



# Summary of feedback to CS 23 and ASIC's response

In ASIC's consultation *Proposals to continue to facilitate digital disclosure* ([CS 23](#)), we sought feedback on our proposal to remake two legislative instruments that provide relief to facilitate electronic delivery of disclosures—*ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647* (ASIC Instrument 2015/647) and *ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649* (ASIC Instrument 2015/649)—and a draft updated Regulatory Guide 221 *Facilitating digital financial services disclosures* (draft RG 221).

We received 7 submissions. We have summarised key feedback we received on our proposal to remake the instruments and draft RG 221 and our responses, including how we have addressed the feedback in the final Regulatory Guide 221 *Facilitating digital financial services disclosures* ([RG 221](#)) where relevant. This document is not intended to be a comprehensive summary of all feedback or all changes to the guidance.

Note: Non-confidential submissions are published on the landing page for [CS 23](#).

## Legislative instruments

Feedback	ASIC's response
Some respondents sought clarification on the scope of ASIC Instrument 2015/647 and its interactions with disclosure requirements under the <i>National Consumer Credit Protection Act 2009</i> (NCCPA) and <i>Insurance Contracts Act 1984</i> (ICA) and considered there should be alignment across the regimes. They also requested that <a href="#">RG 221</a> provide guidance on requirements under the NCCPA and ICA.	<p><a href="#">ASIC Corporations (Electronic Disclosure) Instrument 2025/447</a> (ASIC Instrument 2025/447) consolidates former ASIC Instrument 2015/647 and former ASIC Instrument 2015/649. Instrument 2025/447 provides relief from requirements under the <i>Corporations Act 2001</i> (Corporations Act) and governs how financial services disclosures may be made electronically. Our guidance in <a href="#">RG 221</a> also focuses on addressing ASIC's regulatory expectations for financial services disclosures under the Corporations Act. We have clarified in Section A of RG 221 that our guidance does not cover disclosure frameworks under the NCCPA and ICA and this is because these requirements apply outside of the Corporations Act.</p> <p>In respect of alignment of the regimes, we note that the government has introduced tailored frameworks for specific disclosures required under the Corporations Act, ICA and NCCPA. While we have modification and exemption powers to amend the disclosure requirements under the Corporations Act, we do not have any similar powers to amend the ICA. In relation to the NCCPA and National Credit Code, we have previously used our modification and exemption powers to <a href="#">facilitate electronic disclosures</a>, and we will consider whether any relief is appropriate to address concerns regarding misalignment between the Corporations Act and NCCPA regimes.</p>

Feedback	ASIC's response
There were differing views on the 7-day timeframe stipulated in ASIC Instrument 2015/647 for providing notice. This ranged from strong support for the continuation of the current timeframe to it being too tight and not giving customers sufficient time to opt out.	<p>We note ASIC Instrument 2015/647 is designed to facilitate the electronic delivery of financial services disclosure documents by making electronic delivery the 'default' option for disclosure, subject to safeguards that ensure investors and consumers do not miss the opportunity to choose an alternative method of delivery.</p> <p>The vast majority of respondents were either supportive of the current timeframe or did not raise any issues with it, suggesting it achieves an appropriate balance for the parties involved. We have, therefore, retained the 7-day timeframe.</p>
A respondent suggested that ASIC Instrument 2015/649 could be simplified further.	<a href="#">ASIC Instrument 2025/447</a> consolidates former ASIC Instrument 2015/647 and former ASIC Instrument 2015/649 to simplify the relief provided for digital disclosures. It also incorporates a simplified outline while maintaining the framework of requirements set out in the primary legislation.
A respondent expressed that the relief in ASIC Instrument 2015/647 and ASIC Instrument 2015/649 should be moved into the primary legislation.	We have raised this feedback with Treasury, and it is a matter for government.

## Updated RG 221: Sections A to D

Feedback	ASIC's response	Reference in RG 221
Most respondents expressed support for ASIC's proposal to facilitate digital disclosures and simplify guidance.	We welcome the support for our proposal to update and simplify our guidance.	<a href="#">RG 221</a> generally
A respondent suggested that <a href="#">RG 221</a> should reflect and cite case law developments on the matter of consent in the context of electronic communications.	We note case law in this area is emerging, and outcomes may change over time as technology evolves. We have not included case law in <a href="#">RG 221</a> as it could quickly become dated as a result of such changes. Nevertheless, we would encourage stakeholders to consider case law as appropriate and relevant to their circumstances.	Section B
A respondent suggested <a href="#">RG 221</a> should outline disclosure expectations for vulnerable customers.	The purpose of the guidance in Table 1 of <a href="#">RG 221</a> is to provide general principles to follow, which can be applied and tailored in various circumstances for the particular financial product or service and clients, including, for example, vulnerable consumers.	Table 1

Feedback	ASIC's response	Reference in RG 221
A respondent noted there is uncertainty for Investor Directed Portfolio Service (IDPS) operators on whether they can use electronic distribution methods under <a href="#">ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669</a> (ASIC Instrument 2023/669).	<p>As part of ASIC's broader work on simplification, we have released the draft platforms instrument (pilot), which proposes amendments to <a href="#">ASIC Instrument 2023/669</a>. See our Report 813 <i>Regulatory Simplification</i> (REP 813). Under the pilot, subject to public feedback, we are proposing to amend the requirements for how a document is given to investors by the IDPS operator by adopting a similar drafting approach to that in <a href="#">ASIC Corporations (31-day Notice Term Deposits) Instrument 2025/172</a>. This includes the ability to give documents to investors using 'nominated electronic means'. This will assist to clarify any ambiguity for IDPS operators.</p> <p>Please see a link to the pilot here: <a href="#">Attachment C to REP 813: ASIC Corporations (Platforms—IDPSs and IDPS-like Schemes) Instrument 2025/XXX</a>.</p>	Table 2
Several respondents suggested that <a href="#">RG 221</a> should include more examples on the use of specific digital disclosures.	<p>We have covered certain examples that we consider useful in the current legislative landscape. The general guidance for digital disclosures in Table 1 in <a href="#">RG 221</a> is flexible by design to ensure different approaches still follow ASIC's regulatory expectations.</p> <p>We have not included additional examples on the basis that we cannot cover every situation, and we want our guidance material to remain flexible and up to date in an ever-changing digital landscape. We will consider if specific issues require ASIC to provide additional guidance in the future.</p>	Section B Table 1 Table 2
Several respondents suggested there should be guidance on more innovative ways of providing digital disclosure. One respondent suggested ways to test new digital disclosure ideas with ASIC prior to going to market at large without being exposed to regulatory risk (e.g. a direct hotline or a regulatory sandbox).	<p>Innovative electronic disclosure is not restricted by <a href="#">RG 221</a>. Product issuers can adopt various methods of digital disclosure where there is compliance with the Corporations Act as amended by relevant ASIC relief.</p> <p>Where a product issuer is considering using innovative digital disclosures and is unsure of compliance with the Corporations Act, product issuers can contact ASIC's Innovation Hub for informal assistance by emailing <a href="mailto:innovationhub@asic.gov.au">innovationhub@asic.gov.au</a>. Product issuers can also apply to ASIC for relief from strict compliance with requirements of the Corporations Act on an individual basis.</p>	Section B Section C
Some respondents sought clarification on whether the guidance is now mandatory.	Section D applies as guidance on how ASIC interprets and administers the law. We have revised references in Section D to anchor our guidance to references to relevant legislative obligations. These obligations reinforce the need for suitable compliance arrangements when using digital disclosures.	Section D