corporations Act;
- to formulate accounting, auditing and assurance, or sustainability standards to be published online, or in respect of activities, matters or things (including engagements, reports, audits and reviews) in a Territory, or for other purposes;
- to formulate guidance related to standards mentioned above;
- to develop conceptual frameworks, for the purposes of evaluating proposed domestic or international accounting or sustainability standards;
- to participate in and contribute to the development of a single set of accounting standards, auditing standards and sustainability standards for world-wide use with appropriate regard to international developments;
- to monitor the development of, and amendments to, international accounting, auditing and sustainability standards;
- to monitor the development of accounting, auditing and sustainability standards as they apply to major international financial centres;
- to give strategic policy advice to the Minister in relation to its functions and powers under the Act;
- any other function specified by the Minister by legislative instrument;
- anything else that is incidental or conducive to the performance of any of the above functions.

[Schedule #, item 10, subparagraph 225(3)(d)(i) and subsection 225A(1)]

1.21 Generally, the functions of External Reporting Australia are drawn from the existing functions of the FRC, AASB and AUASB. The Bill also allows for additional functions to be specified by the Minister by legislative instrument and provides that External Reporting Australia may do anything else that is incidental or conducive to the performance of any of its functions. ***[Schedule #, item 10, subsections 225A(1)—(2)]***

1.22 The FRC's existing function in subsections 225(2B)—(2C) of the Act of giving strategic policy advice and reports to the Minister and the professional accounting bodies in relation to audit quality has not been included as a function of External Reporting Australia. In so far as the audit quality advice function involves assessing the internal systems of auditors and their firms, this is in practice already conducted in the first instance by ASIC which has access

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- to compulsory powers and an investigative remit to carry out and report on this work.
- 1.23 Without this function, it is anticipated External Reporting Australia will be better positioned to direct its specialist resources and focus towards its primary role of setting standards. External Reporting Australia will still be able to appropriately inform itself of relevant issues related to audit quality for the purposes of performing its audit-related standard setting functions.
- 1.24 External Reporting Australia's function of making accounting, auditing and assurance, and sustainability standards for 'other purposes' has also been refined to expressly add the purpose of publication on the internet and purposes related to the Australian Territories. As the provision does not otherwise limit the 'other purposes' for which standards can be made, this addition will make it easier for External Reporting Australia to ensure that the relevant purposes are always within the remit of the Commonwealth.
- 1.25 Regardless of the purpose for which they are made, any standards External Reporting Australia formulates under this provision must still be an accounting standard, auditing and assurance standard, or a sustainability standard. Standards made under this provision are not given legal effect under the Corporations Act so would only be mandatory if applied or adopted by some other authority. ***[Schedule #, item 10, subparagraph 225A(1)(b)]***
- 1.26 A minor adjustment has also been made to the function of formulating auditing and assurance standards for purposes other than the corporations legislation when compared to how this function of the AUASB is expressed in the existing legislation. The existing provision refers to formulating auditing and assurance standards for 'sustainability and other purposes'. The language has been simplified as 'other purposes' already includes purposes relating to sustainability, making it unnecessary to specifically refer to sustainability as a purpose in the provision. There is no intention to change the scope of auditing and assurance standards that may be formulated. ***[Schedule #, item 10, subparagraph 225A(1)(b)(iii)]***
- 1.27 Consistent with the law prior to these amendments, the references to 'sustainability standards' in the legislation (including in the context of sustainability standards that may be made for 'other purposes') are intended to mean sustainability reporting standards (that is, standards that primarily govern the content of reports and disclosures related to sustainability), as distinct from auditing standards or assurance standards for auditing and assurance activities related to sustainability reports and disclosures. This mirrors the delineation between sustainability standards and auditing standards in the context of sustainability reporting in the Corporations Act.
- 1.28 External Reporting Australia also has the function of participating in and contributing to the development of a single set of accounting standards, a single set of auditing standards and a single set of sustainability standards for world-wide use, with appropriate regard to international developments. This
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reflects the existing function of the FRC in paragraph 225(1A)(c) of the Act. **[Schedule #, item 10, paragraph 225A(1)(e)]**

- 1.29 The Minister may, by legislative instrument, specify additional functions to be performed by External Reporting Australia and procedural requirements that apply in relation to the performance of such functions. Empowering the Minister to specify additional functions ensures External Reporting Australia can achieve a key objective of the reforms, being to add flexibility to the institutional arrangements and better position the standard-setting body to respond to future standard setting needs. This power could be used by the Minister, for example, to direct External Reporting Australia to provide advice on or provide a report on a particular topic or to formulate a new kind of standard. **[Schedule #, item 10, paragraph 225A(1)(i) and subsection 225A(2)]**
- 1.30 In practice, if a need arose which necessitated the development of a new kind of standard, the Minister would inform themselves of any relevant considerations for making a decision to confer responsibility for making this new kind of standard on External Reporting Australia either through advice from External Reporting Australia or other channels. It is intended that this would likely include consideration of whether the function of formulating standards of that kind would be complementary to External Reporting Australia's other functions and/or well-suited to leverage its existing institutional and governance framework.
- 1.31 If satisfied that External Reporting Australia should be responsible for developing the new kind of standard, the Minister would then confer the function on External Reporting Australia. External Reporting Australia could then respond by establishing processes for developing the new kind of standard, such as conferring responsibility for the new standard on an existing standard-setting board or creating a dedicated standard-setting board so long as it is compatible with the specifications made by the Minister and the overarching legislative framework. For avoidance of doubt, developing an additional kind of standard is not intended to be a function of External Reporting Australia until specified and directed by the Minister, in writing.
- 1.32 External Reporting Australia must, so far as is practicable, perform its functions in a way that promotes the objectives of Part 12 of the Act and the continued adoption of international best practice if doing so would be in the best interests of both the private and public sectors in the Australian economy.
- 1.33 External Reporting Australia must also, as far as practicable, perform its functions with regard to the interests of Australian corporations which raise or propose to raise capital in major international financial centres. **[Schedule #, item 10, subsection 225A(5)]**
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Powers of External Reporting Australia

1.34 External Reporting Australia has the power:

- to establish committees and consultative groups and to monitor the effectiveness of these arrangements; and
- to do anything necessary or convenient to be done in relation to its performance of its functions.

[Schedule #, item 10, subsection 225A(4)]

1.35 For example, the power to do anything necessary or convenient is intended to allow External Reporting Australia to maintain standards and issue associated or supplementary materials to the extent that this is not considered to fall under External Reporting Australia's function of formulating guidance.

1.36 The scope of External Reporting Australia's power to establish committees and consultative groups is intended to be the same as the powers of the Office of the AASB and the Office of the AUASB under existing paragraphs 226A(2)(a) and 227AB(2)(a) of the Act to establish committees, advisory panels and consultative groups. The language has been simplified to improve the legislation.

1.37 External Reporting Australia may make or formulate accounting, auditing, or sustainability standards, by issuing the text of the international version of the standard. External Reporting Australia may distribute for consultation the text of a draft international standard. External Reporting Australia may also modify the text of the international standard to the extent necessary to ensure it can operate within Australia's legal environment and to ensure disclosure and transparency provisions are appropriate for Australia's legal environment.

[Schedule #, item 10, subsections 225A(6)—(8)]

1.38 The Minister may, by legislative instrument, give directions to External Reporting Australia about the role of international standards in the making, formulating or development of standards or other materials by External Reporting Australia. Any direction by the Minister will be informed by consultation with industry stakeholders.

1.39 External Reporting Australia is required to follow a direction given by the Minister. The legislative instrument will be subject to disallowance and therefore subject to additional Parliamentary scrutiny. The legislative instrument is not subject to sunset, as section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides an exemption for instruments that are directions by a Minister to any person or body. ***[Schedule #, item 10, section 225B]***

The Governing Council

1.40 The Bill establishes the Governing Council of External Reporting Australia and provides for its membership and procedures. The Governing Council is not constituted as another entity that is separate to External Reporting Australia. Rather it is the principal leadership organ of External Reporting Australia. ***[Schedule #, item 10, section 226]***

1.41 The Governing Council's primary role is to govern External Reporting Australia. As accountable authority the Governing Council will have responsibilities for the proper use and management of External Reporting Australia's resources as a whole including duties relating to overall planning, budgeting and performance as set out in the PGPA Act.

1.42 The Governing Council's functions also include:

- ensuring the proper, efficient and effective performance of External Reporting Australia's functions which include providing strategic advice to the Minister in relation to the functions and powers of External Reporting Australia; and
- any other functions conferred on the Governing Council by the Act which includes establishing standard-setting boards, making appointments to such boards and various functions relating to managing the performance of such boards and appointees.

[Schedule #, item 10, paragraph 225S(1)(h), subparagraph 225(3)(d)(ii) and subsection 226A(1)]

1.43 The Governing Council may also perform all the functions and exercise all the powers of External Reporting Australia. This is necessary to allow the Governing Council to perform its role as accountable authority of External Reporting Australia. ***[Schedule #, item 10, subsection 226A(2)]***

1.44 However, special procedural requirements apply before the Governing Council makes, formulates, varies, revokes or gives a direction in relation to a particular standard if doing so would be directly inconsistent with a decision of a standard-setting board. This provides a higher threshold for the Governing Council to intervene in the more detailed aspects of standard setting in recognition that standard-setting boards are to be established to primarily carry out these functions for External Reporting Australia. ***[Schedule #, item 10, section 232D]***

1.45 The Governing Council also has the power to do anything that is necessary or convenient in connection with the performance of its function. Anything done in the name of, or on behalf of, External Reporting Australia by the Governing Council will be taken to have been done by External Reporting Australia. If a function or power of External Reporting Australia is dependent on the opinion, belief or state of mind of External Reporting Australia in relation to a matter,

the function or power may be exercised upon the opinion, belief or state of mind of the Governing Council or person acting with the authority of the Governing Council, where acting on behalf of External Reporting Australia in relation to that matter. **[Schedule #, item 10, section 226A]**

Governing Council members

The Governing Council will comprise of the Chair of the Governing Council (Council Chair) plus a minimum of 4 and a maximum of 8 other members. The number of members ensures the Governing Council is comprised of members with an appropriate mix of skills and experience to carry out the various functions of External Reporting Australia including providing oversight of the range of standard-setting boards and functions. **[Schedule #, items 2 and 10, subsection 5(1) (definition of Council Chair) and section 227]**

- 1.46 The members of the Governing Council (including the Council Chair) are to be appointed by the Minister by written instrument. The Minister must nominate one member to be the Council Chair. All appointments are statutory in nature. All appointments will be on a part-time basis, except for the Council Chair – who may be appointed on a full or part-time basis. The Council Chair will be the head of the statutory agency for the purposes of the PS Act. **[Schedule #, item 10, subsections 227A(1) to (3) and paragraph 231(2)(b)]**
 - 1.47 Where an Act provides a power to appoint a person, section 33AA of the *Acts Interpretation Act 1901* provides that the power extends to reappointing the person. A reappointment is made through the same power as an initial appointment, and therefore the same requirements will apply. **[Schedule #, item 10, note to section 227B]**
 - 1.48 A person may only be appointed as a member of the Governing Council (Council member) by the Minister if they have knowledge or experience relevant to at least one of the fields listed in the legislation. That is, experience in or knowledge of at least one of the following: governance, business, financial markets, law, government, accounting, auditing, sustainability or climate change, science, or any other field the Minister considers appropriate having regard to any additional functions conferred on External Reporting Australia. **[Schedule #, items 2 and 10, subsections 5(1) (definition of Council member) and 227A(4)]**
 - 1.49 When making appointments to the Governing Council, the Minister must have regard to ensuring the Governing Council as a whole has an appropriate level of representation of persons who are, and are seen to be, independent from Australian auditors, being the entities that have to conduct audits in accordance with the auditing standards set by the body. **[Schedule #, item 10, subsection 227A(5)]**
 - 1.50 This requirement is intended to mitigate against potential conflicts by ensuring that the Governing Council, as a whole and as a body that engages in collective decision-making, is constituted taking into account this consideration. As
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auditors must comply with auditing standards set by External Reporting Australia, actual or perceived conflicts may arise for appointees who work in the industry applying auditing standards. In contrast, other kinds of standards (such as accounting or sustainability standards) may not give rise to the same potential for direct conflicts at the individual level, as those standards generally relate to reports produced by a broad range of entities across the economy.

- 1.51 Importantly, this approach does not disqualify persons who are auditors or have current links to an audit firm from appointment. Rather, the Minister would merely be required to consider the overall number of such persons on the Governing Council. This ensures that there can continue to be appropriate auditing experience and perspective brought to decision-making at the Governing Council level.
 - 1.52 The legislation does not preclude the Minister considering other things relevant to making the appointment. One matter the Minister will likely have regard to is the provisions governing the appointment by the Governing Council of members to standard-setting boards. As discussed in further detail below, the intention of these provisions is that generally a person should not be a member of both the Governing Council and a standard-setting board having regard, amongst other things, to the role of the Governing Council in oversight of the performance of the boards and matters such as their adherence to due process. This is achieved by requiring the Minister's approval for any such appointment. Consistent with this approach it is anticipated the Minister would not make an appointment that will result in an appointee being a member of a standard-setting board and the Governing Council at the same time other than in exceptional circumstances.
 - 1.53 Members hold office for an amount of time specified in the written instrument of appointment. However, the appointment term for all members, including the Council Chair, must not exceed 5 years. **[Schedule #, item 10, section 227B]**
 - 1.54 Appointment terms of up to 5 years ensure some flexibility for the Minister to make appointments for a term of appropriate duration. This approach is consistent with the Australian Public Service Commission guidelines on the Government's merit and transparency policy.
 - 1.55 The Governing Council may appoint a Council member to be the Deputy Chair. The primary responsibility of the Council Deputy Chair role is to be next in line to preside over meetings when the Chair is not present. The Deputy Chair does not automatically assume the Chair's statutory functions and powers during a vacancy or absence. This would require an acting appointment as Chair under the acting provisions detailed below. **[Schedule #, items 2 and 10, subsection 5(1) (definition of Council Deputy Chair) and sections 227C and 228B]**
 - 1.56 The appointment of the Council Deputy Chair must be in writing. The Council Deputy Chair holds office until their period of appointment (if a term of appointment is specified), they resign their appointment, they cease to be a
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Council member or the Governing Council terminates their appointment as Council Deputy Chair. A person may cease to be the Council Deputy Chair of without ceasing to be a Council member. **[Schedule #, item 10section 227C]**

Remuneration, allowances, leave and other terms and conditions

- 1.57 Appointments to the Governing Council are statutory in nature. The Council Chair and Council members are to be paid remuneration that is determined by the Remuneration Tribunal. However, if no determination is in operation, then the Minister may, by legislative instrument, determine the remuneration and applicable allowances for a Council member. **[Schedule #, item 10, section 227F]**
- 1.58 Council members are to be paid any allowances that are prescribed by the Minister by legislative instrument. **[Schedule #, item 10, subsection 227F(2)]**
- 1.59 These provisions for remuneration and allowances are subject to the *Remuneration Tribunal Act 1973*. **[Schedule #, item 10, subsection 227F(3)]**
- 1.60 The Council Chair (if appointed on a full-time basis) is entitled to recreation leave entitlements, as determined by the Remuneration Tribunal. The Minister may also grant a leave of absence, other than recreation leave, on the terms and conditions that the Minister determines. For part-time Council members (including the Council Chair if they are appointed on a part-time basis), the Minister may grant a leave of absence on the terms and conditions that the Minister determines. **[Schedule #, item 10, section 227G]**
- 1.61 Where the legislation does not provide for a matter, the Minister may determine, in writing, other terms and conditions under which the Council member holds office. **[Schedule #, item 10, section 227E]**

Outside employment and conflicts of interest

- 1.62 The Council Chair (if appointed on a full-time basis) must not engage in paid work outside the duties of their office without the Minister's approval. Paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise). This is intended to be interpreted broadly to mean work for anything of economic value received as a result of work or services, including non-monetary benefits, such as share entitlements, company cars, accommodation, or other benefits provided as part of the employment arrangement. **[Schedule #, items 2 and 10, subsection 5(1) (definition of paid work) and section 227H]**
 - 1.63 Governing Council members required to disclose material personal interests relating to the affairs of External Reporting Australia under the PGPA Act must disclose such interests to other Council members as soon as practicable
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after the relevant member becomes aware of the interest, regardless of when the next meeting of the Council is to be held.

- 1.64 Failure to disclose an interest is taken to be non-compliance with their obligations under the PGPA Act. The Council member presiding at the first meeting of the Council following the disclosure (which will generally be the Council Chair) is then required to table the disclosure at that meeting and to ensure the interest is recorded in the minutes.
- 1.65 These requirements strengthen the Council's oversight and management of conflicts of interest while balancing the need for the Council to comprise individuals who have relevant skills and expertise with the ability for the Council to act, and be seen to be acting, independently. **[Schedule #, item 10, section 227J]**
- 1.66 Material personal interests may include both personal and business relationships, pecuniary interests, and other interests that have the capacity to influence the Council member's vote on a particular issue.
- 1.67 Where the Governing Council is considering a matter in which a Council member has disclosed a material personal interest, generally, the member should not be present and should not vote on the matter. However, the Minister or Governing Council may determine otherwise, and when the Governing Council is making such a determination, the Council member should not be present or take part in making the determination. These arrangements are consistent with requirements outlined in the PGPA Rule.

Resignation of appointments

- 1.68 Council members may resign by providing the Minister with a written resignation. The resignation takes effect the day it is received by the Minister, or on a day specified in the resignation. **[Schedule #, item 10, subsections 227K(1) and (2)]**
- 1.69 The Council Deputy Chair may resign by providing the Governing Council with a written resignation. The resignation takes effect the day it is received or on a day specified in the resignation. As the Council Deputy Chair is a discretionary office appointed amongst members of the Governing Council, the resignation does not affect the person's appointment as a Council member. **[Schedule #, item 10, subsections 227K(3) and (4)]**

Termination of appointments

- 1.70 The Minister may terminate the appointment of a Council member:
- for misbehaviour;
 - if the member is unable to perform their duties due to physical or mental incapacity;
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- for making a disclosure that is inconsistent with External Reporting Australia's confidentiality obligations;
 - if the Council member is absent, except on leave of absence, from 3 consecutive meetings of the Governing Council;
 - who is the Council Chair, if the Council Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
 - who is the Council Chair and appointed on a full-time basis, if the Council Chair engages, except with the Minister's approval, in paid work outside the duties of their office; or
 - if the Council member fails, without reasonable excuse, to comply with their obligations under the PGPA Act (mainly in relation to the duty to disclose interests). This includes where a Council member fails to disclose a relevant personal interest to other Council members as soon as practicable after the relevant member becomes aware of the interest.

[Schedule #, item 10, subsections 227L(1) and (3)]

- 1.71 The Minister must terminate the appointment of a Council member if the member becomes bankrupt. ***[Schedule #, item 10, subsection 227L(2)]***

Procedures of the Governing Council

- 1.72 The Governing Council is required to hold meetings to ensure the efficient performance of its functions. ***[Schedule #, item 10, subsection 228(1)]***
- 1.73 The Council Chair has the ability to convene a meeting at any time but must convene at least 4 meetings each calendar year and a meeting within 30 days of receiving a request in writing from another Council member for a meeting. ***[Schedule #, item 10, subsection 228(2)]***
- 1.74 The Council Chair may wish to convene more meetings, and this may happen during certain periods where certain decisions may be required, for example during the beginning phases of External Reporting Australia.
- 1.75 The Council Chair must preside at all meetings at which they are present. If the Council Chair is not present, the Council Deputy Chair must preside. If both the Council Chair and Council Deputy Chair are not present, the other Council members present must appoint one of themselves to chair the meeting. ***[Schedule #, item 10, section 228B]***
- 1.76 Meetings of the Council will be subject to quorum requirements. Specifically, if there are 7 or fewer Council members, 4 Council members are required to form a quorum, and if there are more than 7 Council members, 5 Council members are required to form a quorum. ***[Schedule #, item 10, subsection 228A(1)]***
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- 1.77 If a Council member is required not to be present because of a material personal interest in a matter, and if when that member has left the meeting there is no longer a quorum present, the remaining members present constitute a quorum for the purpose of any deliberation or decision in respect of the matter concerned. **[Schedule #, item 10, subsection 228A(2)]**
- 1.78 Ordinarily a question arising at a meeting of the Governing Council must be determined by a majority of the votes of the members present and voting at the meeting. The person presiding at the meeting of the Governing Council (generally the Council Chair) has a deliberative vote, and, in the case of a tie, a casting vote. **[Schedule #, item 10, section 228C]**
- 1.79 The Governing Council must keep minutes of all its meetings to ensure that matters considered and decisions taken at meetings are properly recorded. **[Schedule #, item 10, section 228D]**
- 1.80 Meetings relating to the contents of accounting standards, auditing and assurance standards, or sustainability standards, must be held in public. In the case of the Governing Council, it is intended that this would primarily cover meetings, or parts of meetings, where a decision to intervene in a way that directly impacts the content of a particular standard was being considered (see below regarding the Governing Council's role in boards' standard setting).
- 1.81 It is not intended to necessarily apply to other aspects of the Governing Council's role that may indirectly impact the content of specific standards as a result of high-level decision making (for example, the regular setting of business plans and priorities for External Reporting Australia or the making or amendment of determinations establishing standard-setting boards). However, this would not prevent the Governing Council from holding parts of its meeting considering matters of that kind in public where it considers it is practicable and appropriate to do so. **[Schedule #, item 10, section 232E]**
- 1.82 The Governing Council may, subject to the other provisions of the Bill regarding meetings, conduct meetings as it considers appropriate. Further information about the ways in which the Council members may participate in meetings is set out in section 33B of the *Acts Interpretation Act 1901*. **[Schedule #, item 10, section 228E]**
- 1.83 The Governing Council may determine that it can make decisions of a certain kind without a meeting. The Council must determine procedures Council members must follow to vote on decisions of those kinds. The Council is taken to have made a decision if the following conditions are met:
- without meeting, a majority of the Council members entitled to vote on the proposed decision, advise they agree with the decision;
 - that agreement has been provided in accordance with the procedures determined by the Governing Council for the making of decisions of that kind; and
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- all the Council members were informed of the proposed decision (or reasonable efforts were made to inform them of it).

[Schedule #, item 10, subsections 228F(1) to (3)]

- 1.84 The Governing Council must keep a record of decisions made without a meeting. This ensures that both decisions at formal meetings and those made without a meeting are recorded. ***[Schedule #, item 10, subsection 228F(4)]***
- 1.85 The Governing Council must prepare an annual report to be given to the Minister as required by the PGPA Act. The annual report must include information on, and include the reasoning behind, any directions given by the Governing Council to a standard-setting board. ***[Schedule #, item 10, section 228G]***
- 1.86 Special procedural requirements apply before the Governing Council could make, formulate, vary, revoke or give a direction in relation to a particular standard if doing so would be directly inconsistent with a decision of a standard-setting board. The requirement to include any such decisions in the annual report is intended to ensure that any involvement by the Governing Council in the standard setting process is transparent. See below regarding the Governing Council role in boards' standard setting.

Acting appointments

- 1.87 Acting appointments support members taking leave for rest or for personal reasons, whilst ensuring short-term vacancies can be filled and the Governing Council has continuity in its operations.
- 1.88 If the Council Chair is absent or unable to perform their duties, or if the position is vacant, then the Minister may, by written instrument, appoint any person to act as Council Chair. ***[Schedule #, item 10, subsection 227D(1)]***
- 1.89 If the Council Deputy Chair is absent or unable to perform their duties, or if the position is vacant, then the Governing Council may, by written instrument, appoint a Council member to act as the Council Deputy Chair. ***[Schedule #, item 10, subsection 227D(2)]***
- 1.90 If a member of the Governing Council (other than the Council Chair) is absent or unable to perform their duties, or if the position is vacant, the Minister may, by written instrument, appoint a person to act as a Council member. ***[Schedule #, item 10, subsection 227D(3)]***
- 1.91 When making acting appointments, the Minister must be satisfied that the person is eligible for appointment as a Council member. This means the appointees must have appropriate experience and knowledge. As discussed above, the Minister must also have regard to the principle that the Governing Council should contain an appropriate level of representation of persons who are, and are seen to be, independent from Australian auditors. ***[Schedule #, item 10, subsections 227D(4) and (5)]***
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Staff and consultants

- 1.92 External Reporting Australia is able to employ staff and consultants to assist in the performance of its functions and powers.
- 1.93 External Reporting Australia may engage staff under the PS Act for the purposes of External Reporting Australia. **[Schedule #, item 10, paragraph 231(1)(a) and subsection 231(2)]**
- 1.94 External Reporting Australia may also engage staff it considers necessary for the performance of its functions and the exercise of its powers on the terms and conditions that External Reporting Australia determines in writing. **[Schedule #, item 10, paragraph 231(1)(b) and subsection 231(3)]**
- 1.95 External Reporting Australia may also be assisted by officers and employees of Agencies and authorities of the Commonwealth, whose services are made available to External Reporting Australia. **[Schedule #, item 10, sections 231B and 233A]**
- 1.96 The Council Chair must determine a code of conduct, which will apply for staff and persons assisting External Reporting Australia, amongst others. See below for more information on the code of conduct. **[Schedule #, item 10, section 233A]**
- 1.97 External Reporting Australia may engage consultants, on the terms and conditions it determines, to assist in the performance of its functions. **[Schedule #, item 10, subsection 231A]**
- 1.98 For the purposes of the finance law within the meaning of the PGPA Act, officials of External Reporting Australia consist of the Council members, members of standard-setting boards (including the Chair and the Deputy Chair), staff employed under the PS Act or by contract and officers and employees of Agencies and authorities of the Commonwealth which assist External Reporting Australia. Officials are required to exercise their powers and perform their functions under the PGPA Act and the PGPA Rule in accordance with certain standards of behaviour. **[Schedule #, item 10, subsection 225(3)]**

Governing Council to establish standard-setting boards by determination

- 1.99 The following provisions set out the procedures by which the Governing Council creates standard-setting boards that are authorised to perform the standard setting functions of External Reporting Australia.
 - 1.100 The Governing Council is empowered to make a legislative instrument – referred to as a determination – to establish a standard-setting board, define the scope of its functions, and set out the procedures it must follow when
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exercising External Reporting Australia's standard setting powers. A single determination may establish more than one standard-setting board. The legislative instrument would be subject to disallowance and sunseting and will therefore be subject to appropriate parliamentary scrutiny. **[Schedule #, item 10, subsections 229(1)]**

- 1.101 It is anticipated that at commencement, External Reporting Australia will have three standard-setting boards with responsibility for setting accounting, auditing and assurance, and sustainability standards respectively. This is consistent with one of the key objectives of the reforms – facilitating sustainability standard setting being undertaken by a standalone board.
- 1.102 Going forward, the Governing Council will have an ongoing statutory obligation to ensure there is always at least one (but not necessarily only one) standard-setting board with responsibilities relating to each of the three 'categories of standards' External Reporting Australia is empowered to make and formulate in the Act, being accounting, auditing and assurance, and sustainability standards. **[Schedule #, item 10, subsections 229A(2) and (3)]**
- 1.103 Providing for the mandatory establishment of standard-setting boards via a legislative instrument in this way ensures the operational structure of and standard setting processes which will be followed by External Reporting Australia will remain open and transparent. The intent is to provide a level of certainty to the market and confidence to industry that, as far as is practicable, External Reporting Australia will operate in a way that is accountable for its commitment to due process and recognises the key role of technical and standard setting expertise within its structural operations.
- 1.104 At the same time enabling the Governing Council to set the framework within which the standard-setting boards are to operate is important to ensure that at all times it is able to carry out its duties under the PGPA Act. As accountable authority of External Reporting Australia the Governing Council has a number of responsibilities with respect to External Reporting Australia's remit as a whole, including:
- the proper use and management of External Reporting Australia's resources (including its staff);
 - achieving External Reporting Australia's purposes and measuring and assessing its performance in doing so;
 - setting External Reporting Australia's corporate plan and managing its budget;
 - establishing and maintaining appropriate systems relating to risk and control; and
 - keeping the Minister informed of External Reporting Australia's activities and significant decisions.
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- 1.105 Oversight and control of the structure of External Reporting Australia's operations, and the ability to set a framework within which standard-setting boards are to carry out their functions are essential to ensuring the Governing Council can carry out its PGPA Act duties. This will also ensure that the focus and operations of the standard-setting boards are co-ordinated with External Reporting Australia's resourcing, budget, staffing, priorities and strategies at the entity level. It also provides the necessary flexibility to respond to developments in the reporting landscape - including where External Reporting Australia is tasked with formulating new kinds of standards or given other additional functions.

Contents of the determination and allocating functions across boards

- 1.106 In establishing a standard-setting board and providing for its functions, a determination must include:
- that a standard-setting board of a specified name is established;
 - the kinds of standards in relation to which it is empowered to perform a set of functions set out in the legislation; and
 - any additional functions conferred on External Reporting Australia that may be performed by the standard-setting board; and
 - the extent to which (if at all) the standard-setting board is empowered to establish committees and consultative groups to perform its functions.

[Schedule #, item 10, subsection 229(1)]

- 1.107 The determination may also provide for other matters relating to the operation of the board which are discussed below.
- 1.108 As noted above, the Governing Council is not permitted to make a determination that confers functions relating to more than one of the 'categories of standards' on a single standard-setting board. For this purpose there are three categories specified in the legislation, which are accounting standards, auditing and assurance standards, and sustainability standards. This means that a board that is empowered to make standards relating to one of the categories may not be conferred responsibility for setting either of the other two categories of standards. ***[Schedule #, item 10, subsections 229A(1) and (3)]***
- 1.109 These rules, alongside the Governing Council's statutory obligation to ensure that there is at all times at least one standard-setting board conferred with functions and powers in relation to each of these specified categories of standards, mean there should always be a minimum of three standard-setting boards. ***[Schedule #, item 10, section 229A]***
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- 1.110 The Governing Council is otherwise not constrained in how it chooses to define the kind of standard the relevant board is responsible for in the determination.
- 1.111 For example, the legislation does not preclude the Governing Council from dividing responsibility for a single category of standards between more than one standard-setting board, if deemed appropriate. For example, while not intended by the inclusion of this provision at present, the Governing Council could, in theory should the need arise, split the auditing and assurance standards category by establishing one board empowered to make auditing standards for the purposes of the corporations legislation and a second board empowered to make all other auditing and assurance standards. This would involve defining these as separate kinds of auditing and assurance standard in the determination. One reason the Governing Council may see benefit in splitting responsibility within a category of standard is where the setting of one of the subcategories is seen to have particular alignment with the setting of a new kind of standard the body is given responsibility for in the future.
- 1.112 The overall approach is designed to ensure that:
- each board can be constituted by individuals with relevant subject-matter expertise and appropriate experience;
 - allocation of responsibility for standard setting is transparent, including in instances where responsibility for a certain category of standards is split across more than one board; and
 - the Governing Council is able to adjust the internal structure over time to respond to the evolving nature of standard setting and any new standard setting functions it may assume in the future.
- 1.113 The determination may provide that a standard-setting board may perform any additional functions conferred on External Reporting Australia, or subsets of functions of External Reporting Australia. This is particularly relevant for functions relating to international engagements, as it is expected External Reporting Australia's international engagement strategy will require a level of coordination at the whole-of-organisation level. For example, it is likely the accounting standard-setting board would be required to assist in carrying out External Reporting Australia's function of monitoring the development of international accounting standards. **[Schedule #, item 10, paragraph 229(1)(c)]**
- 1.114 In the situation where the Minister confers additional functions on External Reporting Australia by legislative instrument (such as, responsibility for making a new kind of standard) a Governing Council determination may provide for the specific functions or subset of those functions of External Reporting Australia that may be performed by the standard-setting board, including the manner in which the relevant board is to perform these functions. This would be necessary given the particular set of functions and powers for a standard-setting board listed in the legislation are centred around the 'categories' of standard set out in the legislation and may not apply for new
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kinds of standards. For avoidance of doubt, in these circumstances, the Governing Council may confer responsibility for those new kinds of standards on a new standard -setting board, or an existing board. **[Schedule #, item 10, paragraph 229(1)(c) and subsections 229A(1) and (3)]**

Operation of the board

1.115 Subject to the requirements in the legislation relating to when meetings are to be held in public, a determination may also provide for matters relating to the operation of a board, the manner in which a board is to perform functions or exercise powers (including due process requirements such as consultation or other procedural requirements), the broad strategic direction of the board and reporting requirements. **[Schedule #, item 10, subsection 229(2)]**

1.116 Matters the Governing Council may determine relating to the operation of a board include, but are not limited to, the following:

- procedures for convening meetings;
- procedures for determining who is to preside at a meeting;
- determining who may attend a meeting;
- the constitution of a quorum for a meeting;
- procedures relating to a member's interest in matters being dealt with by a board;
- the way in which matters are to be resolved by a board.

[Schedule #, item 10, paragraph 229(2)(a)]

1.117 It is intended that the determination will cover matters akin to those set out in the current board charters such as the relevant approval thresholds for issuing standards, expectations regarding the attendance of observers at meetings and what matters the Governing Council needs to be advised of or consulted on. It is expected the determination would also set out relevant due process and consultation requirements to be followed in setting standards.

1.118 A legislative note is included to clarify that any procedures included in the determination relating to a member's interest in matters being dealt with by a board apply in addition to the member's obligations to disclose relevant interests under the Bill's disclosure of interests provisions as well as the PGPA Act.

1.119 The Governing Council may choose to specify procedures in the determination, to support the effective management of conflicts in line with these rules. For example, the determination could specify which disclosures made to other standard-setting board members must also be made to the Governing Council. **[Schedule #, item 10, note 2 to subsection 229(2)]**

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- 1.120 Where the determination does not provide for a particular matter in the list above, a board may operate in the way it determines for itself. **[Schedule #, item 10, subsection 229(4)]**
- 1.121 The determination may also provide that a board can determine a particular matter relating to its operation. For example, the determination could provide that a board can determine relevant procedures for convening meetings. **[Schedule #, item 10, subsection 229(3)]**
- 1.122 Allowing the Governing Council to set the broad strategic direction of the board in the determination is intended to allow the Governing Council to specify any high-level principles a board must follow in making standards and is similar in effect to the FRC's existing function to determine the AASB and AUASB's broad strategic direction. For example, the determination could maintain the existing directions relating to the alignment of domestic standards with international standards. Including any broad strategic directions in the determination ensures any such matters are transparent. **[Schedule #, item 10, note 3 to subsection 229(2)(c)]**
- 1.123 The Governing Council's power to set out the broad strategic direction of particular standard-setting boards in its determination is not the only activity of the Governing Council that the boards need to consider when carrying out their functions. As accountable authority, the Governing Council sets the body's priorities, corporate plan, budget, resource allocation and other entity wide policies which the board will have to have regard to when carrying out its functions to ensure alignment of operations and strategy. Additionally, the Governing Council may give specific directions relating to the detail of particular standards in certain circumstances. These are explained in more detail below. **[Schedule #, item 10, note 3 to subsection 229B(3) and section 232D]**

Standard-setting boards

- 1.124 The role of a standard-setting board is to carry out certain functions of External Reporting Australia related to the making of a specified kind of standards, and to exercise the powers of External Reporting Australia as necessary or convenient to perform those functions. The kind of standards for a particular board will be specified in the determination for the board. **[Schedule #, item 10, subsection 229B(1)]**
- 1.125 The making of a determination specifying that a board has responsibility for accounting, auditing or assurance, or sustainability standard setting:
- activates an automatic authorisation to perform a particular set of functions and powers on behalf of External Reporting Australia (to the extent those functions are relevant to the specified kind of standard); and
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- authorises the standard-setting board to perform any other functions of External Reporting Australia that the Governing Council has in its discretion decided the board should perform (relevant to the specified kind of standard).

1.126 Specifically, the functions of External Reporting Australia that may be automatically performed by a standard-setting board (to the extent they are relevant to the particular kind of standard) are:

- to make standards of that kind for the purposes of the Corporations Act;
- to formulate standards of that kind for the purposes of publication online, in respect of activities, matters or things (including engagements, reports, audits and reviews) in a Territory, or for other purposes;
- to formulate guidance relating to standards of that kind; and
- to develop conceptual frameworks, for the purposes of evaluating proposed domestic or international standards of that kind.

[Schedule #, item 10, paragraph 229B(1)(a)(i)-(iv)]

1.127 As noted above, the board's authorisation to carry out functions on behalf of External Reporting Australia is limited to only those functions of the body set out in the legislation relevant to the kind of standard defined in the determination for the relevant board. For example, a standard-setting board with responsibility for auditing and assurance standards would not have External Reporting Australia's function of developing conceptual frameworks for the purposes of evaluating proposed standards, as this function of External Reporting Australia is not relevant to auditing and assurance standards.

1.128 The board's powers are limited to those powers of External Reporting Australia that are necessary or convenient to perform the set of functions for standard-setting boards specified in the legislation. A standard-setting board would not be automatically furnished with External Reporting Australia's power to establish committees and consultative groups. ***[Schedule #, item 10, paragraphs 229(1)(d) and 229B(1)(b)]***

1.129 However, the Governing Council has the power to include in the determination an authorisation for standard-setting boards to establish committees and consultative groups. This provides additional flexibility to structure External Reporting Australia in the most appropriate way to discharge its functions and responsibilities.

1.130 However, as the accountable authority of External Reporting Australia for the purposes of the PGPA Act, if the Governing Council were to include such an authorisation it is expected that the Governing Council would maintain oversight of any committees established and the membership of those committees to ensure, for example, appropriate conflict and information

management practices are maintained. The Council may achieve this by establishing rules including, for example, requiring approval for the establishment of new committees, and reporting of new or potential appointments to committees.

- 1.131 As discussed above, the Governing Council could use the determination to specify other functions of External Reporting Australia that may be performed by the standard-setting board. ***[Schedule #, item 10, paragraph 229(1)(c) and subparagraph 229B(1)(a)(v)]***
- 1.132 Anything done by a standard-setting board on behalf of External Reporting Australia with the authority of the Governing Council is taken to have been done by External Reporting Australia. A legislative note is included to reference the general rule that provides for this. For the avoidance of doubt, this is not intended to preclude, for example, External Reporting Australia from branding standards and guidance it issues with the name of the relevant board. ***[Schedule #, item 10, note to subsection 229B(1) and subsection 226A(4)]***
- 1.133 The legislation allows standard-setting boards to act jointly in the performance of functions or exercise of powers. For example, it may be appropriate for two or more boards to work together to allow External Reporting Australia to issue a single standard, where the standard falls within the remit of each of the boards. The Governing Council will determine relevant procedures where two or more boards act jointly to develop a standard, for example with respect to approval. ***[Schedule #, item 10, subsection 229B(2)]***
- 1.134 The legislation requires a standard-setting board to have regard to the duties of the Governing Council as the accountable authority of External Reporting Australia for the purposes of the PGPA Act in performing any functions and exercising any powers. This is intended to ensure the boards' strategic focus and operational activities remain aligned with entity wide plans, budgets and priorities set by the Governing Council from time to time. This is not intended to prevent the standard-setting boards providing advice and proposals that would ordinarily be expected to feed into the Governing Council's whole of entity planning and budgeting approval process. ***[Schedule #, item 10, subsection 229B(3)]***

Appointments to the standard-setting boards

- 1.135 The Governing Council may, by written instrument, appoint members to the standard-setting boards (board members) on a part-time basis. ***[Schedule #, items 2 and 10, subsection 5(1) (definition of board member) and subsections 230(1) and (2)]***
- 1.136 There is no prescribed minimum or maximum number of board members for standard-setting boards. The Governing Council will be able to determine the appropriate number of appointees to each board having regard to matters such
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as the particular remit of the board, its most efficient operating size and External Reporting Australia's overall budget and resourcing. This helps ensure External Reporting Australia has sufficient flexibility to adapt to changes in demands, priorities and operating structure which may evolve over time.

- 1.137 A person may only be appointed as a board member by the Governing Council if they have knowledge or experience relevant to at least one of the fields listed in the legislation. That is, experience in or knowledge of business, financial markets, law, government, accounting, auditing, sustainability or climate change, science, or any other field the Governing Council considers appropriate having regard to any additional functions conferred on External Reporting Australia (which may be conferred on External Reporting Australia by legislative instrument made by the Minister in the future). **[Schedule #, item 10, subsection 230(4)]**
- 1.138 When making these appointments, the Governing Council must ensure, to the extent practicable, that the composition of a standard-setting board reflects an appropriate mix of persons with the qualifications, skills and experience that reflect users of the kinds of standards the board has functions in relation to and users of materials prepared in accordance with those standards (for example users of financial reports and sustainability reports prepared in accordance with accounting standards and sustainability standards under the Corporations Act). **[Schedule #, item 10, subsection 230(6)]**
- 1.139 Governing Council members cannot be appointed as standard-setting board members unless the Minister approves the appointment in writing. This constraint is intended to ensure conflicts of interest do not arise from the Governing Council appointing its own members to positions on the standard-setting boards (even where the appointee does not vote on the decision). It also reflects an intention that, in External Reporting Australia, generally standard-setting board members will not also hold positions on the Governing Council given:
- the Governing Council is responsible as accountable authority for overseeing matters which include the performance and operations of the standard-setting boards and the termination of appointments in appropriate circumstances;
 - to the extent cross-appointments may facilitate useful information flow, this can be addressed through other mechanisms (such as regular reporting requirements and allowing attendance of board representatives at Governing Council meetings (and vice versa) without those attendees needing to participate in formal decision-making); and
 - the legislated size of the Governing Council and number of standard-setting boards (even without catering for future potential growth)
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means the Governing Council risks being overwhelmed by standard-setting board cross-appointments were they to be common practice.

[Schedule #, item 10, subsection 230(5)]

- 1.140 Members hold office for an amount of time specified in the instrument of appointment. However, the appointment term for all members must not exceed 5 years. ***[Schedule #, item 10, subsection 230(3)]***
- 1.141 For each standard-setting board, the Governing Council must appoint, in writing, one of the board members of that board to be the Chair. The instrument of appointment must specify the period of appointment. The appointment may be made at the same time as the appointment of that person as a board member, or at a later time. If the Chair ceases to be a board member of a particular board, then they will also cease to be the Chair of that board. However, the person may cease to be the Chair and continue to be a board member. ***[Schedule #, item 10, section 230A]***
- 1.142 For each standard-setting board, the Governing Council may appoint, in writing, one of the board members of that board to be the Deputy Chair with the period of appointment specified in the instrument of appointment. Unlike the position of the Chair which must be designated, the Governing Council may choose whether or not a Deputy Chair role needs to be in place. The appointment may be made at the same time as the appointment of that person as a board member, or at a later time. If the Deputy Chair ceases to be a board member of a particular board, then they will also cease to be the Deputy Chair of that board. However, the person may cease to be the Deputy Chair and continue to be a board member. ***[Schedule #, item 10, section 230B]***

Remuneration, allowances, leave and other terms and conditions

- 1.143 Appointments to a standard-setting board are statutory in nature. Board members are to be paid remuneration (including allowances) determined by the Remuneration Tribunal. However, if no determination is in operation, then the Governing Council may, by legislative instrument, determine the remuneration and allowances for the member. ***[Schedule #, item 10, subsections 230E(1), (2) and (4)]***
- 1.144 These provisions for remuneration and allowances are subject to the *Remuneration Tribunal Act 1973*. ***[Schedule #, item 10, subsections 230E(3)]***
- 1.145 The Governing Council may grant leave of absence to any board member on the terms and conditions that the Governing Council determines. ***[Schedule #, item 10, section 230F]***
- 1.146 Where the legislation does not provide for a matter, the Governing Council may determine, in writing, other terms and conditions under which the board member holds office. ***[Schedule #, item 10, section 230D]***
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Conflicts of interest

- 1.147 Board members required to disclose material personal interests relating to the affairs of External Reporting Australia under the PGPA Act, must disclose such interests to other board members, as soon as practicable after the relevant member becomes aware of the interest, and regardless of when the next meeting of the board is to be held. Failure to disclose is taken to be non-compliance with requirements under the PGPA Act.
- 1.148 Where the board is considering a matter in which a board member has disclosed a material personal interest, generally, the member should not be present and should not vote on the matter. However, the board may determine otherwise, and when making such a determination, the board member should not be present or take part in making the determination. These arrangements are consistent with the requirements under the PGPA Rule.
- 1.149 The board member presiding at the first meeting of the board following the disclosure (which will generally be the Chair of the standard-setting board) must table the disclosure at the meeting and ensure the interest is recorded in the minutes. This will strengthen the Chair's oversight of and ability to manage conflicts of interest. [*Schedule #, item 10, section 230G*]

Resignation of appointments

- 1.150 Board members may resign by providing the Governing Council with a written resignation, with it taking effect the day it is received or on a day specified in the resignation. [*Schedule #, item 10, subsections 230H(1) and (4)*]
- 1.151 Similarly, the Chair or Deputy Chair of a standard-setting board may resign from the Chair or Deputy Chair position by providing the Governing Council with a written resignation, with it taking effect the day it is received or on a day specified in the resignation. In each of these cases, the resignation does not affect the person's appointment as a board member. [*Schedule #, item 10, subsections 230H(2) to (4)*]

Termination of appointments

- 1.152 The Governing Council may terminate the appointment of a board member:
- for misbehaviour;
 - if the member is unable to perform their duties due to physical or mental incapacity;
 - for making a disclosure that is inconsistent with External Reporting Australia's confidentiality obligations;
 - if the board member is absent, except on leave of absence, from 3 consecutive meetings of the standard-setting board; or
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- if the board member fails, without reasonable excuse, to comply with their obligations under the PGPA Act which mainly deals with the duty to disclose interests.

[Schedule #, item 10, subsections 230J(1) and (3)]

- 1.153 The Governing Council must terminate the appointment of a board member if the member becomes bankrupt. ***[Schedule #, item 10, subsection 230J(2)]***
- 1.154 These rules relating to termination also apply in relation to the appointment of the Chair and the Deputy Chair of a standard-setting board. The Governing Council is not able to terminate such appointments without cause. This is in contrast to the rules that apply for the Deputy Chair of the Governing Council, who can have their appointment as Council Deputy Chair terminated without cause by the Governing Council. ***[Schedule #, item 10, paragraph 227C(2)(d)]***

Acting appointments

- 1.155 Acting arrangements support members taking leave for rest or for personal reasons, whilst ensuring short-term vacancies can be filled and External Reporting Australia has continuity in its operations.
- 1.156 The Governing Council may, by written instrument, appoint a board member to act as the Chair of the relevant board if the Chair is absent or unable to perform their duties, or if the position is vacant. ***[Schedule #, item 10, subsection 230C(1)]***
- 1.157 The Governing Council may, by written instrument, appoint a board member to act as the Deputy Chair of the relevant board if the Deputy Chair is absent or unable to perform their duties, or if the position is vacant. ***[Schedule #, item 10, subsection 230C(2)]***
- 1.158 The Governing Council may, by written instrument, appoint a person to act as a board member if a board member is absent or unable to perform their duties, or if the position is vacant. However, the person must meet the knowledge and experience requirements for being appointed as a board member. ***[Schedule #, item 10, subsections 230C(3) and (4)]***

Standards issued by External Reporting Australia

- 1.159 The Bill maintains current arrangements in relation to the interpretation of standards.. Specifically, in interpreting a standard made or formulated by External Reporting Australia, a construction that would promote the objectives of Part 12 of the Act and a purpose or object of the standard to the extent that this is not inconsistent with those objectives is to be preferred to a construction that would not. ***[Schedule #, item 10, subsections 232(1) and (2)]***
- 1.160 Additionally, where the Minister has conferred functions on External Reporting Australia in relation to a new kind of standard, the Minister may also
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provide for interpretation rules in relation to standards of that kind, by legislative instrument. **[Schedule #, item 10, subsection 232(3)]**

1.161 The standards may be of general or limited application. For example, standards may be limited to apply to different types of audit, or specified industries, bodies or undertakings. Standards may also differ to account for differences in time, place or circumstances. **[Schedule #, item 10, section 232A]**

1.162 In making or formulating accounting standards, External Reporting Australia:

- must have regard to the suitability of a proposed standard for different types of entities;
- may apply different accounting requirements to different types of entities; and
- must ensure that there are appropriate accounting standards for each type of entity that must comply with accounting standards.

[Schedule #, item 10, subsection 232B(1)]

1.163 For the purposes of preparing a financial report for a period, the accounting standards may require information in relation to comparative amounts for earlier periods. **[Schedule #, item 10, subsection 232B(2)]**

1.164 In making or formulating sustainability standards, External Reporting Australia:

- must have regard to the suitability of a proposed standard for different types of entities; and
- may apply different sustainability requirements to different types of entities.

[Schedule #, item 10, subsection 232B(3)]

1.165 External Reporting Australia must carry out cost/benefit analysis of the impact of a proposed accounting or proposed sustainability standard before making the standard to the extent it is practicable to do so. **[Schedule #, item 10, section 232C(1) and (4)]**

1.166 External Reporting Australia is exempt from carrying out this cost/benefit analysis if it relates to adopting a text of an international standard. However, to the extent practicable, External Reporting Australia must carry out a cost/benefit analysis of the impact of a proposed international accounting standard or international sustainability standard before providing comments on a draft of the standard or proposing the standard for adoption as an international standard. **[Schedule #, item 10, section 232C(2) to (4)]**

Meetings relating to contents of certain standards to be held in public

- 1.167 A meeting or a part of a meeting of the Governing Council or a standard-setting board must be held in public if the meeting or the part of the meeting relates to the contents of certain standards. This applies for accounting, auditing and assurance, and sustainability standards. It also applies for standards of a kind specified by the Minister by legislative instrument, where the Minister has conferred functions on External Reporting Australia for such standards and specified that meetings relating to that kind of standard must be held in public. **[Schedule #, item 10, section 232E]**

Governing Council's role in boards' standard setting

- 1.168 The Governing Council's ability to intervene in a standard-setting board's work of making, formulating, varying, or revoking a standard is bound by certain procedural requirements. Requiring the Governing Council to satisfy these requirements before any intervention in the making or formulation of a particular standard is intended to give recognition to a key objective of the institutional arrangements – namely ensuring appropriate technical expertise brought to bear in the detailed work of standard setting – while at the same time ensuring the Governing Council can fulfil its primary role as accountable authority for External Reporting Australia.
- 1.169 Specifically, the Governing Council may, by notifiable instrument, provide written directions to a standard-setting board in relation to a particular standard, or itself make, formulate, vary or revoke a particular standard, only in the following circumstances:
- a decision to give the direction is made at a meeting of the Governing Council, with the agreement of at least 75 per cent of the Council members present and entitled to vote, and the number of members who agree representing greater than 50 per cent of all members entitled to vote regardless of who is present;
 - the Governing Council considers that the decision to give the direction is required because the standard-setting board has failed to comply with any requirements of the determination that established the board; or
 - the Governing Council considers that the decision to give the direction is required to comply with its obligations as accountable authority of External Reporting Australia for the purposes of finance law within the meaning of the PGPA Act.

[Schedule #, item 10, subsections 232D(1) and (4)]

- 1.170 The standard-setting board must comply with a written direction it receives from the Governing Council. **[Schedule #, item 10, subsection 232D(2)]**
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- 1.171 In certain circumstances, a meeting, or part of a meeting of the Governing Council must also be held in public.
- 1.172 The conditions above and the requirement to hold meetings in public do not apply where the Governing Council is making or amending a determination which establishes a standard-setting board and provides for its functions, notwithstanding that such a determination could be construed as affecting the content of a particular standard. The conditions above and the requirement to hold meetings in public also do not apply where the Governing Council is incorporating a broad strategic direction for a standard-setting board into a determination or otherwise taking an action that merely influences the content of standards in accordance with its role as accountable authority, which involves setting External Reporting Australia's corporate plan, priorities, and other strategic matters.

Validity of Standards

- 1.173 The validity of a standard (or a variation or revocation) is not affected by a failure to comply with the requirements explained above in relation to the making, formulating, varying or revoking of a standard. This includes a failure to observe any procedural requirements specified by the Minister in relation to any new functions of External Reporting Australia. **[Schedule #, item 10, section 232F]**

Delegations

- 1.174 The Governing Council may delegate certain functions or powers of External Reporting Australia to a Council member, a board member, or a member of staff. The staff member must be a Senior Executive Service or acting Senior Executive Service employee or hold a position that is equivalent or higher than that which is occupied by a Senior Executive Service employee. Generally, a person to whom a power or function has been delegated must exercise the power personally. However, this does not preclude other staff members from providing assistance and supporting the delegate. **[Schedule #, item 10, subsection 233(1)]**
- 1.175 The intent is to allow the Governing Council to delegate the performance of administrative tasks to an appropriate person. This includes External Reporting Australia's power to establish committees and consultative groups and the power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.
- 1.176 However, the Governing Council must not delegate any of External Reporting Australia's functions or powers that relate to formulating and monitoring standards, as those functions or powers are to be conferred on standard-setting
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boards by legislative instrument which are registered on the Federal Register of Legislation providing a higher degree of transparency and accountability.

- 1.177 The Governing Council also must not delegate External Reporting Australia's function of giving strategic policy advice or functions relating to monitoring the development of international standards. These delegations continue in force despite a change in the membership of the Governing Council. **[Schedule #, item 10, section 233]**
- 1.178 The legislation does not include a provision allowing the Governing Council to delegate any of its own powers or functions under the Act (as compared to the powers or functions of External Reporting Australia). However, other Acts may allow the Governing Council to delegate powers, functions or duties to others. For example, the PGPA Act allows an accountable authority to delegate powers, functions or duties under that Act or rules made under that Act, to officials.

Code of conduct

- 1.179 The Council Chair must determine, in writing, a code of conduct, which applies to Council members, board members, staff of External Reporting Australia and persons assisting External Reporting Australia. **[Schedule #, item 10, section 233A]**

Confidentiality

- 1.180 External Reporting Australia must protect information given to it in confidence from unauthorised disclosure or use. **[Schedule #, item 10, section 233B]**
- 1.181 The legislation includes a list of circumstances in which the disclosure of information is taken to be authorised. The list of authorised disclosures is generally consistent with the existing set of circumstances set out in the Act where disclosure is taken to be authorised. In addition, External Reporting Australia can disclose information if the disclosure is made:
- to the Minister;
 - to the Secretary of the Department administering the Act for the purpose of advising the Minister;
 - to any other agency within the meaning of the *Freedom of Information Act 1982* for the purposes of the performance or exercise of any of the agency's functions or powers; and
 - in accordance with the consent of the person who gave the information or to whom the information relates.

[Schedule #, item 10, subsection 233B(2)]

- 1.182 External Reporting Australia's confidentiality obligations complement other applicable confidentiality obligations that operate at the individual level.
- 1.183 A disclosure of information by a Council member or a board member may be grounds for termination of appointment if the disclosure is inconsistent with External Reporting Australia's confidentiality obligations. ***[Schedule #, item 10, paragraphs 227L(1)(c) and 230J(1)(c)]***
- 1.184 Officials of External Reporting Australia are also subject to duties under the PGPA Act, including the duty in relation to the use of information under section 28 of the PGPA Act.

Chapter 2: Consequential, Transitional and Other Machinery Provisions

Consequential amendments

- 2.1 The exposure draft Bill includes consequential amendments to the Act. Consequential amendments to other Commonwealth legislation will also be required and will be settled prior to settling draft legislation prior to introduction. The consequential amendments replace references to the abolished or renamed bodies with references to External Reporting Australia to ensure that provisions of the Act operate in an equivalent way for External Reporting Australia. The amendments repeal definitions that will become obsolete and insert a range of definitions to support the operation of the amendments. **[Schedule #, items 1 to 8, paragraphs 1(d), subsection 5(1) and paragraphs 127(4)(a) and 213(2)(aa)]**
- 2.2 The Act protects specified persons from liability for damages in relation to acts done or omitted in good faith in the performance of functions or exercise of powers under the Act or the Corporations Act.
- 2.3 Amendments to those provisions in the Act ensure that the following are protected from liability for damages in the same circumstances as the equivalent persons in relation to the abolished or renamed bodies:
- relevant persons engaged by, assisting or making their services available to External Reporting Australia (such as staff, consultants and secondees);
 - members of the Governing Council;
 - members of a standard-setting board; and
 - members of committees or consultative groups established by External Reporting Australia.
- 2.4 The references to equivalent persons in relation to the abolished or renamed bodies have been removed. See transitional provisions for a savings provision affecting such persons. **[Schedule #, items 11 to 14, paragraphs 246(1)(i), 246(1)(k), 246(1)(l) and 246(2)(b) and (c)]**
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Commencement, Application, and Transitional provisions

- 2.5 The Bill provides for commencement to occur on the first day of the first calendar month after the end of four months following Royal Assent. This will provide for sufficient time to transition from existing to new institutional arrangements.

Overview of key transitional arrangements

- 2.6 Part 2 of the Bill contains provisions relating to the transition from the existing institutional arrangements for standard setting to the new framework, where the key functions and powers of those bodies are combined and conferred on External Reporting Australia.
- 2.7 The transitional provisions are designed to ensure External Reporting Australia can begin operations from the day the amendments establishing the new framework take effect—the External Reporting Australia start day. The provisions are centred around facilitating a staged approach to setting up External Reporting Australia that involves:
- the Government first determining the composition of External Reporting Australia’s inaugural Governing Council; and
 - the proposed appointees then setting up key elements of External Reporting Australia’s internal arrangements, so they are ready for commencement.
- 2.8 Consistent with this staged approach, the Bill facilitates proposed appointees to the new Governing Council (via the FRC), being able to exercise certain powers for a transitional period of no less than four months.
- 2.9 This is achieved by empowering the FRC (to which it is anticipated the proposed inaugural Governing Council members would be appointed for the transition) to take certain preparatory steps during the period from the day after Royal Assent of the Bill to the External Reporting Australia start day to ensure External Reporting Australia can begin operations on the External Reporting Australia start day. In addition to performing its usual functions during this time the FRC would be empowered to establish standard-setting boards and make appointments to such boards, with those appointments taking effect on the External Reporting Australia start day. This will facilitate an orderly process, minimising disruption to the current standard-setting boards’ ongoing work and providing greater certainty around statutory roles ahead of commencement.
- 2.10 Generally, the existing standard-setting boards will continue to operate as usual until the External Reporting Australia start day to ensure continuity. For
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- administrative ease and to provide certainty for statutory officeholders, the Bill provides for the automatic extension of appointments of the existing members of the AASB and AUASB until the External Reporting Australia start day.
- 2.11 Other transitional provisions transfer staff, consultants, secondees and records from the abolished bodies to External Reporting Australia and ensure that any confidential records transferred continue to be protected.
- 2.12 The provisions also ensure that persons with qualified privilege in respect of a disclosure made to the FRC continue to be protected and that persons continue to have protection from liability for actions done or omitted in good faith in the performance of their past functions.
- 2.13 The transitional provisions also clarify that standards formulated by the AASB and AUASB continue in effect and may be dealt with by External Reporting Australia.
- 2.14 A standard suite of transitional rules is also provided to facilitate the transition and ensure other laws continue to operate as intended. This includes deeming outdated references to the abolished and renamed bodies in instruments to be references to External Reporting Australia, and deeming things done by, or in relation to, the abolished or renamed bodies to be done by, or in relation to, External Reporting Australia. It also includes allowing the Minister to make transitional rules by legislative instrument to promptly deal with any unforeseen or unintended consequences arising from the transition.

Definitions

- 2.15 The amendments insert definitions of ‘amended Act’, ‘the External Reporting Australia start day’, ‘old Act’, ‘rules’ and ‘transition period’, which are used in the transitional provisions. ***[Schedule #, item 15, section 348]***

Appointments to AASB and AUASB automatically extended during transition period

- 2.16 It is intended that the existing bodies continue to fulfil their existing roles and functions up until the External Reporting Australia start day. For administrative ease, the amendments automatically extend the existing appointments of members of the AASB and the AUASB to the end of the transition period (i.e. the day before the External Reporting Australia start day). ***[Schedule #, item 15, section 351]***
- 2.17 However, where a member of the AASB or AUASB gives their resignation or has their appointment terminated, the amendments only extend their existing appointment to the time when the resignation or termination takes effect. ***[Schedule #, item 15, paragraphs 351(b) and (c)]***
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Exercise of certain powers by the FRC during the transition period

- 2.18 The amendments empower the FRC during the transition period to establish standard-setting boards by legislative instrument, and to make appointments to such boards, including appointing a Chair and a Deputy Chair for each board. As authority for these matters is jointly provided under the amendments and section 4 of the *Acts Interpretation Act 1901*, all instruments establishing standard-setting boards and all appointments will only take effect from the External Reporting Australia start day. **[Schedule #, item 15, section 349]**
- 2.19 Consistent with the requirements that will apply to the Governing Council after the External Reporting Australia start day, the FRC will be required to establish a minimum of three standard-setting boards, each with responsibility for no more than one of the inaugural categories of standards specified in the legislation.
- 2.20 This is partly achieved because the amendments create a duty on the FRC to take all reasonable steps to ensure standard-setting boards are established on the External Reporting Australia start day in a manner consistent with External Reporting Australia's statutory obligation regarding establishing boards. External Reporting Australia's statutory obligation is to ensure at all times that there is at least one standard-setting board conferred with functions and powers in relation to each of the categories of standard specified in the legislation. The amendments also provide that the FRC has the functions of establishing such standard-setting boards and making appointments to those boards.
- 2.21 The FRC would also be required to ensure that a standard-setting board has responsibility for no more than one of the inaugural categories of standards specified in the legislation. This requirement operates as a limitation on the Governing Council's power to make a determination and would therefore also apply where the FRC is exercising the power to make the determination. **[Schedule #, item 15, section 350]**
- 2.22 Standard-setting boards established by the FRC would have responsibility for making future standards of the kind the board is established to perform functions in relation to. As other transitional rules made by these amendments ensure existing standards continue in force, the standard-setting boards established by the FRC would, from the External Reporting Australia start day, also have responsibility for existing standards of the kind the board is established to perform functions in relation to.
- 2.23 Before the External Reporting Australia start day, the AASB and AUASB would continue to operate as usual to ensure continuity, including by retaining responsibility for existing standards. The amendments also clarify that the FRC continues to have its existing functions under the Act during the transition period. For example, it will continue to have an oversight role in relation to the AASB and AUASB. **[Schedule #, item 15, subsection 350(2)]**
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- 2.24 The Bill ensures that the FRC will have the power to vary or revoke any instruments it makes during the transition period. **[Schedule #, item 15, paragraph 349(1)(b)]**
- 2.25 The Bill also provides that at the end of the transition period, an instrument establishing a standard-setting board made by the FRC would be taken have been made by the Governing Council and can be dealt with as such. This allows the Governing Council to amend or revoke the instrument and remake it in the future. **[Schedule #, item 15, subsection 349(3)]**
- 2.26 The FRC is also expected to undertake other preparatory tasks during the transition period to ensure External Reporting Australia is ready to begin operations on the External Reporting Australia start day – for example, preparatory work to set up committees and consultative groups.
- 2.27 The procedural and operational requirements that will apply for the Governing Council do not apply for the FRC. For example, the quorum rules of the Governing Council do not apply for the FRC.

Transfer of staff, consultants and secondees of abolished bodies

- 2.28 The amendments ensure that any staff of the Office of the AASB and Office of the AUASB employed immediately before the External Reporting Australia start day are taken to be staff of External Reporting Australia on and after the External Reporting Australia start day, on the same terms and conditions. The amendments ensure that the merger of the various bodies and associated repeal of relevant provisions does not affect a person's continuity of employment. **[Schedule #, item 15, section 352]**
- 2.29 Consultants engaged to perform services for the Office of the AASB or the Office of the AUASB are similarly taken to be engaged by External Reporting Australia on and after the External Reporting Australia start day, on the same terms and conditions. **[Schedule #, item 15, section 353]**
- 2.30 Certain persons whose services were made available to the Office of the AASB or the Office of the AUASB (that is, secondees) are similarly taken to be persons whose services are made available to External Reporting Australia on and after the External Reporting Australia start day, on the same terms and conditions. **[Schedule #, item 15, section 354]**

Transfer of records and preserving confidentiality

- 2.31 The Bill ensures that any records or documents that were in the possession of the abolished bodies are transferred to External Reporting Australia after the External Reporting Australia start day. **[Schedule #, item 15, section 355]**
- 2.32 This transfers legal responsibility for these records or documents. For example, External Reporting Australia will be responsible for responding to any freedom of information requests and for the disposal and archiving of these documents in line with the *Archives Act 1983*. The amendments insert a note to explain
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that the Office of the AASB is continued in existence as External Reporting Australia. As such, there is no need to transfer records or documents in the possession of the Office of the AASB. **[Schedule #, item 15, note to subsection 355(1)]**

- 2.33 The Bill provides for the transfer records or documents that were in the possession of the FRC, including records or documents in the possession of the FRC Secretariat. Before the External Reporting Australia start day, these records or documents remain the legal responsibility of Treasury, which houses the FRC Secretariat. It is not intended that the FRC Secretariat staff will transfer to External Reporting Australia.
- 2.34 The Bill ensures that the obligations of External Reporting Australia to protect information given to it in confidence also extends to protect records and documents transferred to External Reporting Australia from the abolished bodies, where those were originally given in confidence. Information originally given to one of the abolished bodies in confidence is taken to have been given to External Reporting Australia in confidence. From the External Reporting Australia start day, External Reporting Australia must take all reasonable measures to protect from unauthorised use or disclosure any such records or documents, regardless of whether the information was given or was taken to have been given before, on or after the External Reporting Australia start day. **[Schedule #, items 10 and 15, sections 233B, 356 and 358]**

References to bodies in instruments

- 2.35 The Bill ensures that, from the External Reporting Australia start day, instruments referring to the abolished bodies can continue to operate in relation to External Reporting Australia. This is achieved by deeming references to the abolished bodies to refer instead to External Reporting Australia. This would cover a broad range of instruments, including legislative and non-legislative instruments, as well as commercial instruments. The amendments clarify that this transitional rule does not prevent an instrument from being amended or repealed on or after the External Reporting Australia start day. **[Schedule #, item 15, subsections 357(1), (2) and (4)]**
- 2.36 However, the transitional provision does not cover references to the Office of the AASB. Instead the amendments insert a note which explains that relevant provisions of the *Acts Interpretation Act 1901* applies in relation to references to the Office of the AASB, which is renamed as External Reporting Australia. In effect, these provisions maintain the continuity for the Office of the AASB by ensuring its identity remains unaffected, any investigations and proceedings relating to it are preserved and references to it under its former name are construed as references to External Reporting Australia, including references in instruments. **[Schedule #, item 15, note to subsection 357(1)]**
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Thing done by, or in relation to, bodies

- 2.37 The Bill ensures that things done by, or in relation to, one of the abolished bodies has effect on and after the External Reporting Australia start day as if it was done by, or in relation to, External Reporting Australia. **[Schedule #, item 15, subsections 358(1) and (2)]**
- 2.38 For example, any authoritative pronouncements of the AASB would be taken to have been authoritative pronouncements of External Reporting Australia. This does not affect the time the relevant act is taken to have occurred. For example, any contracts entered into by one of the abolished bodies on a particular date would still be considered to have been entered into on that date.
- 2.39 The Bill also facilitates other laws which refer to things done by, or in relation to, one of the abolished bodies, where this has ongoing relevance after the External Reporting Australia start day, operating as intended following the transition.
- 2.40 However, this transitional provision does not apply to the making of an instrument by the FRC to establish a standard-setting board in the transition period under other transitional provisions in this Schedule. Other transitional provisions ensure that after the end of the transition period, such an instrument is taken to have been made by the Governing Council (rather than being taken to be made by External Reporting Australia). **[Schedule #, item 15, subsections 349(3) and 358(3)]**

Continuation of certain standards formulated by the AASB and the AUASB

- 2.41 The Bill clarifies that certain existing standards made by the AASB and the AUASB continue in effect and can be dealt with by External Reporting Australia. This provides continuity for users of the existing standards. It also ensures that at a future date, External Reporting Australia may revoke or withdraw existing standards and remake them, if External Reporting Australia considered that appropriate. **[Schedule #, item 15, section 359]**

Saving provision for qualified privilege

- 2.42 The Bill ensures that a professional accounting body or a person that has qualified privilege in respect of a disclosure to the FRC under the Act will continue to have that protection following the repeal of that provision. It is expected that this provision will be repealed as a consequence of the amendments establishing the new framework. **[Schedule #, item 15, section 360]**

Savings provision for liability for damages

- 2.43 The Bill also ensures that persons who are protected from liability for damages for acts done or omitted in good faith in the performance of their functions
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continue to be protected, despite amendments to the Act which remove references to such persons. See consequential amendments regarding removal of such references. **[Schedule #, item 15, section 361]**

Transitional rules can be made by the Minister

- 2.44 The Bill provides the Minister with the power to make rules by legislative instrument which are required or permitted by the other transitional provisions, or necessary or convenient for carrying out or giving effect to the transitional provisions. **[Schedule #, item 15, subsection 362(1)]**
- 2.45 The transitional provision which deems outdated references to the abolished and renamed bodies in instruments to be references to External Reporting Australia allows the rules to specify when the provision does not apply. The transitional provision which deems things done by, or in relation to, the abolished or renamed bodies to be done by, or in relation to, External Reporting Australia also allows the rules to specify when the provision does not apply. **[Schedule #, item 15, subsections 357(3), 358(4) and 362(1)]**
- 2.46 The amendments also allow the Minister to make rules by legislative instrument which are of a transitional nature. This will allow the Minister to deal with any unintended outcomes, or unforeseen issues, associated with the transition, which could require immediate or prompt changes. **[Schedule #, item 15, subsections 362(1) and (2)]**
- 2.47 The amendments place limits on the transitional rules which could be made, and make it clear that the Minister could not make rules which:
- create an offence or civil penalty;
 - provide powers of arrest or detention or powers of entry, search or seizure;
 - impose a tax;
 - set an amount to be appropriated from the Consolidated Revenue Fund; or
 - directly amend the text of the amendments establishing the new framework.
- [Schedule #, item 15, subsection 362(3)]**
- 2.48 The transitional provisions do not otherwise limit the transitional rules which could be made by the Minister. **[Schedule #, item 15, subsection 362(4)]**
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