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Dear Simplification Team

### **Response to the Australian Security and Investment Commission's Regulatory Simplification Paper REP 813**

Thank you for the opportunity to respond to the Australian Security and Investment Commission's (ASIC) Regulatory Simplification paper REP 813.

We congratulate ASIC for embarking on this program of work to simplify how it regulates entities and individuals and make it easier to understand information, interact with ASIC and comply with regulations.

ASIC's program of simplification has the potential to greatly benefit consumers, including through improved:

- Industry compliance with clearer obligations and guidance
- Consumer understanding of rights and ways to raise a complaint about misconduct
- Efficiency across the ecosystem and regulatory framework, allowing ASIC to focus its resources on issues causing greatest harm
- Trust in ASIC and industry through clearer information, reduced misconduct and improved transparency.

Consumer Action has welcomed the opportunity to take part in ASIC's simplification work via the Simplification Consultative Group. In that forum we have provided feedback and reflections on the importance of preserving consumer protections that have been introduced in response to widespread misconduct, such as that raised in the Financial Services Royal Commission. However, unnecessary regulatory complexity is problematic and if rules and processes are costly and difficult to follow, with little benefit, then it's in everyone's interest to simplify or recast the rules entirely.

We note the intersection of ASIC's simplification work and the Government's current focus on productivity. While both agendas present important opportunities to support Australians' economic wellbeing and participation, we caution against taking a blunt approach to deregulation (e.g. the UK's current approach). Instead, when considering the value of any simplification or deregulation it is critical to consider the policy intent behind the regulation and whether the regulation is achieving its intended outcomes. <sup>1</sup>Knowing what good regulation is – and whether it's working – calls for measurement and

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<sup>1</sup> In the Paper's Foreword, ASIC recognises the significance of maintaining consumer protections in this context, see attachment A to the Paper, p11. For further consideration of both the value and risks of simplification see our [Response to the Productivity Commission Interim Report: Creating a more dynamic and resilient economy](#).

evaluation of regulation and regulatory outcomes. This is something additional that ASIC should turn its mind to throughout its simplification work.

It is important to acknowledge that complexity is not always introduced to protect or support consumers. Systems can and have been complicated at the request and in the interest of industry participants in reform processes. This can be done to create bespoke regimes to suit specific interests or business models and where industry opts to support a less substantive, but more complex, set of obligations.

One example of this result is the introduction of the new Low Cost Credit Contract regime in response to the significant harm of unregulated Buy Now Pay Later (BNPL) products. Appropriate regulation of BNPL products is welcomed and essential as they pose significant risk to consumers by enabling unregulated debt accumulation, disproportionately affecting low-income consumers. This harm would have been addressed by the recognition of BNPL products as credit and their introduction into the Responsible Lending Obligation (RLO) regime. Instead, the introduction of 'modified RLOs' through the new Low Cost Credit Contract regime has resulted in both less effective consumer protection (when compared to general RLOs) and additional complexity and confusion within our credit laws.

ASIC's remit is broad, as outlined in Figure 1 of the Paper, with touchpoints across consumers, small business, lawyers, advocates and decision-makers. Therefore, an important principle to keep in mind throughout the simplification work is who the audience is for particular pieces of information or regulation. Something that might be simple for a small business or experienced lawyer may be jargon and inaccessible to a consumer.

While consumers are at the heart of ASIC's regulatory function, the focus and pilots in the simplification work to date has been on business. Therefore, our submission below in response to the Paper is brief. We would like to see ASIC select more consumer-focused pilots in its next phase of work. We think a priority should be on regulatory guides and even a consumer-specific roadmap, for the key issue(s) on which consumers consult ASIC's materials and website.

### **Improving Access to Regulatory Information**

As a general observation, Consumer Action's lawyers (technical users) find ASIC's regulatory guidance materials clear and relatively easy to use in practice. A consumer who doesn't regularly interact with the Regulatory Guidance may not know it exists or may struggle to navigate or identify what is relevant to their circumstances. Therefore, for a lay user of ASIC's resources, a consolidated roadmap and arranging of resources around topics would be an improvement to guidance numbered by order of publishing date.

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

Yes, we think the new website has improved searchability for us as consumer advocates (technical users) and likely improved somewhat for lay-consumers as well. Money Smart is also a clear and heavily used resource for consumers.

Via its consultants, ASIC's review of consumer-facing parts of the website or resources could involve user-testing, to ensure that a diversity of consumer-archetypes is considered and the information is accessible and navigable.

*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?*

Both the grouping (and consolidating) of Regulatory Guidance and Regulatory Roadmaps will have the significant benefit of putting relevant information in the one spot. We think this will help people who may not know what specifically to search for when they have a complaint or issue with a business ASIC regulates.



Consolidating and grouping resources according to issue, and creating a roadmap of obligations, also goes some way to mitigating the challenges outlined in Attachment A to the Paper – that obligations and reforms are spread across far too many regulatory instruments, guidance, amendments and rules.

*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?*

The concepts of roadmaps and grouping/consolidating resources will go some way to helping consumers identify what rules apply and what their rights may be. ASIC's approach to focus groups is also a good one, and user-testing will also help to ensure the information is accessible and there are no gaps or unintended consequences of changes to the broadest audience.

On principles-based vs specific guidelines, it is difficult to provide a single answer. For guidance that is 'filling the gaps' of very high-level principles-based laws like overarching duties, then more specificity is helpful to business and consumers. However, this creates a risk of imposing a compliance-based or minimum standard approach to implementing the laws. Generally, we think more specificity is probably preferable given the purpose of regulatory guidance is to provide additional information to understand obligations and the law.

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

Yes – for the issues or sectors with which consumers interact most with ASIC. In our experience, these might be credit and debt, hardship, responsible lending, superannuation.

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

Potentially – this would be something the focus groups could advise on. We encourage ASIC to consider having translated versions of key documents available. We are also aware that videos can be a useful accessible format for some consumers.

## **Reducing complexity in regulatory documents**

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

The best practice principles look sound to us, and in particular, consistency across instruments will be a benefit of the work.

*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 instruments should be organised by topic. Issues that relate directly to consumers and consumer protection should be distinct from issues that predominantly concern governance and corporations. Within topic areas that concern consumers, there should be further distinctions for particular regulated industries such as credit, insurance and financial services.

More generally, grouping and consolidation is helpful so that obligations aren't overlooked by business or consumers when understanding rights, duties and exemptions. We caution against consolidation leading to unwieldy documents. As much as possible, shorter and clear instruments are preferable.

## **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?*



We commend ASIC's work on improving the process for reporting misconduct. This streamlining should lead to greater numbers of complaints being reported. We would like to see more regular published data on complaint numbers and themes for greater transparency over patterns of misconduct of regulated entities.

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

We think it's important that multiple channels exist for reporting misconduct to ASIC to avoid any barriers to reporting that might exist for an individual, given a single report can prevent significant harm to other consumers.

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

This approach appears sound, noting ASIC's carve out in the Paper that this may not always be appropriate if other regulatory tools are being used.

## **Law reform**

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

The Financial Services Royal Commission was just years ago, and it outlined widespread and extraordinary misconduct entrenched in our financial services sectors, unacceptably harming consumers. The Reportable Situations Regime was implemented as a direct consequence of the Royal Commission and so moves to reduce it should be subject to close scrutiny.

We would support removing certain reporting requirements if they are ineffective and consumers aren't being harmed by the action under review, but only after very careful consideration of the rationale and evidence.

More generally, the message from industry is that aspects of the Reportable Situations Regime are overly burdensome and aren't protecting consumers – minor breaches that aren't harming consumers are taking up all the time. In contrast, complaints to the Australian Financial and Complaints Authority are strikingly high at over 100,000 per year<sup>2</sup> and the organisation employs over 1200 staff<sup>3</sup> to handle complaints about financial services providers. We have a very large financial services regulator lodging enforcement proceedings multiple times each week. Perhaps the wrong things are or aren't being reported, and Treasury could review and evaluate the impact of the Reportable Situations Regime against its outcomes, and the conduct it was introduced to counter in the first place.

*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?*

While beyond what ASIC can immediately implement, the discussion and focus on supporting simplification through law reform is significant. Simplifying the overly complex and fragmented financial services laws is key to improving the entire financial services ecosystem – for business, decision-makers, consumers and ASIC itself.<sup>4</sup> The Corporations Act is long overdue for a root and branch review and we would support implementation of many of the ALRC's Final Report

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<sup>2</sup> <https://www.afca.org.au/news/media-releases/afca-receives-more-100000-financial-complaints-in-2024-25>.

<sup>3</sup> <https://www.afca.org.au/news/media-releases/afca-named-one-of-australias-best-places-to-work-o>

<sup>4</sup> Attachment A to the Paper, p4.; Australian Law Reform Commission (2024) *Confronting Complexity: reforming corporations and financial services legislation*, available at: <https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-141.pdf>.

recommendations.<sup>5</sup> This is not headline-grabbing work, but it would be the reform to move the dial on simplification and “better regulation”.

### Concluding questions

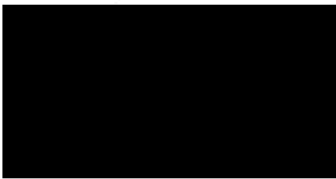
20. *Are there any additional areas of simplification you would like us to consider?*

As outlined above, measuring and evaluating the impacts and objectives of regulation is key to simplification. ASIC should apply this principle across its various regulatory instruments, guidance and functions. Simplification isn’t possible without considering if the process, document or instrument being simplified is achieving its aims. Similarly, applying arbitrary targets to reduce number or length of instruments or guides may lead to further complexity or holes in our regulatory system, and the likely consequence.

Thank you for the opportunity to contribute our reflections and we again congratulate ASIC for embarking on this simplification program of work. If you have any questions please contact [REDACTED].

Yours sincerely

**CONSUMER ACTION LAW CENTRE**



[REDACTED]  
CEO

### About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

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<sup>5</sup> Ibid.

