

20 October 2025

Simplification team

Australian Securities and Investments Commission

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Email: simplificationconsultativegroup@asic.gov.au

Dear Simplification team,

Submission to the ASIC Regulatory simplification program – REP 813

The Financial Advice Association Australia¹ (FAAA) welcomes the opportunity to provide feedback to ASIC on its regulatory simplification program.

The FAAA, as the peak professional association for financial advice providers, represents over 10,000 members, including many employers and employees. The membership has a strong interest in the issues raised in ASIC REP 813.

In responding to REP 813, the FAAA has sought input from a range of financial advice profession participants, including FAAA members, staff and others.

General observations

REP 813 has been released at a time of heightened sensitivity for the financial advice profession. The time and monetary cost of compliance for financial advice firms has never been greater - ASIC's services contribute to the time/effort cost, and its levies are part of the monetary cost. Furthermore, the profession is potentially facing increased costs as a consequence of the levy structure to fund the Compensation Scheme of Last Resort.

Regulatory simplification developments must, therefore, deliver identifiable benefits in a commercially viable (cost/benefit-wise) manner to the community that ASIC seeks to serve, and that funds its operations. Some of the feedback the FAAA has received suggests that this is not the case for the recent website improvement (see comments in our answer to question 1 below).

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

More disturbingly, certain participants in the financial advice profession have been subjected to ASIC's heavy pecuniary penalties for foreseeable administrative mistakes, heavy penalties which on the face of it appear disproportionate to the mischief underlying the regulatory breach, and levied against licensees which strive to be compliant in every aspect of their operations.

The recent collapses of a number of managed investment schemes and other investments has placed a spotlight on the importance of regulatory oversight and early intervention. Whilst law reform and other changes are likely to be necessary to address a number of gaps that have been identified, the existing law does enable appropriate enforcement to a significant extent. It is our view that the regulatory regime should place more focus on early intervention to avoid major issues and less focus on interfering with the efficient operation of well-intentioned businesses. It is important that strong regulatory enforcement action is taken with respect to these matters to provide a clear message to strongly discourage similar conduct in the future.

We acknowledge and agree with the following sentiment from the ASIC Chair from the foreword in the consultation paper:

I have observed that we don't do simplification well in Australia, and that regulatory complexity is a significant challenge.

Not only has this complexity hindered our work to enforce the law, it has also had a significant chilling effect on business. It has raised the cost of doing business, made compliance more time-consuming, and can stifle innovation and entrepreneurial drive throughout the economy.

Feedback from the FAAA memberships indicates a strong preference towards regulatory guidance that is drafted with financial advisers as the intended audience. This guidance should be principles-based, with examples and templates to support concepts. Our membership would also like ASIC to provide more educational services about its guidance, be more open to industry feedback and increase engagement generally.

Whilst the FAAA sees some merit in ASIC embarking on a program to consolidate regulatory guidance into a single source of truth, either on a topic or sector basis (or both), most practitioners use external search engines to find answers to regulatory questions. So, we see greater merit in improving the ASIC website search function, relieving users from the inconvenience of exiting to use external search functions.

Meaningful action

It is important that ASIC takes meaningful action as a result of this consultation. In November 2020, ASIC released Consultation Paper 332 on *Promoting access to affordable advice for consumers*. In total 466 submissions were received from financial advisers, licensees, associations and other relevant stakeholders in response to this consultation. To the best of our understanding, very little reform occurred as a result of this consultation. Whilst some of the ideas were passed on to the Quality of Advice Review, it seems to those who did so much work on CP 332, that very little actually happened. It is essential that meaningful change flows from this consultation.

We have set out our responses to the twenty questions in REP 813 on the following pages.

Please contact me on [REDACTED], or via [REDACTED], if you have any questions or if we can provide further information on any of the points raised.

Yours sincerely,

[REDACTED]

[REDACTED]

General Manager Policy, Advocacy and Standards

Financial Advice Association Australia

ASIC REGULATORY SIMPLIFICATION PROGRAM – REP 813

Effective date: 20 October 2025

Submitted to: Australian Securities and Investments Commission



Section 1 – Improving access to regulatory information

1. Has our new website improved searchability and access to useful information for you? Do you have any suggestions for further improvement?

General feedback is the recent website developments have not made an immediate difference to financial advisers, and in the short term are time consuming as users become familiar with the new layout. Of course, as familiarity grows, this issue will abate.

Feedback comments from various FAAA members and staff:

*I was on it this morning looking for an RG and got so frustrated I ended up **searching in google instead!***

...cleaner and faster and reflects 'current website styles'

...a great improvement. I would say the consumer part of the website is greatly improved with easier accessibility to information and simpler navigation.

.... they have reduced duplicated information on the financial advice pages which does on one hand make it less cluttered and easier to navigate, but the content is now fairly high level and light on so I am not confident all helpful and necessary information is still available.

...the filtering capability in the search is an improvement however it would be good to be able to still be able to search by the number of the regulatory guidance. I couldn't work out how to do this.

*...on the 'report a complaint' page, they have an option to select who you are reporting the complaint on behalf of - myself as consumer, whistleblower, or a professional on behalf of client. I would be keen for this **to be expanded to include professional with concerns about other providers (i.e. not necessarily on behalf of client)**.*

I lodged our IDR report in August and the ASIC website didn't feel any different to me.

I use the website often and it is currently taking me longer to navigate and find things as I get used to where things have moved. Longer term I expect it will take about the same time – not a time saver for me.

The ASIC website has a search function which is really poor. I use Google search to find anything on the ASIC website rather than use theirs.

The bigger issue is the ASIC registers which are wasting a lot of time for licensees. They are increasingly unavailable due to problems with the systems. There have always been intermittent issues in the past and particularly in busy times but we now find the systems are unavailable far too often. This is ASIC Connect and the ASIC Regulatory Portal. There seems to be multiple issues causing the downtime. The ASIC error messages are also not useful and it is only because we are using these systems every day that we can work out if the issue is at the ASIC end or the user end....licensees...waste an enormous amount of time doing things like re-establishing logins and re-setting passwords when it is a problem at the ASIC end. It is a major frustration for licensees.

For the general public I can see the system problems also cause the Financial Adviser Register and Professional Register to be unavailable far too often. This is on top of scheduled maintenance where the FAR can be unavailable all weekend - when consumers may be trying to look at adviser details.

...ASIC used to process changes to the Financial Adviser Register in a short period of time and you would often be able to see changes and check lodgements were ok shortly after completing. ASIC now update overnight so these checks can't be done until the next day.

Whilst it is understood that this question was with respect to the ASIC website, there are some strong opinions in the feedback received with respect to the other ASIC systems and portals.

2. Which of the proposals to enhance our guidance materials do you think will have the biggest impact and should be prioritised – or do you have other suggestions?

Target audience for financial advice-related regulatory guidance

There has been a seismic shift in the structure of the financial advice profession since the Royal Commission into Banking, Superannuation and Financial Services ('Royal Commission'), with a transition by financial advisers away from large licensees towards smaller and/or self-licensed arrangements. We believe that ASIC should adapt to this new environment by re-framing its regulatory guidance for the financial advice sector, pitching the guidance at the increased audience of financial advisers that now rely directly on their own readings of ASIC's guidance.

Although we appreciate that ASIC needs to cater for a range of different users, our view is that existing and new financial advice-related regulatory guidance should be framed for an audience of financial advisers. This contrasts with current guidance which appears to be pitched at compliance experts, many of whom are or were employed by the larger licensees.

Although small Australian Financial Services Licensees (AFSLs) and self-licensed financial advisers often utilise external compliance services, not all do, and further enabling financial advisers to access and understand ASIC's regulatory guidance will be in the best interests of the advice profession, ASIC and the community at large. It will result in improved compliance standards across the profession and reduce the cost of operating a financial advice business.

Principles-based versus prescriptive style

We note the acknowledgement in the consultation paper of the need for balance between principles-based versus prescriptive guidance.

Feedback from our membership indicates a preference for more principles-based guidance, with examples, flow charts and templates to support the principles.

Members are critical of existing guidance being:

- heavily technical
- prescriptive
- not fit for purpose
- difficult to understand, and
- requiring expert interpretation.

Our membership would like to see a greater level of consultation with practitioners by ASIC when drafting regulatory guidance which affects the financial advice profession. RG 90, an example Statement of Advice, was cited as an example of guidance which lacks practical application and accordingly has very little impact on the profession.

We note ASIC's recent approach to INFO Sheets, in particular the language, style, FAQs, and length, and the publication of these as webpages. This is a significant improvement on other types of regulatory guidance.

The FAAA endorses an outcomes-based approach (with relevant examples) to regulatory guidance, which places the best interests of financial advice clients at the heart of any regulatory guidance.

An outcomes-based approach is in line with other regulators, such as AUSTRAC and OAIC. For example, AUSTRAC's publication *AML/CTF program guide* demonstrates an outcomes-based approach to regulatory guidance.

Education and training

Our membership also expressed strong interest in more education and training covering the regulatory guidance provided by ASIC. The FAAA believes increasing the level of ASIC-delivered training will help improve the overall level of compliance within the financial advice profession.

By ASIC engaging with the audience, it will also establish a useful feedback loop to help ASIC understand the issues which are most troubling for the financial advice profession and provide an opportunity for ASIC to act on that intelligence. In doing so, ASIC will build further confidence and trust between the profession and the regulator.

Training programs could be run jointly with industry and professional associations such as the FAAA.

Enforcement issues

The FAAA understands that ASIC as a regulator must work with the law as it currently stands.

However, we are aware of examples where ASIC's interpretation of the law is often harsher than the policy intent and creates additional obligations that are not in the legislation itself.

On occasions ASIC takes an inflexible approach to regulatory requirements that are impractical and disproportionately focus on minor matters that cause no consumer detriment and matters that may be very quickly addressed by licensees without harsh penalties being applied. Please refer to the answer to question 11 below for examples.

ASIC's approach to breach reporting for client fee consent forms that did not include the account number prior to the client signing, is a clear example of this. The costs to business for breach reporting are very high, and thus requiring financial advice licensees to report breaches related to a known deficiency in the law was very frustrating.

We seek a more pragmatic approach from ASIC in the future with matters of this nature. ASIC needs to be conscious of the time and cost impost on business, which distracts them from their primary purpose of servicing the needs of their clients.

Despite this focus on what the financial advice profession sees as trivial enforcement issues, recent events suggest that ASIC is not as effective as they should be at stopping the serious

misconduct. When trivial breaches attract harsh penalties, yet serious misconduct goes undetected or unpunished, it presents as a serious misallocation of ASIC's scarce resources.

Serious misconduct should be the core focus of ASIC. Often this relates to people with a deliberate intent to do the wrong thing, seek to benefit themselves and demonstrate a disregard for the interests of clients. This is very different from unintentional mistakes by parties who strive to be compliant and are committed to acting in the best interests of their clients.

Consolidated guidance

Generally financial advisers search for answers to regulatory queries via search engines, so whether guidance is in separate documents or compiled into one longer 'financial advice' compendium is not of great consequence. Devoting resources to improving the searchability of regulatory guidance should be the major focus.

However, there may be benefits in consolidating guidance into a single source of truth. For example, as issues emerge that affect the guidance, updating a single source of guidance may be more efficient, timelier, and less prone to potential omission that might arise with shorter, specific-issue-based multiple guidance documents.

The naming convention of regulatory guidance documents is arguably not of great consequence, as most industry participants search for guidance using topic-based searching techniques, but nonetheless a naming convention based on sector and topic may be helpful. It would also be helpful to search by RG / INFO Sheet number.

The FAAA agrees that clearer explanation of the purpose and intended audiences for the different forms of ASIC guidance would be useful.

In the context of the broad range of audiences and the scale of guidance documents, we believe that it would be appropriate to clearly label which sectors each document applies to. It might be that this could be provided by a table covering each document that demonstrates which sector(s) the document applies to. This could be achieved by a table with the documents in the rows and the sectors in the columns, with an X in each box that is applicable. This information could also be broken up into separate tables for each sector, to show which documents apply to them.

We strongly recommend ASIC consider AUSTRAC's industry engagement project and collaborative approach to developing guidance used for the pending AML/CTF reforms.

3. How can we present our guidance materials more clearly for different audiences (for example, consumers, small businesses, technical users and representative organisations)? Should we focus on principles-based guidance or more prescriptive guidance which outlines our expectations of complying with the law?

Please refer to the answer to question 2 above.

Servicing a broad range of users necessitates a level of reliance upon search functionality, a vehicle to demonstrate the applicability of each document to a sector or group of users and the ability to demonstrate linkage between different documents as this relates to a specific sector.

We recognise that the roadmaps represent an effort to do this. We are supportive of the roadmap approach and would be happy to work closely with ASIC to ensure that this can be as effective as possible.

4. Do you think the small-company and financial advice regulatory roadmaps are helpful? Would you suggest any improvements?

The *Roadmap for financial advice providers* is a useful document that may help to increase the understanding of the concepts it describes. An improvement would be a table or diagram that lists the types of activities that are commonly considered financial advice, and which Acts and regulators apply to those activities, if at all.

It is important to appreciate that the financial advice sector contains very complex and extensive legislation, increasing the challenge to prepare a document that easily achieves this objective. It is therefore necessary to carefully consider the level of detail contained in the roadmap and to illustrate how different documents link together to provide a clear message.

There is a general lack of understanding across the financial services industry of the meaning of *financial product advice* versus the more generally used term, *financial advice*. The distinction is important, as financial product advice is regulated under the *Corporations Act 2001* whereas financial advice that is not financial product advice may be regulated under another Act (for example, the *National Consumer Credit Protection Act 2009* or the *Tax Agent Services Act 2009*) or not regulated at all.

It is also important to appreciate that financial advice could be general advice, personal advice to wholesale clients or personal advice to retail clients on relevant products. The obligations, right across the spectrum, are significantly different for each. It is important to

ensure that this distinction is very clear to the readers, so that it does not unnecessarily increase the level of confusion or complexity of understanding.

Any ASIC publications which help financial services industry participants better understand when their activities are regulated, and when they are not, will be helpful to the industry. The roadmap may also be useful for some financial advice clients.

5. Should we consider piloting additional roadmaps? If so, for which sectors?

The FAAA believes a roadmap that helps qualified tax relevant providers (QTRPs) to understand what is and is not tax (financial) advice would be very helpful and greatly welcomed by the financial advice profession.

The concept of tax (financial) advice is important for authorisation purposes – only QTRPs and registered tax agents can provide tax (financial) advice, so understanding the meaning of tax (financial) advice and its boundaries is important.

But it's also important for financial advice clients, as fees incurred for tax (financial) advice provided by a QTRP or registered tax agent may be tax deductible.

6. Would alternative formats of the regulatory roadmaps be helpful (for example, hard-copy versions or podcasts)?

Yes, the more ways useful information can be provided, the more likely it will be to reach its intended audience. People are not all the same. There are a range of different preferred reading and interpretation styles. It is beneficial to give people alternatives in how they consume information.

Section 2 – Reducing complexity in regulatory documents

7. Are our best-practice drafting principles useful? Is there anything you would change?

Yes, the FAAA believes the best practice drafting principles are very useful, and if implemented will over time improve the efficiency for users in approaching and navigating through relevant provisions, etc.

The FAAA believes ASIC should adopt a more purposive approach (rather than a literal approach) to its interpretation of the law and reflect that approach in its guidance. Ultimately, the laws relating to financial advice strive to achieve what's in the best interests of the client, and that principle should underlie all of ASIC's regulatory guidance and enforcement.

8. Is our consolidation of financial reporting, accounting and audit instruments helpful? If not, please provide any feedback on how it could be improved.

As this is not directly relevant to the financial advice profession, we have no feedback with respect to this question.

9. Is our simplification of the platform instruments helpful? If not, please provide any feedback on how it could be improved.

As this is not directly relevant to the financial advice profession, we have no feedback with respect to this question.

10. Are there other ASIC relief or categories of instruments you consider should be simplified or consolidated? If consolidation were to occur, would it be most valuable for this to be organised by industry sector, topic or Corporations Act chapter?

ASIC has in the past used its powers to establish Class Orders, or more recently Legislative Instruments, that modify the application of the law.

In the case of ASIC Class Order [CO 14/923], which later became 'ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508', the FAAA believes the requirements exceeded those required by the law, adding unnecessary complexity to the record keeping obligations.

These obligations should have been part of the primary law, not delivered through a Class Order. The obligations have stayed in place for over ten years as an ASIC Instrument, however in the context of the Delivering Better Financial Outcomes (DBFO) reforms, may no longer be necessary.

There should be greater clarity with respect to the circumstances where these powers will be used.

We note that page 17 of the consultation paper highlights that there are nine financial advice ASIC legislative instruments. It is however very difficult to find these legislative instruments to easily facilitate feedback on this question. It is assumed that some of these nine are more related to disclosure obligations and general advice.

In terms of modification powers, the consultation paper states:

ASIC's exemption and modification powers in legislation such as the Corporations Act allow ASIC to provide administrative 'relief' from the operation of various provisions where we judge that applying those provisions is not warranted, or that they should apply in a modified way. For example, they could be modified in circumstances where the strict operation of the legislation may produce unintended or unreasonable results. These exemption and modification powers help us ensure the regulatory regime can accommodate practical realities, support innovation, address unintended consequences, and maintain fair and efficient markets while still operating within the boundaries of legislative intent.

It is the FAAA's view that ASIC fails to utilise its exemption and modification powers in situations where doing so would provide great benefit to the financial advice profession without any detriment to the community or ASIC itself.

We would welcome a shift in this regard and call for the following administrative relief:

- Breach reporting more generally, including with respect to a range of civil penalty provisions that are automatically classified as reportable situations. Whilst a breach of the best interests duty might appear to be a material matter, often issues with respect to this can occur where there is no client detriment and the solution is additional learning. Equally in the past problems existed with respect to minor differences in Fee Disclosure Statements (FDS).
- Breach reporting for the recent client fee consent form issue, where in many cases the form did not include the account number prior to the client signing as it was yet to be issued.

The FAAA is broadly supportive of legislation that provides some flexibility for ASIC to sensibly modify the law, particularly where this is used to address unintended consequences. There are parts of the law where this power applies, however there are other parts where it does not.

The Corporations Act should be amended to provide the power to ASIC to fix minor matters. ASIC has very little powers with respect to Part 7.7A of the Corporations Act. There are no amendment powers with respect to *Division 3-Charging ongoing fees to clients*. Thus, there was no way to resolve the issue that arose earlier in 2025 with fee consent forms that did not

include an account number as it was a new account, and the account number did not exist at the time of application. This is a problem, and we would like to see ASIC being vocal about obtaining this power.

The law is often inflexible with respect to minor errors. For example, under the previous FDS regime, a minor numerical mistake in an FDS might have entirely invalidated an FDS. This often arose as the adviser might have applied a particular advice fee to the wrong period, since the fee came out of the client's account in a different period to the period that it was received by the adviser.

Providing ASIC with the ability to deal with these minor matters in a timely basis is important. We would also like to see ASIC more willing to use these powers when it is practical to do so, has material benefit to the regulated population and has little or no consumer impact.

Section 3 – Making it easier to interact with ASIC

11. With respect to interacting with ASIC, other than the work we've outlined, is there anything else we should prioritise?

Engagement

The change in tone used in this consultation paper is noticeable and very much welcomed. The simple, plain language used makes it more accessible and presents an open-mindedness behind the consultation. It acknowledges some of the problems, the diverse users of ASIC information / guidance experience, and suggests a pathway to try to improve the system. It is very refreshing.

However, simplifying the regulatory regime must include a change in ASIC's approach to stakeholder engagement. ASIC has minimal interaction with the industry when compared with other regulators. This minimal interaction and guarded approach to engagement significantly restricts ASIC's ability to truly understand the issues the broader financial services industry and financial advice profession are facing.

The inability to engage with ASIC has practical implications, reduces the regulatory outcomes ASIC can achieve, makes the regime more stifling for those they regulate and inaccessible for consumers.

This is in stark contrast to the more collaborative approach AUSTRAC has embraced to develop the rules and regulatory guidance as part of the overhaul of the AML/CTF regime.

We note the establishment of the ASIC Simplification Consultative Group (ASCG) as a positive step in bringing together a range of stakeholders to gain industry input to this project.

As the seniority of the ASCG membership indicates a high level of experience and expertise, we encourage ASIC to form issue-specific and ongoing industry working groups for the development of regulatory guidance to undertake more in-depth stakeholder consultation prior to public consultation commencing.

Pecuniary penalties

ASIC should review its application of pecuniary penalties.

There are instances of technical breaches of the regulatory provisions where the pecuniary penalties are extremely harsh when considered in relation to the severity of the misdemeanour and the size of the party involved.

An example recently is AFSLs being fined more than \$30,000 for what amounts to a misunderstanding, leading to an administration mistake when authorising and registering new authorised representatives. This mistake is generally unintended and a consequence of a transitional legislative arrangement resulting in an illogical double ASIC notification requirement.

When the individual financial adviser licensing obligation on AFSLs was announced, it was highly foreseeable that some AFSLs would be 'caught out' by the dual requirement to notify ASIC of a new authorisation of an authorised representative as well as separately notify ASIC of the registration of a relevant provider.

This additional obligation resulted from a Royal Commission reform that was based upon a move towards individual financial adviser registration. As a result of the cancellation of the Modernising Business Registers program, the Government has announced that this is no longer being progressed. Licensees and financial advisers did not understand the distinction between notifying ASIC of the authorisation of financial advisers and registering them with ASIC. This confusion is understandable.

For the AFSLs who misunderstood their obligation, and who otherwise conscientiously strive for regulatory compliance, it is proffered that a simple warning issued to the AFSL of their error, with an explanation of what had gone wrong, would have been effective in resolving the issue and ensuring future compliance with the current law. This is not a matter that involves significant risk of detriment to consumers.

The imposition of such a heavy fine for what many would view as a minor administrative mistake creates resentment in the financial advice profession towards ASIC – this is neither in the industry’s best interest, ASIC’s, nor consumers.

A further example relates to the annual ASIC fee payable by corporate trustees of self managed superannuation funds (SMSFs), currently \$67.

The late payment fees of \$411, which apply for payments made more than one month after the due date, are also extremely harsh, and difficult to reconcile against the perceived mischief of a late payment, which is often just an oversight on the part of the corporate trustee.

It appears this late payment levy applies to all corporate entities, regardless of level of fee payable by the entity. The annual fee for most proprietary companies from 1 July 2025 is \$329, whereas for special purpose proprietary companies (commonly used as a corporate trustee for SMSFs) the fee is only \$67.

Applying the same penalties, regardless of the level of fee outstanding, seems incongruous, and results in the absurdity of a \$411 late fee on a \$67 initial fee.

Furthermore, ASIC has a reputation for dismissing applications for leniency on such issues, so there exists little if any recourse to challenge the excessive fees.

12. Are there any services that ASIC provides that you think cannot be facilitated electronically? If so, please provide more information.

No.

13. With respect to how you use ASIC’s registers, other than the work we’ve outlined, is there anything else you would like us to improve?

Please refer to feedback comments as part of question 1 above. The feedback from our members is that there are regular problems with the ASIC portals and people are often uncertain as to what they are expected to do.

14. Do you have feedback on our proposal to engage earlier with industry on data requests and revise our consultation approach?



In prior years, ASIC was known for issuing requests for a substantial amount of information just prior to Christmas. We welcome the commitment to avoid requests for data at this time of the year.

We also welcome the offer to engage better and to be open to alternative options to obtain the data that you are seeking. This is a welcome change.

We appreciate that such an approach cannot apply in the case of reactive data requests where serious issues or the risk of client detriment may be in play.

15. How would you prefer to interact with ASIC more generally? What can we improve?

The FAAA is greatly appreciative of the regular and respectful interaction it has with ASIC.

We also appreciate the opportunity we have to respond to targeted consultations and to be able to proactively raise issues with our colleagues at ASIC. We believe that this is beneficial for both our members, but also for ASIC.

We do however believe that there is room for further improvement.

ASIC should move to a more collaborative approach to regulatory guidance, not just consulting with industry through public consultations, with the occasional confidential consultation with industry.

An ongoing ASIC/industry-specific working group should be established to work collaboratively on guidance to simplify and improve the effectiveness of regulatory guidance that delivers for consumers and reduces compliance time and costs.

This should be a 'working' working group, not a forum presentation approach, where issues with existing regulatory guidance are identified and resolved, and the collaborative development of new guidance occurs. Membership must be made up of industry experts with the capability and capacity to provide real feedback on detailed regulatory policy to ensure it can work in practice in the most cost-effective and efficient manner to achieve the desired consumer protection outcome.

This is critical given the pending Delivering Better Financial Outcomes (DBFO) reforms. To achieve the goals of the DBFO reforms, it will be necessary for ASIC to work closely with the advice profession to assist licensees and advisers to transition to a model that is more outcomes focussed, rather than the predominantly prescriptive process-based approach that has applied previously. Without strong ongoing engagement, the licensee community and

broader financial adviser profession will lack the confidence necessary to implement the reforms as intended. Risk averse practices will prevail out of fear of enforcement action.

Careful management of transition periods of this nature is critical.

Section 4 – Simplification through law reform

16. What changes, if any, should be made to the reportable situations regime and substantial holding notices?

It is the view of the FAAA that there is a lack of materiality in breaches that need to be reported to ASIC. We have made several comments on this matter above.

The changes that were made to the breach reporting regime following the Royal Commission led to a significant increase in breaches being reported to ASIC. Much of this was not material in nature and whilst some may argue that it provides ASIC with additional data, it is in most cases data that is of no use.

The low materiality and the high cost of breach reporting create an inappropriate incentive for some businesses to not report immaterial matters. Evidently ASIC suspects that this is the case due to the large number of licensees that report no breaches.

The solution to this is not to pursue those who don't report, but instead to fundamentally change the regime so that it goes back to being a significant breach regime, rather than the current model, where every breach of a civil penalty provision is reportable.

The FAAA is very concerned about the flaws in the workings of the obligation in section 912DAB to report advisers from other licensees. Whilst we strongly support the need to have such a reporting regime, as it is a very useful source of information on serious misconduct, our concern is that the reporting entity needs to notify the entity that they are reporting to ASIC.

Whilst this may have been designed to limit the prospect of unfounded reports or revenge type reports, it makes it much more challenging to report a breach. In some cases, particularly with entities willing to undertake egregious conduct, there is a genuine fear of the repercussions of reporting.

A licensee reporting misconduct perpetrated by another licensee is akin to a whistle-blower. Rather than having the protections that are available to whistle-blowers, they are forced to tell

the party that they are reporting on. This is counter-productive and has likely led to a lot of material misconduct not being reported.

The materiality of reporting a breach by a financial adviser who is licensed/authorised by another licensee should be raised and it should not be a requirement of the regime to notify the licensee being reported.

Finally, with respect to breach reporting and the related obligations, the notify, investigate and remediate provisions should not only apply to financial advisers. Provided sensible materiality levels apply, we recommend that this should be a broader obligation.

It is not obvious why it was limited to financial advisers, and we argue that there is merit in considering how it can be sensibly extended to other sectors. It would be appropriate to consider some rationalisation of these obligations as part of this exercise.

17. Are there any other regulatory reform ideas within ASIC's remit that could simplify the application of the law, or otherwise make it easier for individuals and businesses to meet their compliance obligations?

ASIC deals with a wide range of regulated populations. In the financial advice sector, licensees can be large businesses, medium size businesses or small self-licensed practices.

It is important to ensure that the guidance considers the differences between regulated parties and that this does not unnecessarily force small businesses to employ processes and practices that are more suited to large practices.

Guidance that is more principles based than prescriptive is the preference expressed by smaller financial advice businesses.

Client consent obligations, account numbers and breach reporting

As discussed above in questions 2 and 10, a pragmatic response and action by ASIC to a legislative drafting error would be greatly appreciated by the financial advice profession.

Personal/general advice

Guidance on the legal line between general advice and personal advice in section 766B of the *Corporations Act 2001* would be helpful for the financial services industry and the financial advice profession, after the decision in *Westpac Securities Administration Ltd v ASIC* [2021] HCA 3.

That decision has led some in the financial services industry to adopt a very conservative position on when general advice applies, whilst others have continued to act without change.

A greater understanding of when financial product advice provided directly to a client in a one-on-one situation can be general advice, if at all, including practical examples would be very helpful for the financial services industry.

Guidance should include practical scenarios about how to interpret section 766B(3)(b) ('a reasonable person might expect the provider to have considered one or more of those matters.').

Other matters

One of the big opportunities as part of the DBFO reforms is to extend the usage of record of advice (RoA), which is subject to some level of uncertainty due to the complex and subjective factors that govern their use. Even in advance of the DBFO reforms, we recommend that ASIC undertake a review to assess the opportunity for simplification of the guidance on the use of RoAs.

Whilst it might be best to await the outcome of the DBFO reforms, we would recommend that ASIC consider how to best simplify the example SOA in RG 90.

Concluding questions

18. Of all the simplification work outlined, which do you think we should prioritise and why? Where possible, provide information or data about the cost savings that could be achieved.

The FAAA suggests prioritising the developments as follows:

1. Draft regulatory guidance which applies primarily to the financial advice profession at a level appropriate for the average financial adviser
2. Run training and education sessions on regulatory guidance for financial advisers and seek feedback from those audiences on issues they face regarding that guidance.
3. Make greater use of ASIC's exemption and modification powers, especially regarding the issue raised in our answer to question 10.
4. Reconsider ASIC's pecuniary penalty application in a range of scenarios and only apply harsher pecuniary penalties to repeated conduct or where malintent is evident. Do not apply draconian pecuniary penalties where relatively new legislation is in place,



especially when it is highly foreseeable that industry participants may be confused by the application of the new laws at first instance.

5. Improve ASIC website search function
6. Consolidate guidance into a single source of truth, with regular updates as issues emerge.
7. Provide further relief for the reportable situations regime, increasing the threshold and better enabling licensees to report misconduct by other licensees.

19. Are there any costs associated with any of the options that are important for us to consider?

The FAAA is unable to provide data on the likely cost savings of the above.

However the FAAA encourages ASIC to do investigate the average cost of a licensee making a reportable situations report to understand the impact that this has on a business and the benefits to the financial advice profession from a more sensible assessment of what is reportable.

20. Are there any additional areas of simplification you would like us to consider?

Extending the law

We encourage ASIC to avoid including obligations that go beyond the law in their guidance. Invariably this is unnecessary and counter productive.

One recent example is ASIC Info Sheet 292 *FAQs: Informed consents for insurance commissions*, in particular the response to FAQ 11: *Do I need to give a copy of a client's informed consent to the insurance product issuer?*

Whilst the response starts with the point that there is no explicit provision requiring this, it then goes on to say:

However, the insurance product issuer may wish to ask for a copy of the client's informed consent, or agree that this is done as part of their compliance or risk mitigation strategies, as product issuers (and sellers) must not give AFS licensees and representatives conflicted remuneration: see section 963K(1). It is also possible for an insurance product issuer to include the request for informed consent as part of the product application process.

Not only does this response appear to suggest that life insurers might wish to consider doing this, but it also creates an idea that life insurers could include the client consent obligation as part of their application process.

This is confusing and simply not practical for a financial adviser to ever undertake. In our view this is a case of ASIC seeking to extend the law and also of including unnecessary complexity.

We strongly discourage ASIC seeking to extend the law through guidance.

Complaints Definition

In recent years ASIC changed the definition of a complaint so that it now includes any statement of dissatisfaction requiring a response, even if it is a misunderstanding or if it can be immediately resolved.

In the context of the effort and cost involved in recording and tracking complaints and the introduction of IDR reporting to ASIC, we believe that the definition of a complaint should be reviewed so that it no longer captures trivial and easily resolved matters.

