

CS 61 Proposed remake of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785

ASIC

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Introduction

Thank you for the opportunity to comment on CS 61 and the proposed remake of the ASIC Corporations (Wholly-owned Companies) Instrument 2016/785. I support continuation of the relief where separate reporting and audit requirements within a genuinely integrated corporate group would substantially duplicate information already available through consolidated reporting, and where the alternative architecture preserves substantially equivalent practical protection for the people who would otherwise rely upon the individual company reports.

I do not support treating the existing instrument as an entitlement that should simply continue until 2031 because corporate groups have relied upon it for many years. The proposed instrument relieves qualifying companies from requirements to prepare financial reports and directors' reports, obtain an audit, report to members and provide reports requested by members, with consolidated reporting and the deed of cross guarantee forming the principal substitute architecture.

ASIC itself explains the longstanding rationale for this relief on the basis that the deed makes participating companies akin to a single legal entity in many respects, allowing creditors and potential creditors to focus on the consolidated position rather than separate subsidiary financial statements. That is a legitimate rationale, particularly for a stable group in which the relevant entities remain within the cross guarantee and consolidated reporting perimeter.

The qualification is important because the group is only akin to a single legal entity "in many respects", not actually a single legal entity. Individual companies remain separate

Page 1 of 15

legal persons, group membership can change, cross guarantee support can be released, the guarantee is enforceable according to specified insolvency-related conditions, and the proposed instrument would formally extend access to relief for some financing subsidiaries issuing debentures to sophisticated or professional investors.

My preferred position is therefore continuity without inertia. ASIC should remake the relief to avoid an unnecessary regulatory cliff, but should use the remake to establish that the statutory test continues to be satisfied, address the treatment of creditor protection when entities leave the cross guaranteed group, modernise the visibility of disposals and revocations, test the interaction with creditor-defeating restructuring risk, justify the formal expansion concerning certain debenture issuers, and prepare for the simpler statutory architecture already announced by Government.

ASIC's statutory test must come first

The proposed instrument is made under subsection 341(1) of the *Corporations Act 2001*. Section 342 therefore supplies the legal starting point, because ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 would make the reports misleading, be inappropriate in the circumstances or impose unreasonable burdens.

ASIC should identify which of those statutory criteria supports continuation of this class relief in 2026 and the evidence on which that conclusion rests. The historical existence of the relief is relevant, but longevity and industry reliance cannot substitute for the statutory state of satisfaction required when ASIC makes the new legislative instrument.

For the audit component of the relief as it applies to proprietary companies, Parliament has gone further. Section 342(2) requires ASIC, when determining whether audit requirements would impose an unreasonable burden on a proprietary company or class of proprietary companies, to consider the expected costs of compliance, the expected benefits of compliance, practical difficulties, unusual aspects of the companies' operations and other relevant matters. Section 342(3) then expressly requires ASIC, when assessing the expected benefits, to take account of the number of creditors and potential creditors, their position and particularly their ability independently to obtain financial information, together with the nature and extent of the companies' liabilities.

That is significant for CS 61. For the relevant proprietary-company audit relief, creditor information is not merely an optional public policy consideration advanced by a submitter; Parliament has expressly placed creditor numbers, information access and liabilities inside ASIC's assessment of the expected benefits of audit.

ASIC's April 2026 Regulatory Guide 43 provides the broader policy context and explains how ASIC approaches financial reporting and audit relief, including class relief and individual relief. The detailed examples concerning individual relief should not be mechanically transplanted into a class instrument, but they reinforce the underlying discipline that a regulatory burden is not unreasonable merely because it exists and that the value of the information to users must also be considered.

The consultation therefore should not reduce the statutory question to how much corporate groups save by relying on the instrument. ASIC should establish both sides of the equation: the burden removed and the informational, assurance and creditor-protection value displaced or replaced.

The existing safeguards make continuation of the relief defensible

This submission does not proceed on the basis that the current relief simply abandons accountability. The proposed instrument retains substantial eligibility requirements, director decisions, solvency conditions, ASIC lodgements, consolidated financial statements, disclosure of membership of the closed and extended closed groups, information concerning entities added or removed from the group, additional consolidation information in specified circumstances and auditor involvement where the holding entity's report must be audited.

Those safeguards provide a credible reason why separate subsidiary accounts may add relatively little value in some stable corporate groups. The correct test is therefore not whether every subsidiary should always produce its own audited accounts, but whether the substitute architecture provides substantially equivalent practical protection for the risks that matter.

ASIC's own explanation of the relief is strongest in precisely that stable-group situation. Where the same companies remain parties to the deed, consolidated reporting describes the economic group and all relevant liabilities continue to receive the intended cross guarantee support, requiring substantially duplicative financial reports and audits can consume real resources without generating a proportionate additional public benefit.

The harder questions arise at the perimeter of that architecture. They concern what happens when an entity is assumed into the deed, sold, released by revocation, used as a financing vehicle, becomes financially distressed or ceases to receive the group support that justified replacing entity-level reporting in the first place.

The cross guarantee is valuable protection, but it performs a different function from entity-level reporting

The deed of cross guarantee provides real creditor protection and should not be understated. It creates cross-group obligations in relation to relevant debts and gives creditors rights under the deed architecture, while consolidated reporting allows the financial position of the relevant group to be assessed collectively.

It nevertheless performs a different function from continuous entity-level reporting. The guarantee becomes enforceable according to the circumstances specified in Pro Forma 24, including specified winding-up events and, in other circumstances, where relevant debts remain unpaid after the prescribed period following winding up.

The deed is therefore better understood as providing insolvency-linked group recourse rather than simply giving every creditor an immediately callable parent guarantee whenever an invoice is unpaid. At the same time, the separate deed poll covenant means creditor rights do not depend exclusively upon the trustee choosing to commence enforcement, so criticism of the architecture should not incorrectly suggest that a passive trustee makes the guarantee practically worthless.

The important distinction is informational. The trustee is not an ongoing financial monitor of every Group Entity, while a creditor may need to decide whether to supply goods, extend credit, renew a contract or increase exposure long before winding up occurs.

That makes the quality of consolidated information and the visibility of changes to the protected group essential components of the regulatory bargain. If entity-level reporting is removed because consolidated information and cross-group recourse together provide an acceptable substitute, ASIC should be able to demonstrate that creditors can identify both the relevant consolidated financial position and any material change to the liability support behind the particular entity with which they deal.

The treatment of liabilities already incurred warrants reassessment

The most consequential issue in Pro Forma 24 concerns what can happen to cross guarantee protection when an entity leaves the protected group. Clause 4.2 permits qualifying disposals to release the Group Entity sold and relevant subsidiaries from liabilities under the deed, including liabilities arising or accruing before the disposal, while other Group Entities can also be released from cross guarantee liability for debts of the sold entity arising before the disposal. Clause 4.3 provides that a disposal may occur even where the deed has become enforceable in respect of a Group Entity or a relevant winding up has commenced.

Clause 4.5 provides another pathway through a Revocation Deed. Once its conditions have been satisfied, the released Group Entity and remaining Group Entities can be released from specified cross guarantee liabilities associated with debts arising before as well as after the revocation, while clause 4.6 allows a Revocation Deed to be executed even after the deed has become enforceable or winding up has commenced.

These mechanisms are not innovations introduced by the 2026 draft. Materially similar release provisions exist in the present 2016 Pro Forma 24, so the point is not that ASIC is newly creating this issue.

Sunsetting nevertheless creates an appropriate opportunity to ask whether this longstanding feature remains the best design. A creditor can incur an exposure while its counterparty is within a cross guaranteed group and while the regulatory regime is allowing entity-level reporting and audit to be displaced partly because of that group support, yet the support associated with the existing exposure can subsequently be released.

There may be legitimate reasons why corporate acquisitions and restructures need a mechanism for cleanly removing companies from a deed. Requiring every departed company and every former group member to remain indefinitely liable for every historical exposure could complicate legitimate mergers and acquisitions, create indefinite contingent liabilities and materially reduce the practical usefulness of the relief.

That is a strong counterargument to a simple rule that every historical cross guarantee must survive forever, but it does not justify ignoring the creditor side of the transaction. ASIC should test whether a less burdensome mechanism can distinguish future liabilities from accrued creditor exposure so that legitimate corporate restructuring can proceed without retrospectively removing protection on which an existing creditor may reasonably have relied.

One approach would be for cross guarantee protection ordinarily to continue for liabilities accrued before the effective release date. Where indefinite continuation would be disproportionate, an alternative could allow release where substantially equivalent substitute protection has been provided, such as another guarantee, security, novation, creditor consent where practicable or another mechanism appropriate to the circumstances.

The policy objective should not be to prescribe one commercial solution for every group. It should be to prevent the reporting relief from creating a situation in which protection that helped justify removal of entity-level reporting can disappear retrospectively without ASIC first testing whether the remaining creditor position is acceptable.

Disposal and revocation should be practically visible to creditors

The notification architecture becomes especially important if accrued group support can be released. Clause 4.5 currently requires notification of a Revocation Deed through a public advertisement in a daily newspaper circulating in each state and territory in which a creditor of the relevant Group Entity is located.

That requirement may formally publish the information but is increasingly difficult to defend as the principal means of effective creditor notification. A supplier or other creditor should not reasonably be expected to monitor newspaper advertisements across jurisdictions in order to discover that the liability support associated with its counterparty has materially changed.

ASIC should replace or supplement that mechanism with a prominent digital notice that is readily discoverable through the ASIC company record and connected to the relevant holding entity and Group Entities. Where an existing creditor is reasonably identifiable and an accrued exposure will lose cross guarantee support, direct electronic or written notification should also be considered.

That recommendation should not extend unrealistically to every possible future, contingent or unascertainable creditor captured by the broad definition of Creditor in Pro Forma 24. Direct notice should be directed to reasonably identifiable existing creditors whose existing exposure is materially affected, while searchable ASIC disclosure can perform the wider public notice function.

Disposal deserves comparable attention because clause 4.2 does not appear to use the same general creditor newspaper notification mechanism. Although ASIC lodgements and other conditions apply, the economic consequence can still include removal of cross guarantee support for liabilities incurred before the disposal.

The relevant standard is practical discoverability rather than mere technical availability somewhere in ASIC's records. A person searching the company should be able to determine reasonably easily that the company relies upon wholly-owned company relief, identify the relevant holding entity and deed, and discover a disposal or revocation that has materially altered that protection.

Interaction with phoenix and creditor-defeating restructuring risk should be tested

The disposal and revocation mechanisms also warrant narrow consideration against Australia's policy concerning illegal phoenix activity and creditor-defeating dispositions. This point should not be overstated because a sale of shares under clause 4.2, a legitimate group restructuring or the release of a company from a deed is not itself evidence of phoenixing or a creditor-defeating disposition.

ASIC describes illegal phoenix activity as commonly involving the business or assets of an indebted company being moved to another company for little or no proper value so that economic activity continues while debts remain behind. Creditor-defeating disposition provisions more specifically concern company property disposed of for inadequate consideration in circumstances that prevent, hinder or significantly delay that property becoming available for creditors.

Clause 4.2 is not that transaction merely because cross guarantee coverage changes. In specified voluntary disposals, the draft also requires directors of the holding entity to certify that the sale is bona fide and that the consideration is fair and reasonable, with the disposal not being to an Associate of a Group Entity.

Those are meaningful safeguards around the share disposal, but they do not completely answer the separate question concerning removal of cross guarantee support. The relevant risk is whether a disposal or revocation could form one component of a wider distressed restructuring that also involves movement of business or assets, continuation of economically valuable activity elsewhere and reduction of the recovery position of historical creditors.

ASIC should therefore test the interaction rather than characterise the deed itself as a phoenix mechanism. In particular, where a financially distressed Group Entity leaves a closed group, accrued cross guarantee support is removed and material business or assets are transferred in close proximity, ASIC should have sufficient information to recognise the combined pattern and determine whether further scrutiny is warranted.

This is directly relevant to the design of reporting relief because reduced entity-level reporting should not create an information gap between corporate restructuring and insolvency regulation. The appropriate safeguard is visibility and risk-based scrutiny, not a presumption that legitimate restructuring is misconduct.

The proposed debenture amendment requires a separate and current justification

The proposed change concerning debenture borrowers also requires more precise treatment than a simple claim that ASIC is creating entirely new practical relief. Under the text of the existing 2016 instrument, the relevant definition already accommodates specified offers that did not require disclosure because of subsection 708(1), while the 2026 draft would expressly extend the definition to offers under subsections 708(8) and 708(11).

There is, however, an important intervening history. In April 2024 ASIC adopted a no-action position concerning special-purpose financing subsidiaries or other wholly-owned subsidiaries issuing debentures to sophisticated or professional investors, and their guarantors, where they otherwise complied with Instrument 2016/785. ASIC made

the position applicable to financial years ending on or after 28 September 2016 and excluded circumstances where a trust deed and trustee were required.

ASIC also recorded that this represented a change from the position it had stated in September 2023, when it had reminded entities that such financing subsidiaries and guarantors were excluded and said it did not then intend to provide formal or informal no-action relief. ASIC subsequently changed its position following further consideration and stakeholder feedback.

That history should be acknowledged because it materially changes the strongest argument available in CS 61. The proposed amendment is not the first occasion on which ASIC has tolerated affected structures in practice, but it would convert a non-binding enforcement position into express legislative relief.

ASIC itself emphasises that a no-action position is only an expression of regulatory intention. It does not necessarily prevent third parties from taking action and does not prevent a court from finding that the underlying conduct contravenes the legislation.

Formalising the position in the legislative instrument therefore matters. It changes the legal position rather than merely restating an enforcement priority, and the case for that formalisation should satisfy the statutory requirements governing the class relief.

The period since the 2024 no-action announcement also gives ASIC an evidence base that was not available when the 2016 instrument was made. ASIC should disclose, at least in aggregate, what it knows about the use of the position, including the number or broad scale of affected financing structures, whether material compliance or creditor issues have emerged and what experience supports converting the position into formal relief.

The substantive information question also remains. Offers under subsections 708(8) and 708(11) occur within statutory pathways where ordinary Part 6D.2 disclosure is not required, and the proposed amendment can then allow the issuing subsidiary to avoid its separate entity-level financial reporting and audit requirements if the other conditions of the instrument are satisfied.

Sophisticated and professional investors are generally better placed than retail investors to undertake due diligence, negotiate information rights and assess complex financing structures. That is an important reason not to overstate the investor-protection objection.

It does not, however, establish that issuer-level financial information has no value or that every other creditor of the financing subsidiary or its guarantors possesses the same bargaining power. An exemption from one statutory information mechanism does not logically establish the redundancy of a separate reporting and audit obligation.

If ASIC formalises the expanded relief, the consolidated reporting architecture should make the financing position intelligible. It should identify material financing subsidiaries relying upon the expanded category, the material nature and amount of relevant debt, the group entities providing the cross-guarantee support and any material change in that support during the reporting period.

That would preserve the logic of the relief rather than recreate an individual subsidiary audit through the back door. The objective is to ensure that consolidated reporting actually contains the information needed to understand a material group financing exposure once separate issuer reporting has been removed.

Follow the money by measuring net resource savings

ASIC is right to ask about compliance costs because genuinely duplicative reports and audits consume labour, management attention and professional capability that could be used productively elsewhere. Where the same useful information and assurance can be delivered more simply, removing duplicated regulatory work is a genuine productivity improvement.

The relevant measure is nevertheless net real resource use rather than the amount disappearing from a regulated company's compliance budget. A cost removed from a subsidiary is not fully removed from the economy if creditors must undertake additional due diligence, lenders demand additional private reporting, counterparties price greater uncertainty into contracts, insolvency practitioners later reconstruct information no longer routinely produced, or ASIC must undertake additional surveillance.

For proprietary-company audit relief based upon unreasonable burden, this distinction is reflected directly in section 342. ASIC must consider both expected costs and expected benefits and, in assessing benefits, must consider creditors, their independent access to information and the nature and extent of liabilities.

The first-principles test should therefore be straightforward. If consolidated reporting and the cross-guarantee architecture remove duplicated work while retaining substantially equivalent practical protection for the relevant risks, the saving is real; if expenditure merely disappears from the relieved company and reappears as additional information, risk-management or enforcement costs elsewhere, part of the apparent saving is cost shifting rather than productivity.

Incentives matter where the protected perimeter moves

Regulatory relief inevitably affects corporate decisions, and there is nothing improper about companies organising their affairs so that they can lawfully use relief deliberately provided by ASIC. The relevant incentive question is therefore not whether corporate

groups respond to the law, but whether the design of the law ensures that the commercially rational response also preserves the protection that justifies the relief.

The most relevant events are assumption, disposal, revocation and the use of financing subsidiaries because those events can alter the relationship between consolidated reporting and creditor recourse. ASIC should be able to identify patterns in those events without assuming that the patterns themselves amount to abuse.

That monitoring can largely be built from information ASIC already receives. The proposed framework requires opt-in and opt-out notices, deed and related documentation, consolidated reporting and information associated with changes to group membership, so improved regulatory visibility need not involve constructing another large compliance regime.

ASIC currently states that it checks compliance with the existing relief from time to time through surveillance of a random selection of companies. Random checks may remain useful, but the combination of structured lodgement information, changes in the cross-guarantee perimeter and the proposed formal expansion for financing subsidiaries makes a risk-based capability increasingly important.

ASIC should at minimum be able to query which entities are relying on the relief, their relevant holding entities and material assumption, disposal and revocation events. That information should be available to support targeted surveillance when indicators such as financial distress, rapid changes in group membership or material financing activity justify closer examination.

Public visibility can be narrower. A searchable company record need not expose commercially sensitive internal information, but should make reliance on the relief and material changes to the deed protection reasonably apparent to a person considering whether to deal with the company.

Technical simplification should proceed where protection is preserved

Several proposed amendments appear capable of reducing administrative complexity without materially weakening protection. Modernised electronic lodgement, clearer drafting, deletion of requirements genuinely duplicated by current accounting standards and the removal of obsolete procedural requirements should proceed where ASIC can identify the legal or accounting protection that now performs the same function.

The proposed Administrative Review Tribunal review of an ASIC decision excluding a company from relying upon the relief is also a sensible accountability improvement. It increases reviewability of ASIC administration without weakening the eligibility conditions applying to the relief.

ASIC should nevertheless maintain a clear audit trail between the current and remade instruments. Stakeholders should be able to determine what has been retained, removed or substantively altered without having to reverse engineer the effect of the clean draft, markup, existing instrument, accounting standards and several associated proforma's.

This is particularly important where a provision is removed because ASIC considers it redundant under AASB 10 or another existing obligation. Redundancy should mean that the relevant function continues elsewhere, not merely that similar terminology can be found elsewhere.

The Government's statutory reform changes the role of this instrument

The broader regulatory reform program materially changes the context of CS 61. The Government has expressly stated that it will simplify reporting relief for group entities without reducing protections for those dealing with group companies, replacing the need for complex deeds of cross guarantee with a simplified statutory process.

That policy direction supports the central distinction in this submission. The problem the Government has identified is unnecessary complexity in the mechanism, not the existence of creditor protection itself.

The proposed ASIC instrument applies to financial years ending on or after 1 January 2027 and is presently drafted to repeal on 1 October 2031. The legal sunset can provide a useful outer limit, but it should not be interpreted as a fresh policy conclusion that the existing deed architecture should operate untouched for five more years when Government has already announced its intended replacement.

The 2026 instrument should therefore be treated as transitional continuity. ASIC should avoid imposing the disruption of immediate expiry while preserving the capacity to move promptly to the statutory model when Parliament enacts it.

A proportionate review commitment would be a public review within 24 months if the replacement statutory regime has not by then been enacted or materially progressed. If replacement legislation is introduced or commences earlier, the transition to that legislation should itself trigger reconsideration of how long the ASIC instrument and its transitional provisions need to remain operative.

That is not a demand for repeated regulatory review for its own sake. It is protection against a temporary bridge becoming the de facto architecture until 2031 merely because a replacement instrument has already removed the immediate pressure created by sunseting.

Response to ASIC's compliance cost and savings question

As an individual submitter rather than a corporate group currently relying upon the relief, I cannot responsibly provide an entity-specific dollar estimate and do not propose to manufacture one. ASIC should obtain actual figures from companies using the relief, their finance functions, auditors and advisers concerning the entity-level reports, audits and associated administration that would be required if the relief disappeared.

Those figures should distinguish costs that genuinely disappear from functions that continue at group level. Consolidated financial reporting, holding-entity audit work, solvency assessment, maintenance of the existing deed architecture, legal documentation and ASIC lodgement continue to consume resources even when individual subsidiaries obtain relief.

For proprietary-company audit relief based on unreasonable burden, ASIC should then apply the analysis expressly required by section 342 rather than simply aggregate industry estimates. The expected compliance cost must be weighed against expected benefits, including the statutory considerations concerning creditors, their capacity independently to obtain information and the nature and extent of company liabilities.

The result may well support continuation of the relief. Where individual subsidiary reports substantially duplicate consolidated reporting and the cross guarantee materially improves creditor recourse, requiring both architectures could impose cost disproportionate to the additional information obtained.

The important point is that the conclusion should be demonstrated rather than assumed. A large gross compliance saving does not itself establish a large net productivity gain if important information or risk-management functions must simply be reproduced elsewhere.

Response to ASIC's question about expiry of the relief

Allowing Instrument 2016/785 to expire without replacement would create a regulatory cliff for corporate groups that have lawfully organised their reporting arrangements around longstanding ASIC relief. Qualifying companies could again become subject to separate reporting and audit obligations or need to seek another form of relief, creating transition costs and recurring work that may be unnecessary where the consolidated architecture continues to provide adequate protection.

That provides a strong reason to remake the instrument, but it does not establish that every existing design feature should continue unchanged until 2031. Reliance on an existing regulatory arrangement demonstrates the cost of abrupt withdrawal; it does not by itself prove the optimality of the arrangement.

The proportionate response is continuity while the replacement architecture is developed, combined with targeted improvements where the present design has identifiable weaknesses. This protects legitimate corporate reliance without turning sunseting into a procedural exercise in which longstanding relief is assumed to remain justified simply because allowing it to lapse suddenly would be disruptive.

Recommended approach

1. ASIC should remake the instrument so that qualifying corporate groups do not face an unnecessary reporting and audit cliff, while expressly identifying the section 342 basis on which the class relief continues to be made. For the proprietary-company audit component where unreasonable burden is relied upon, that assessment should expressly address the costs and benefits and the creditor factors Parliament has prescribed, rather than relying principally upon estimates of compliance savings.
2. ASIC should retain the core consolidated reporting, solvency, group membership and audit safeguards because those conditions provide the foundation for treating separate subsidiary reports as substantially duplicative. Where a condition is removed as redundant, ASIC should identify the equivalent protection that continues to perform its function.
3. ASIC should specifically reconsider the treatment of liabilities accrued before a disposal or revocation. The objective should be to preserve existing creditor protection where reasonably practicable, while allowing legitimate corporate restructuring through an appropriate mechanism for release where continuing the historical guarantee would be disproportionate and substantially equivalent substitute protection is provided.
4. If ASIC retains the existing ability to remove cross guarantee support for accrued liabilities without substitute protection, notification should be materially improved. Revocations and qualifying disposals should be readily discoverable through ASIC's company records, while reasonably identifiable existing creditors whose existing exposure is materially affected should receive direct notice.
5. ASIC should also assess the interaction between group exits and wider creditor-defeating restructuring risk without treating ordinary restructuring as misconduct. A share disposal under clause 4.2 is not itself phoenix activity or a creditor-defeating disposition, but ASIC should be capable of identifying circumstances where removal of cross guarantee support occurs alongside financial distress and transfers of business or assets that may justify targeted scrutiny.

6. The proposed extension associated with subsections 708(8) and 708(11) should be expressly justified as the conversion of ASIC's 2024 no-action position into formal legislative relief. ASIC should use its experience since that no-action position was announced to explain why the formal relief is appropriate, and the consolidated reporting architecture should provide sufficient visibility of material financing subsidiaries, relevant debt exposure and the group support standing behind that debt.

7. ASIC should use information already received under the regime to strengthen its own visibility rather than create a large new reporting burden. Random surveillance can continue, but ASIC should also be able to use structured information about reliance, assumptions, disposals, revocations and financing subsidiaries for risk-based supervision.

8. Finally, ASIC should treat the 2026 instrument as transitional continuity pending the Government's announced statutory reform. If replacement legislation has not been enacted or materially progressed within 24 months, ASIC should conduct a substantive public review rather than allow an architecture already designated for replacement to operate by default until the 2031 sunset.

Conclusion

Wholly-owned company reporting relief has a legitimate economic and regulatory purpose. Where a corporate group is genuinely integrated, consolidated financial reporting adequately describes the relevant economic position and creditors receive effective cross-group support, requiring substantially duplicative subsidiary reports and audits can consume real resources without producing proportionate additional protection.

The existing regime also contains substantial safeguards and should not be characterised as simple deregulation. ASIC's longstanding rationale that the deed makes participating entities akin to a single legal entity in many respects is credible, but it is strongest while the group remains stable and the substitute reporting and liability perimeter remains intact.

The harder questions arise when that perimeter moves. Disposal and revocation can remove cross guarantee support associated with liabilities incurred while an entity was inside the protected group, the present creditor-notification mechanism remains heavily dependent upon newspaper publication, financially distressed restructuring can create interactions with wider creditor-protection law, and the proposed debenture amendment would convert a temporary no-action position into formal legislative relief.

Those issues do not justify allowing the instrument to expire abruptly. They justify making the bridge stronger before relying upon it.

The governing principle should be that simplification removes unnecessary work rather than necessary protection. Where consolidated reporting and group liability deliver substantially equivalent practical protection at lower real resource cost, the relief is productive; where a cost merely disappears from the regulated company and reappears as greater information asymmetry, due diligence, risk or enforcement cost for somebody else, the apparent saving is partly a transfer rather than a net gain.

That principle is also consistent with the Government's announced destination. The Government has expressly committed to simplifying group reporting relief without reducing protections for those dealing with group companies, and that should be both the test applied to the 2026 remake and the benchmark for the statutory regime that ultimately replaces it.