

Submission

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NIBA Submission ASIC REP813- Regulatory Simplification

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback on ASIC Report 813: Regulatory Simplification and ASIC measures to enhance industry interaction with the regulator.

The complexity of financial services regulation and the diversity of sectors it covers means that the accessibility, clarity and consistency of ASIC materials are critical to ensuring that licensees, advisers and other market participants can meet their compliance obligations effectively.

For the insurance broking profession, ASIC's website and regulatory materials play a central role in guiding compliance with obligations under the Corporations Act and other associated financial services legislation. However, users often encounter challenges in locating relevant information, distinguishing between general and sector-specific obligations, and navigating dispersed guidance. These challenges increase compliance costs and create uncertainty that could be avoided through clearer, more structured materials and regulatory instruments.

To this end, NIBA supports reforms that deliver clarity without imposing unnecessary prescriptiveness and that recognise the different needs of sectors and sub-sectors within the financial services landscape.

About NIBA

NIBA is the peak representative body for the general intermediated insurance profession. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

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NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

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?

NIBA acknowledges ASIC's efforts to improve its website and recognise the challenges inherent in serving different user types, both technical and non-technical across diverse sectors. However, in the "For Financial Professionals", "AFS Licensees" and "Regulatory Resources" sections, accessibility could be improved through the use of sector-specific regulatory roadmaps.

This road map should identify both general obligations that apply across all financial services and sector or sub-sector-specific obligations. For insurance, a high-level roadmap could include core topics relevant to all licensees and link to subsector maps for general insurance and life risk insurance. Subtopics could further break down obligations by roles such as product issuers, distributors, claims handling service providers and consumers.

The guidance currently contained within the "Regulatory Guidance" and "Financial Services" subsections is generalised. Given the complexity of financial services legislation and its variation across sectors, this approach is not sufficient. Sector roadmaps could collate relevant laws, regulations, relief instruments and ASIC guidance, reducing the burden on industry to cross-reference disparate documents. Headings and subheadings should also indicate whether the material is sector-specific or applies across multiple sectors.

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?

ASIC's highest priority should be the consolidation of existing guidance into a single, comprehensive and authoritative set of materials. Currently, ASIC guidance is fragmented across multiple documents, resulting in duplication, inconsistency, and inefficiency for users.

In addition, the current naming conventions and sequential numbering system create unnecessary complexity. We recommend moving to a sector- or topic-based grouping that aligns more closely with the structure of regulatory obligations. This would improve usability, reduce confusion, and allow industry participants to locate relevant materials more quickly and accurately.

Consolidation, coupled with a clearer organising framework, would deliver the most immediate and significant improvements in regulatory clarity.

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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?

ASIC Guidance reflect the nature of the underlying legal framework. Where legislation is principles-based, ASIC's role should be to provide interpretive clarity that assists industry in understanding and applying those principles, without introducing prescriptive obligations that go beyond the law

Where areas of uncertainty are identified, ASIC should publish its likely regulatory position, including through FAQs or sector-specific supplementary materials. These should be clearly linked to the relevant sector or subsector, allowing users to readily determine their applicability. This approach would provide greater regulatory certainty while preserving the flexibility that is fundamental to principles-based regulation.

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 offers a high-level overview but is of limited practical use to advice providers seeking to understand their obligations in detail and does not assist users in navigating the complexity of the regulatory framework or in identifying the specific requirements that apply to their circumstances.

A significant limitation is the absence of links to key ASIC regulatory guides that explain ASIC's position on advice obligations. At a minimum, the roadmap should incorporate direct links to relevant guidance so that users can progress from the overview to more detailed materials.

A more sophisticated and valuable addition would be a diagrammatic representation of advice obligations and their timing. This could map obligations such as Financial Services Guides, general advice warnings, anti-hawking prohibitions, deferred sales model restrictions, Statements and Records of Advice, and Product Disclosure Statement obligations. Such a tool would help advice providers understand how obligations interact across the advice process.

The roadmap also contains inaccuracies and omissions that risk misleading users.

- The definition of financial product advice is incomplete, as it only refers to the "intention" element.
- The 'Why is it important to know if I'm giving financial product advice?' section incorrectly implies that both general and personal advice are subject to a best interests duty.
- The 'Am I giving advice as a financial adviser?' section fails to clarify that the terms "financial adviser" and "financial planner" are restricted under section 923C to relevant providers. This omission may cause confusion, particularly for general insurance advisers who are not captured by the definition of relevant provider.
- The roadmap does not identify important exemptions or licensing carve-outs that may apply to potential users, such as referrers, claims handling and settling service providers. Without this information, the roadmap risks overstating the licensing requirements that apply to some participants.

In NIBA's view the proposed roadmap requires substantive revision to provide accurate, sector-specific guidance and to function as a meaningful entry point into the regulatory framework.

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

An insurance sector roadmap would be of significant benefit, given the breadth of obligations and the differing requirements across product issuers, distributors, and claims handling service providers. A roadmap tailored to these distinctions would help users navigate the complexity of insurance regulation and improve compliance efficiency.

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

In NIBA's view, alternative formats such as hard-copy versions or podcasts would offer limited additional value. Resources would be better allocated to improving the content, structure, and accessibility of the roadmaps as outlined in response to Question 1.

Reducing Complexity in Regulatory Documents

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

NIBA supports ASIC's best-practice drafting principles. Applied appropriately, they should enhance clarity and simplicity, which are essential for both compliance and regulatory certainty.

It would be valuable for ASIC to make explicit the policy outcomes each instrument is intended to achieve. This is particularly important for principles-based instruments, where the law provides broad obligations and ASIC's guidance plays a significant role in shaping industry practice. By setting out the underlying policy objectives, ASIC would assist industry in interpreting and applying the instrument in a way that aligns with its intended purpose, reducing ambiguity and the risk of inconsistent application.

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

NIBA strongly supports ASIC's consolidation of financial reporting, accounting, and audit instruments. To maximise usability, consolidated instruments should be maintained on an ongoing basis and accompanied by mark-ups highlighting amendments from previous versions. This would enable industry participants to track changes efficiently and reduce the risk of misinterpretation.

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 consolidated by sector and topic, with sector-specific relief clearly identified. Instruments that apply across multiple sectors should also be explicitly labelled. This structure would align with proposed regulatory roadmaps, facilitate easier cross-referencing, and improve accessibility for industry participants.

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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?

ASIC should establish a dedicated contact point for queries relating to regulatory guidance and instruments. This would enable industry-wide issues to be identified efficiently and addressed in a coordinated manner, improving consistency and reducing duplication in interactions with the regulator.

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

None identified

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?

No, beyond the proposed consolidation.

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

NIBA strongly supports ASIC's proposal to engage earlier with industry on data requests. For thematic surveillances, ASIC should consult on the intended data collection prior to issuing notices to ensure that requests are relevant, proportionate, and practicable. Additionally, ASIC should clearly explain the purpose of requests and coordinate internally to prevent duplicate requests from different teams, thereby reducing unnecessary burden on licensees.

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

As above

Simplification Through Law Reform

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

The current reportable situations regime is overly complex and generates a high volume of reports on isolated or immaterial matters that have limited regulatory value. This contributes to inconsistent compliance by licensees and diverts resources away from identifying and addressing significant misconduct.

The recent extension of the investigation reporting timeframe from 30 to 60 days is appropriate and sufficient. However, the broader issue is not the reporting timeframe but the complexity of determining whether a breach is reportable. Licensees must assess potential breaches against an extensive body of legislation, and the requirement to report matters of minimal significance compounds this burden.

NIBA does not agree with ASIC's position that the main driver of the burden is the process of investigation and information gathering rather than the reporting obligation itself. The difficulty lies in the breadth of conduct captured by the regime, particularly the automatic deeming of certain breaches as reportable. For example, misleading or deceptive conduct is deemed reportable irrespective of its materiality, which results in reports of trivial matters that ASIC has limited ability to use in a meaningful way.

NIBA supports removing the deeming of misleading or deceptive conduct breaches, so that such matters are only reportable where they satisfy the statutory significance test. This would reduce unnecessary reporting, better align reporting obligations with regulatory objectives, and improve the quality and usefulness of reports ASIC receives.

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?

There are multiple opportunities for ASIC to use its powers to provide exemptions and modifications in areas of law that currently create confusion for industry participants:

- The concept of "arranging" remains unclear. A safe harbour licensing exemption, developed in consultation with industry, could reduce uncertainty.
- Clarification is needed on the scope of scaled personal advice in the context of risk insurance.
- Design and distribution obligations in Part 7.8A, particularly the target market determination (TMD) content and the reasonable steps test, are causing significant confusion. There appear to be inconsistencies between the law and current ASIC guidance, necessitating detailed engagement with industry to resolve.
- RG195 on group purchasing bodies for insurance and risk products is inconsistent with existing ASIC relief, creating further ambiguity.

These measures would simplify compliance, reduce regulatory burden, and enhance the effectiveness of ASIC guidance.

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.

Priority should be given to simplification measures that ASIC can implement efficiently and independently, without requiring extensive industry consultation. Focusing on these tasks would deliver immediate improvements in regulatory clarity, reduce time and effort for licensees in interpreting obligations, and lower compliance costs. While precise cost savings are difficult to quantify, reducing duplication, clarifying obligations, and improving accessibility of guidance are likely to materially reduce industry compliance burden and administrative effort.

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

There are no significant costs associated with the proposed simplification measures beyond the normal administrative expenses involved in implementing such changes.

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

No additional areas of simplification are identified beyond those outlined above.

NIBA looks forward to continuing its engagement with ASIC and working collaboratively to ensure that regulatory simplification initiatives deliver clarity, consistency and efficiency for industry while supporting strong outcomes for consumers. For any queries regarding this submission, or to discuss the matters raised in more detail, please contact [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]

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