

Regulatory Simplification

Submission by Arca

XX October 2025



Thank you for the opportunity to provide a submission in response to [Report 813 Regulatory Simplification \(REP 813\)](#).

Arca is an industry association focussed on the use of credit reporting and consumer data. We bring together Australia's leading credit providers and credit reporting bodies to improve data protection and use, and to make credit more visible, accessible and easily understood. Our vision is to make credit work for all Australians.

Our Members include banks, mutual ADIs, finance companies and fintech credit providers, as well as all of the major credit reporting bodies (CRBs) and, through our Associate Members, many other types of related businesses providing services to the credit industry. ARCA's Members collectively account for well over 95% of all consumer lending in Australia.

General comments

We consider that simplicity should be one of the goals of good regulation. Put another way, if there is a choice between a simpler and a more complex way to achieve the same public policy outcome, the simpler way is preferable.

However, simplicity and simplification must be considered alongside other goals of good regulation, such as certainty for both the regulated population and the regulator, and consistency of outcomes for consumers. In many cases achieving the other goals of regulation require a more complex set of rules or expectations. Simplification may not be warranted if it involves significant tradeoffs against these other objectives.

It is with this in mind that we raise reservations about the following comments in the Context paper at Attachment A to REP 813:

Over time, as particular issues have emerged, the policy response has taken into consideration the requests by financial firms for greater clarity and certainty of their obligations – leading to additional layers of prescription in the legal framework (ALRC Background Paper FSL2, 10, [49])

...

In terms of legislative design decisions, overly prescriptive, cover-all drafting in legislation, regulations and legislative instruments, often results in a disproportionate focus on strict compliance with rules over substantive compliance with intended outcomes. It might be said that a prescriptive, rules-based approach makes the rules easier to understand and comply with. In many cases, however, this approach has meant that the regulated community has been overly reliant on regulatory guidance as the 'source of truth' for compliance purposes.

We disagree with these statements – particularly the implication that the volume or detail of guidance is adding to complexity in a problematic way, and that the goals of the simplification warrants producing less guidance on the current (complex) legislative framework on the basis that that will lead to more meaningful compliance. We observe that the law applies to millions of different consumers and situations, and that it is often very unclear how those laws (whether they be principles-based or prescriptive) should be interpreted or applied to particular circumstances. It is for these reasons that well-developed guidance on the law from the regulator is especially valuable, as:

- **It simplifies business operations, making the regulatory regime clearer and more coherent for all parties.** Uncertainty about what the law means imposes costs (ultimately borne by consumers) and regulatory risk for licensees. Licensees operate complex businesses, often with multiple teams and functions with different expertise coming together to provide regulated services to customers in a safe and appropriate way. Consistent guidance from the regulator about the meaning of the law and what is expected of the licensee helps reduce the complexity of those operations and maximises the chances that the regulator's expectations are met.
- **It promotes consistent outcomes for consumers,** as it reduces the chances that licensees will form different opinions about what a high-level law requires and therefore treat similar customers differently. It also reduces the chance that licensees could conclude that the least onerous of the open interpretations should be followed, even if it does not achieve the objectives of the regulation.



- **It makes it easier for ASIC to administer the law**, as ASIC's views on what the law means/requires (or the things that affect what it means/requires) in particular situations are set out for reference for ASIC and others.
- **It can create clarity about what constitutes good practice**, which is useful in the context of external dispute resolution consideration of difficult matters.

We note the similarities between these outcomes and the objectives of simplification of the regulatory regime and its administration set out on page 5 of Attachment A. To that end while we support simplification as a goal, we:

- do not consider that the goal of simplification should be pursued in isolation;
- believe that a sufficient amount of detailed, well-developed guidance is critical to making the (sometimes inherently complex) legal regime simpler to comply with in practice;
- question the premise that producing less guidance would necessarily generate meaningful compliance.

We also have feedback on the specific questions/topic areas set out in REP 813.

Improving access to regulatory information

Improvements to ASIC guidance

ASIC has a key role to play providing guidance on the laws it administers. We note the list of potential gaps and improvement to ASIC's regulatory guidance. In response we have the following comments:

- There could be benefit in developing higher-level summaries of ASIC guidance for strategic users. However, we do not consider that this should occur at the expense of well-developed, highly technical guidance (which is highly valued by the regulated population and often critical to ensuring that ASIC's expectations can be fully reflected in industry practice)
- While the idea of consolidated guidance on a particular topic is appealing, we observe that this would require very regular and substantial updates, and that past practice suggests that doing so would prove challenging given ASIC's remit and limited resources. We think there may be more benefit in the following approach:
 - developing roadmaps or other missing pieces of guidance around fundamental topics (e.g. when an AFS or credit licence is needed, what all the general conduct obligations require, how the reportable situations regime operates, ASIC's expectations around dealing with consumers experiencing financial difficulty) to "fill the gaps" between existing ASIC guidance and better signpost where the most important pieces of guidance can be found; and
 - updating the most important pieces of guidance on a more frequent basis – one example mentioned by some of our Members as warranting further updates was Regulatory Guide 209 *Credit licensing: Responsible lending conduct*.

We would also have reservations about consolidating guidance being a justification for producing less guidance (or less detailed guidance).

- We don't have feedback on the substance of the draft roadmaps attached to the report. However, we note that the language used in those roadmaps is rather complicated, and that it might be best to guide readers to the places where they can find more detailed guidance that relates to each of the general headings and questions set out in that roadmap.
- We acknowledge that ASIC receives mixed feedback about whether guidance should be principles-based or prescriptive. The right form of guidance for a particular topic will depend on the underlying law, the nature of the regulated population and the circumstances in which that law applies. We would suggest that mixed feedback may indicate that ASIC has – and should continue to – balance these competing priorities on a case-by-case basis.



Development of ASIC guidance

We agree with ASIC's comments that 'guidance' from ASIC takes many forms and that stakeholders need the opportunity to be meaningfully consulted as that guidance is being developed. We consider that consultation is an important element of the guidance development process. Consulting on draft guidance has several advantages, including:

- allowing for more stakeholders to be reached, which raises awareness of the issues as well as giving ASIC a wider range of perspectives and information to consider when finalising the guidance;
- providing an opportunity for difficult issues to be fleshed out and addressed; and
- ensuring that the needs of the users of the guidance can be reflected in its development (e.g. additional detail provided about matters that industry is concerned about).

There have been instances where ASIC 'guidance' has been provided at the end of a thematic review without a consultation process; one recent example is the guidance on hardship set out in [Report 782 Hardship, hard to get help: Findings and actions to support customers in financial hardship](#) (REP 782) and [Report 783 Hardship, hard to get help: Lenders fall short in financial hardship support](#) (REP 783). While we are still engaging with ASIC on the detail of that guidance and how it applies in particular situations, we think that best practice guidance development should involve public consultation.

Reducing complexity in regulatory instruments

We support the majority of ASIC's principles to reduce complexity in the legislative instruments it produces.

We have some feedback about principle 5, which states "Draft for the majority, and don't try to cover all scenarios". We think this could be a useful principle for ASIC to consider when deciding whether conditions or restrictions that apply to only a very limited set of situations are truly necessary.

However, we would have concerns with this principle being used in a way that means ASIC instruments avoid dealing with difficult scenarios. In particular, it would be a poor outcome if the operation of the law was left unclear in some situations (out of a desire to draft simply) and instead the onus was shifted to licensees to apply for more bespoke instruments to resolve that uncertainty. We note that the process of requesting relief from ASIC is costly, burdensome, time-consuming for industry participants, and that the outcome is uncertain. Additionally, the result if a bespoke application was approved would be more complex, and participants would have to read the underlying law together with the ASIC legislative instrument *and* the further relief.

Making it easier to interact with ASIC

Contacting ASIC

We acknowledge the work that ASIC is doing to make interactions easier and more seamless, including the reduction in waiting times for people calling ASIC. However, Members have advised us that contacting ASIC by phone continues to involve long wait times, after which they talk to staff without the expertise to solve Member issues (which are often of a technical or regulatory nature).

We recommend that ASIC address these concerns by making it easier for the regulated population to contact them about regulatory questions. One option is a series of dedicated mailboxes or contact points, where licensees and/or their representatives can receive prompt responses to questions that don't involve legal advice. Allowing for these matters to be more easily addressed will simplify compliance with the law, as well as increase the likelihood that ASIC's expectations are met.

Earlier engagement on data requests

We support ASIC engaging on the data they intend to collect for thematic surveillances before notices are finalised. Our experience has been that ASIC often consults in this way: a recent example is the thematic reviews around hardship which led to REP 782 and REP 783. We believe that these consultations led to better, clearer data requests for industry which aligned with other relevant data definitions. We would also expect that consultation could lead to data requests which are easier for licensees to respond to, and mean the data provided is more useful for ASIC.



Simplification through law reform

Reportable situations regime

We strongly agree with the views set out in REP 813 that the reportable situations regime is complex and burdensome, and note that the regime also causes issues for ASIC. While we acknowledge that the current regime stems from concerns about uncertainty about what to report to ASIC and when such reports need to be made, the current regime is especially complicated. Members have told us that they find the interaction of the deeming provisions, carve-outs and the subjective test to be confusing and hard to apply in practice.

Feedback from Members supports ASIC working with Treasury on law reform around the reportable situations regime. We believe that the regime should:

- ensure that important or notable breaches of the law are reported to ASIC, so that ASIC can monitor rectification and consider enforcement action;
- provide sufficient certainty to participants about what needs to be reported to ASIC and when that should occur; and
- avoid all parties having to deal with the burden of large numbers of comparatively low-value breach reports.

We query whether there is a better way of achieving these objectives than deeming all breaches of certain laws to be 'significant', with resulting carve-outs and clarifications.¹

If such reform is too complex, there would nonetheless be benefit in considering further refinements to the existing regime, such as expanding relief for reporting breaches of the prohibition on misleading and deceptive conduct. Feedback from Members indicates that the thresholds are still rather limited, and that there may be burden with reporting about breaches that only affected a small but unquantifiable number of consumers.

Other areas for simplifying law reform

There are other areas beyond those mentioned in REP 813 where the law could be simplified without jeopardising the overarching objectives of the regime or the protections consumers receive. Two examples include:

- streamlining the ability of credit licensees to give documents electronically
- the regime mandating certain licensees participate in comprehensive credit reporting (Mandatory CCR laws)

Giving documents electronically

There are significant, longstanding differences between the regimes for giving documents electronically under the Corporations Act and the National Credit Act. In simple terms:

- The regime under the Corporations Act (for documents given by e.g. AFS licensees) is set out in the [ASIC Corporations \(Electronic Disclosure\) Instrument 2025/447](#), supported by [Regulatory Guide 221 Facilitating digital financial services disclosures](#) (RG 221), which is in the process of being updated. The regime allows for providers to make many disclosures available digitally, and notify the client the disclosure is available, without the need for client agreement to receive the disclosures in that manner.
- The regime under the National Credit Act is much more complicated and spread across the National Credit Code, the National Credit Regulations and the Electronic Transactions Act 1999. In particular, debtors, mortgagors and guarantors must provide address nominations (including nominations of electronic addresses such as emails) in writing; and give their consent and be provided with warnings before they can be provided with electronic disclosure.²

¹ The Final Report of the Review into Small and Medium-sized banks suggested moving towards a regime where only breaches that are assessed as significant are reported to ASIC. In the time available we have not been able to gather feedback on these suggestions.

² See, for instance, sections 187 and 195 of the National Credit Code, as well as regulation 28L of the National Credit Regulations, See also Section D of [Consultation Paper 224 Facilitating electronic financial services disclosures](#), which led to the creation of RG 221.



While there are legal reasons for these differences, they lead to additional burden, especially for businesses that operate under both the AFS and credit licensing frameworks (e.g. large ADIs). Consumers who have both a banking product and a credit product with the same entity may have different experiences receiving documents for each respective product – an outcome which could be confusing.

These differences have been known about for numerous years but are yet to be fully addressed, even though Government and ASIC have taken other steps to facilitate digital disclosures and modernise business communications. As such, we believe the time is right for law reform to simplify and streamline the laws affecting when documents can be given electronically, and to the extent possible align those requirements under both the Corporations Act and National Credit Act regimes.³ Appropriate law reform will not jeopardise consumer outcomes, and will reduce the compliance burden while supporting high quality, consistent experiences for consumers.

Mandatory CCR laws

Part 3-2CA of the National Credit Act requires certain licensees to participate in comprehensive credit reporting, but does so in an especially inflexible and burdensome manner. In simple terms the laws require licensees to give comprehensive information about 100% of eligible accounts to the credit reporting bodies they deal with. The legislative design of these provisions means that a failure to give even a single type information about one account is a breach of the law unless an exemption is in place.

Arca has previously commented on the significant burden that these inflexible laws impose on both the relevant licensees and ASIC. In this regard we encourage ASIC to review [our submission to the Review of Australia's Credit Reporting Framework](#), especially the material in response to question 9.4 on page 96, which sets out the issues and unintended consequences that have arisen.

In our view, the objectives of the mandatory CCR laws are to ensure that the largest consumer lenders participate in comprehensive credit reporting, creating incentives for others to participate. This objective could be achieved through a much simpler regime, which would be easier to comply with, better aligned with the underlying industry standards such as the Principles of Reciprocity and Data Exchange (PRDE) and less onerous for ASIC to administer.

We recommend that ASIC and Treasury work together on law reform to improve and simplify the mandatory supply obligations. We believe these obligations should be less focused on complete supply of information and more targeted at meaningful participation in credit reporting. For instance, the obligations could be about 'substantially complete supply', or even supply in situations required by the PRDE or some other instrument. Reframing the mandatory CCR laws in this way would allow the objectives of the laws to be achieved in a simpler way without affecting consumer outcomes.

³ Any reforms should also ensure that interaction with the Australian Privacy Principles is sufficiently clear and consistent with the objectives of facilitating electronic disclosure.