

15 October 2025

To Simplification Team
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Response to ASIC Report 813 Regulatory simplification

1 Background and overview

At ASIC's annual forum in November 2024, ASIC Chair Joe Longo called on legislators, regulators and business to work together on reducing complexity in financial services regulation, in the interest of handing future generations a more efficient and effective system. This response to ASIC's *Report 813 Regulatory Simplification (Report)* is provided in that spirit.

We congratulate ASIC on its simplification initiative, and the progress made so far. Recognising that there is only so much ASIC can do without legislative change and that substantively simplifying Australia's multi-layer complex regulatory regime is an enormous task, it is laudable that that ASIC has begun a national conversation on the topic and made some progress as shown by the Report.

We particularly welcome the opportunity to make a submission in response to the Report because two of our people, [REDACTED], have already been serving on the expert panel appointed to provide technical advice to the ASIC Regulatory Simplification Consultative Group. We would be pleased to continue assisting ASIC in this way.

Our submission responds to all four broad topics in the Report, but our substantive responses are limited to the questions to which our experience and legal expertise is most relevant, and generally does not comment on matters which are more the realm of commercial industry participants.

The following comments are set out in the same order as the Report. However, as the Report identifies a key purpose of submissions as being to help ASIC prioritise its simplification work, we note the following as particularly important areas for your attention:

- to eliminate reporting to ASIC and record keeping that has low regulatory benefit;
- to implement a methodology for substantive simplification and ongoing maintenance of ASIC legislative instruments; and
- to seek legislative reform to provide better consumer protection by changing the focus of financial services licensing, managed investment scheme registration and financial product disclosure away from detailed paperwork to substantive data for ASIC to monitor unethical

operators and provide for more effective communication to encourage consumers to better understand the risks of an investment.

Our firm has separately provided to ASIC, in a letter dated 5 May 2025, detailed feedback on ASIC’s public consultation on Australia’s evolving capital markets. Although some of those proposals include an element of simplification, we do not repeat them here.

2 Section 1 – 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?

Yes, some aspects of the website have improved. Under “Search ASIC registers”, the path to finding company and licence holder information is a little clearer and quicker. However, the general search function at the top of the home page rarely produces meaningful results. For example, if you were a new user on the site and did not know that “professional registers” is the item to choose to find out whether a company holds an Australian financial services licence, neither the search function nor the menus would assist. This is a key piece of information for consumers that should be more readily found by a novice user of the site¹.

A key concern is the difficulty of locating ASIC-made law on a topic (legislative instruments, as opposed to guidance). On the website under the “Regulatory resources” search, the “Instruments” item can be narrowed to the 284 existing legislative instruments (formerly known as Class Orders) and then narrowed by topic such as “financial services” (133 instruments). The page can then be searched for a particular instrument, but it is necessary to know the title or number to do this, and many instruments do not have names that are descriptive of their purpose², and it is not possible to search within the content of instruments without following the link to the Federal Register of Legislation and downloading them separately. The website changes do not address the fundamental issues with access to and understanding of the amendments made to the text of the Corporations Act by ASIC instruments. See our further comments under question 10 on the importance of navigability of laws, and a proposed solution.

2. Which of the proposals to enhance our guidance materials do think have the biggest impact and should be prioritised – or do you have other suggestions?

The potential improvements suggested in Table 1 on page 13 of the Report (tailored summaries, consolidation of guidance, consistent naming and clarity on the function of types of guidance) are all worthy suggestions.

¹ For example, the “Search ASIC Registers” tab under “Popular tasks” is not currently hyperlinked to: <https://www.asic.gov.au/online-services/search-asic-registers/>. To assist navigation, ASIC may consider including this hyperlink and including a brief description of each register in the page linked.

² For example, the instrument governing unit pricing in registered schemes refers to “product consideration”, an extension to the relief in hardship cases is titled “ASIC Corporations (Amendment) Instrument 2025/548”, the important instrument on custody for responsible entities is titled “asset holding standards”, and changes to allow for incorporation by reference for compliance plans and for ASX listing rules to prevail over other provisions of a scheme constitution are hidden in “ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125. A search function is only partly useful if the user needs to know bespoke, rather than intuitive, terms for it to function.

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?

We find that even sophisticated users of ASIC materials such as in-house counsel or senior compliance officers refer to regulatory requirements by reference to ASIC Regulatory Guide (eg RG 133 or RG 166) as the source of their obligations, when in fact in most cases the source of the obligations is an ASIC instrument or legislation. ASIC Regulatory Guides should make it clear where the relevant law resides and that Regulatory Guides represent ASIC’s view of the law and are not, in themselves, law.

The use of the expression “ASIC expects” in ASIC documents reinforces that incorrect approach to applying the law to a particular issue, and can cause the regulated population to fear regulatory action when that is not warranted. A recent example of this was ASIC Media release 25-090MR and the report “Review of managed fund compliance plans: failing to plan is planning to fail” which, accompanied by letters to responsible entities, suggested that ASIC expected a greater level of detail in compliance plans when in fact the documents already complied with the law. It would be more constructive to say that “ASIC considers” that specified actions would meet the relevant legislative requirement.

It would also be useful, as ASIC has done in the recent release of the draft Regulatory Guide on management of conflicts, to refer to key case law, and to promptly update guidance when there is a significant case, an understanding of which would be helpful to the regulated population³. An historical example of an extremely helpful Regulatory Guide was RG 7 (Calculating time periods) which included case law on the subject, but has been withdrawn rather than being updated⁴.

We do not have any specific comments in relation to questions 4, 5 and 6.

3 Section 2 - reducing complexity in regulatory documents

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

Yes, the principles are all logical and seem very helpful. The technique of a simplified outline, new to ASIC instruments, is used in the pilot draft instrument governing investment platforms. We understand it would be referenced by courts to interpret the delegated legislation in the instruments. This is a constructive step towards more principles-based laws, which if well drafted should facilitate a reduction in complexity of the drafting that follows.

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

Yes, the 21 instruments combined into one was a suitable choice for the ‘low hanging fruit’ to reduce the overall number of instruments.

³ Four months after the decision in the appeal case *ASIC v BPS Financial Pty Ltd* [2025] FCAFC 74, ASIC’s INFO 251 has not been updated to reflect the outcome of the case and ASIC’s views of its implications for aspects of a wholesale trustee’s role, such as advice and custody of assets.

⁴ Finding the High Court case of *Prowse v McIntyre* (1961) 111 CLR 264 (which is still good law) by looking at RG 7 in the internet search function “way back machine” recently resolved an issue in a client transaction. Superseded Regulatory Guides are not searchable by ordinary means.

9. Is our simplification of the platform instruments helpful? If not, please provide any feedback on how it could be improved.

Yes. In our role on the expert panel we have already been involved in the development of this pilot project. We were pleased to find that the points of complexity in the existing two instruments identified by us were almost identical to those identified separately by the ASIC team. The ASIC team took a bold and sensible approach to the removal of unnecessary parts of the instruments and the end result maintains the overall policy position but is easier to understand and less prescriptive.

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?

We applaud the work already done on the pilot projects referred to in questions 8 and 9 above. The instrument most urgently in need of simplification is ASIC Corporations (Disclosure of Fees and Costs) instrument 2019/1070 which makes the rules underpinning the notoriously problematic Regulatory Guide 97. The recent announcement by ASIC that it will reconsider the inclusion of stamp duty in transaction costs that are required to be disclosed opens an opportunity for other reforms to the instrument which is, to be frank, inscrutable even to experienced lawyers. The application of ASIC's new drafting principles (see question 2) and consideration of whether any complexity in the requirements of the rules can be reduced, would be welcomed by industry so long as it does not require any changes in software that has been implemented to comply with existing rules.

The instruments that relate to unit pricing for registered managed investment schemes are also excessively complex and in need of simplification⁵.

While the two pilot projects (questions 8 and 9), and any further improvements to individual instruments that ASIC may make, are and would be valuable reforms in themselves, they do not provide a methodology to (i) correct the existing systemic complexity created by the proliferation of ASIC instruments and (ii) avoid additional complexity from future modifications of the law by ASIC. There should be a consistent method by which the regulated population is alerted to the fact that provisions of the Corporations Act have been modified by ASIC instruments. This defect in our legislative model of making law by "notional amendments" to the Corporations Act was called out as one of the aspects most in need of reform by the Australian Law Reform Commission (ALRC) in its *Report 141 Confronting Complexity: Reforming Corporations and Financial Services Regulation* (November 2023).

This is not just an historical problem. So far in 2025, ASIC has issued more than 50 legislative instruments of general application. Granted, some of them amend or replace existing instruments, but the frequency of change highlights the difficulty for regulated entities to know what the law is, so they can comply with it.

The ALRC report advocates "top-down" reform with simpler primary legislation in the Corporations Act, supported by two types of delegated legislation:

- "scoping orders" that would define whether the law applies to a person or situation or if there is an exception; and

⁵ Two different ASIC instruments (2023/693 and 2025/629) apply, depending on whether a scheme was registered before October 2013

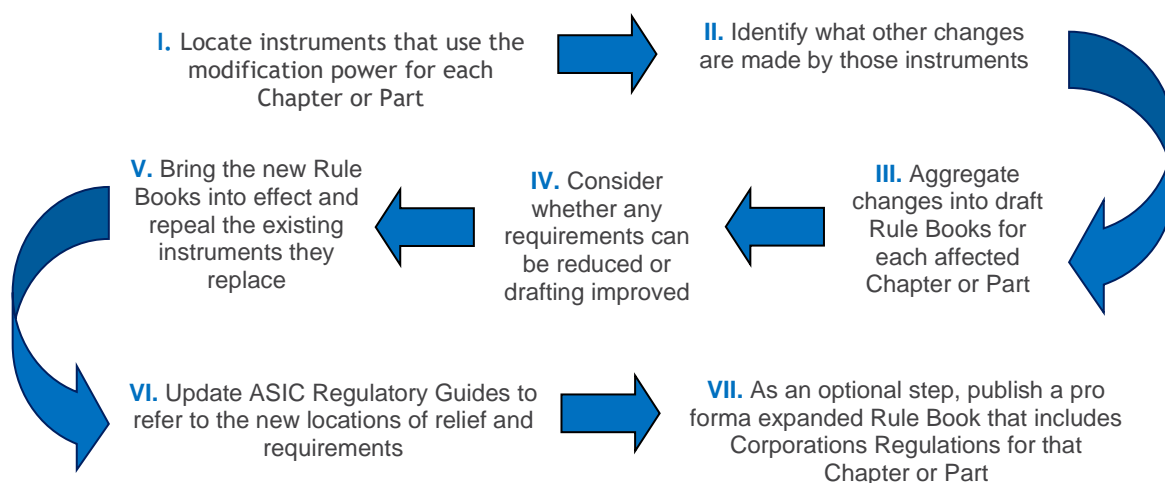
- “rules” under each chapter of the Corporations Act that would prescribe the detail applicable to specific products and circumstances.

Obviously, ASIC can only change what is within its remit. We suggest that ASIC should consider its simplification of legislative instruments as “bottom-up” reform. It is within ASIC’s powers to reorganise and consolidate the content of the nearly 300 instruments it has issued into a much smaller number of instruments that perform the functions of both scoping orders and rules, one for each Chapter or Part of the Corporations Act (**Rule Books**).

Reorganising the delegated legislation in this way would not only in itself make the law easier to find, use and maintain, but would set the foundation for the ALRC’s wider reforms should Parliament be minded to implement them at some stage. As noted at question 1 above, despite the improvement to ASIC’s website it remains extremely difficult for anyone other than an experienced legal or compliance professional to find the law on a particular issue as modified by ASIC.

We have conducted a detailed analysis of a representative sample (more than 10%) of ASIC instruments currently in force, and believe that reorganisation of the material into Rule Books according to the Chapter of the Corporations Act they modify is feasible⁶. This would achieve two important aims - to make it possible for the regulated population to know what the law is, and for ASIC to add to and amend those rules in a way that is accessible and clear. Under this model, there would be fewer than 10 separate instruments each containing a logical group of modifications. Alongside each Rule Book, ASIC could publish the relevant regulations, providing a cohesive set of materials that could be used to understand what the law is, potentially reducing the need for extensive regulatory guidance and easing challenges in both compliance and enforcement⁷.

The steps in this proposed simplification process can be diagrammatically represented as follows:



If ASIC considers that there are not the resources currently available to undertake this task in the short term, the concept should at least be taken into account in the approach to discrete tasks of

⁶ As Chapter 7 is particularly complex and covers disparate topics, the organisation would be by “Part” rather than Chapter alone.

⁷ For example, ASIC may consider an approach somewhat similar to that taken by the Financial Conduct Authority of the United Kingdom (**FCA**) that publishes a “FCA Handbook”. We understand the FCA Handbook contains the complete record of FCA Legal Instruments and presents changes made in a searchable format. See the link here - <https://handbook.fca.org.uk/home>.

simplifying instruments that are undertaken in the coming months and years, so reforms do not run contrary to the ALRC vision of integrated and navigable legislation.

4 Section 3 - 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?

Historically, ASIC has kept its distance from the regulated population. A concern to avoid 'regulatory capture' is legitimate, but ASIC has recognised in recent years that its limited resources mean that it can benefit from being in listening mode - to take in ideas and expertise from outside parties and then make its own decisions without being unduly influenced. This has been refreshing and constructive. For example, in the past consultation papers were released after all policy decisions had been made, and submissions on technical points were largely ignored even when sensible and in line with ASIC's regulatory objectives. More recently, ASIC has conducted some closed consultations with appropriate experts in advance of finalising policy, producing much better outcomes for all. This practice should be continued.

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

ASIC's Annual Forum is an excellent event and in person attendance creates a fruitful environment for learning and interaction. ASIC's licensing liaison meetings also provide a welcome opportunity to hear from senior members of ASIC's licensing team and to ask questions in person.

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?

There is some fundamental information relevant for consumers that it is not currently possible to find out without a paid search - most significantly the identity of the current responsible entity of a registered scheme, and the current directors of a company. That information should be made freely available.

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

ASIC's data requests under s30 or s33 of the ASIC Act are notoriously broad, across all parameters including (in particular) the scope of information requested and the time periods for the relevant information or conduct. As a consequence, responding to these notices is unduly time consuming and expensive for recipients, and results in the production of a large volume of irrelevant documents that must hinder ASIC's ability to review them efficiently. The average cost of responding to a s33 notice in our experience over the last 5 years or so exceeds \$50,000 in legal fees, excluding the significant value of internal management and administrative time to locate relevant documents.

We have noted that ASIC has recently adopted a much more focused approach in its pleadings when commencing proceedings, instead of the former "plead everything including the kitchen sink" approach which resulted in a lot of wasted preparation and court time and unsuccessful claims. We believe that a similar approach should be taken to the drafting of notices requesting information under s912C.

A more focussed approach would be particularly appreciated in instances where ASIC does not suspect a contravention but is merely gathering information. In recent years, we have seen legal costs for individual clients exceed \$100,000 merely to respond to an information gathering exercise that did not result in any new policy or enforcement outcomes. The activities of the Corporate Governance Task Force were a case in point: a very expensive exercise that resulted in a report that was limited to financial services sector entities (despite seeking responses from across industry sectors) and added nothing to the work already undertaken by the Financial Services Royal Commission and the APRA non-financial risk reviews.

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

See our comments on specific matters above.

5 Section 4 - Simplification through law reform

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

Reportable situations

There has been significant puzzlement as to why ASIC's modifications of the reportable situations regime in Instruments 2024/620 and 2025/289 were so limited, providing very little relief from reporting minor incidents which are of low regulatory benefit to ASIC from a surveillance and enforcement perspective.

A particular concern is that operators of registered schemes have to consider, every time there is a minor glitch in processes, whether it is a breach of the scheme's compliance plan and therefore a deemed reportable situation, regardless of materiality. Compliance plans are long and detailed documents, typically including numerous administrative steps such as reviewing a report from a service provider with a specified regularity. If ASIC considers that law reform is necessary to introduce a materiality test into reporting of compliance plan breaches, then this should be advocated to Treasury as a priority. An important change beyond the relief so far provided by ASIC is to remove the ceiling on the number of persons affected from the relief conditions. If there is a breach of a procedural requirement (such as a compliance plan breach) it may be said to affect all scheme members, removing it from the exemption from reporting even if it is an isolated incident causing no harm to any member and not really "significant" at a common sense level.

A materiality filter that produces a sensible level of reporting should be applied to all reportable situations, such as misleading or deceptive statements or other breaches of law with no loss, or loss of very low economic value, unless the breaches are systemic. The filter would not apply to serious fraud or gross negligence (section 912D(2)).

Substantial holder notices

We acknowledge the critical role that substantial holder notices play in supporting an efficient, competitive and informed market by providing timely visibility into the build-up and holding of significant interests in listed entities. With potential amendments to these requirements under consideration as part of the Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025, there is a timely opportunity for ASIC to drive meaningful simplification and efficiency gains through targeted, practical refinements to the notice requirements. These changes

would preserve transparency and market integrity while reducing duplication and administrative burden for market participants.

We propose 2 specific updates to the notices and associated guidance.

Enable cross-referencing to publicly available disclosures

The notices should expressly allow holders to cross-reference information that is already publicly available, rather than reproducing it in full in the notice. This is particularly relevant for large corporate groups, where setting out every associate entity is time-consuming, increases the risk of immaterial error, and adds little incremental value to the market. In most cases, the relevant group structure and associate information are already disclosed in the holder's most recent Annual Report or other market announcements.

Permitting cross-references to such documents would maintain transparency while improving usability and accuracy. A simple, standardised mechanism - for example, a field within the notice to identify the relevant report and section - would avoid duplicative disclosures and lengthy annexures, and would assist readers by directing them to a single, authoritative source that is subject to existing continuous disclosure obligations.

Allow aggregate reporting of multiple transactions

The current approach, as reflected in RG 5 (including at 5.307), requires disclosure of each transaction, which can necessitate listing numerous intraday trades across multiple pages. While this approach is grounded in the requirements of the Corporations Act, it imposes a disproportionate compliance burden and produces disclosures that can obscure, rather than illuminate, the pricing dynamics that matter for policy purposes.

A more informative and efficient approach would be to permit aggregation at a sensible level of granularity. From a market policy perspective, users of the information are primarily concerned with 2 metrics: the maximum price paid over the last 4-month period, given the minimum bid price rule, and the average price paid over that period. Allowing daily or period-based aggregation that reports, at a minimum, the volume-weighted average price and the maximum price paid would provide the core data points that market participants actually use, while eliminating unnecessary line-by-line detail. Where needed, ASIC could retain the ability to request underlying trade-level data, ensuring that transparency and enforcement capabilities are preserved.

These targeted reforms - introducing cross-referencing to existing disclosures and enabling aggregate reporting - would streamline compliance, improve the readability and utility of notices, and reduce friction without compromising the integrity or timeliness of market information.

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?

The following combined response to this question 17 and question 20 comments on potential law reform that involves policy change without separating changes that would require legislation from those within ASIC's existing powers, because the distinction depends on the extent of the reform.

Consumer protection without additional compliance burden

Reports indicate that ASIC is already working with Treasury to devise regulatory changes in the context of the significant recent losses by retail investors in structures such as the Shield Master Fund and First Guardian Master Fund⁸. New thinking will be required in designing changes to laws that have not been fully achieving their purpose. It does not follow that the new laws should increase the burden of paperwork for financial services businesses. Where new requirements are added, old ones that have not worked well should be removed. This theme underlies the following three ideas to make the law both simpler and more effective - stop collecting formulaic detail and start focusing on the relevant information.

- (a) **MIS scheme registration process:** As ASIC has recently pointed out, there is currently no ability for it to collect information about the business model of a managed investment scheme when it is registered. The current process of ASIC reviewing compliance of the constitution and compliance plan with the Corporations Act during a fixed 14 day period, and then being required to register the scheme regardless of whether the proposed activity is investment in “alpacas or meme coins”⁹, should be dispensed with and the obligation to ensure compliance imposed on the proposed responsible entity. This is based on a similar principle to that applied when in 2000 ASIC stopped reviewing prospectuses and placed the onus of compliance onto issuers¹⁰. In place of the registration process, ASIC should require a document similar in concept to the A5 business description proof used in the licensing context (prior to the transition to the new Regulatory Portal), plus a process of annual reporting of limited key data about each scheme (nature of assets, size, liabilities etc) and an obligation to promptly notify fundamental changes. ASIC could apply artificial intelligence tools to sift the data and identify funds for additional monitoring.
- (b) **AFS licensing process:** The process of seeking an Australian financial services (AFS) licence is extraordinarily burdensome and slow¹¹ for legitimate businesses and is not geared to identifying the high risk operators. If a key goal of the licensing process is to prevent bad actors providing financial services, the licensing process is not asking the right questions. It is heavily focused on assessing organisational competence through the experience and education of personnel rather than the business context and proposed activities of the applicant.

In existing financial services groups that have a good compliance record, the bottleneck for licence applications and variations could be solved by making new and varied licences near-automatic for those legitimate businesses, with the onus to adequately resource and supervise placed back on the applicant, except where there is a wholly new business area established. As well as facilitating business, this would free up ASIC resources to more closely scrutinise new entrants and major changes to an existing business. In all cases, there should be a focus on the business model of the licensee, with annual reporting and an obligation to promptly notify fundamental changes. Much of what is dysfunctional in licensing is within ASIC’s control but certain aspects, such as dispensing with ‘fit and proper’ personnel checks in overseas parent companies, may require adjustments to the legislation.

⁸ For example, *Government plans super investment reforms after Shield collapse*, Australian Financial Review, John Kehoe and James Eyers, 25 September 2025

⁹ As referenced in the speech by ASIC Chair Joe Longo to the Financial Services Council symposium, 30 July 2025

¹⁰ Under the *Corporate Law Economic Reform Program (CLERP) Act 1999*

¹¹ ASIC’s target of processing most applications in 5 to 8 months, and the preceding several months of work to prepare responses and collate the required paperwork, is not consistent with productivity in the sector, and drives operators to explore every possibility to avoid licensing

On a technical level, ASIC's new Regulatory Portal has not made the licensing process more efficient for applicants. We note the following on this change:

- The strict character limits (which include spaces) in the Regulatory Portal make it difficult to provide meaningful information to ASIC in some cases. For example, the "Option 5 submission" which was previously required in accordance with ASIC Regulatory Guide 105, has been replaced with a text box in the Regulatory Portal which is limited to 250 characters. This equates to roughly 2 sentences in total. Previously, an Option 5 submission was roughly 1-3 pages in length.
 - Before the transition to the new Regulatory Portal, ASIC published a "Sample application form" which provided a list of all questions that may be asked in the AFS licence application. This has not been updated to reflect the questions asked in the new Regulatory Portal. Further, it would be helpful if all potential questions could be downloaded in a format that allows applicants to prepare drafts without extracting each question from the Regulatory Portal and copying each into a separate Word document. In our experience, applicants spend a considerable amount of time preparing responses to licence application questions. These drafts generally require multiple levels of review before they are approved and lodged. Making a draft application available without necessitating the commencement of a new application on the Regulatory Portal would assist this process.
- (c) **Financial product disclosure:** Complete reform of all financial product disclosure laws is beyond the scope of this response, but a relatively simple fix to increase investor protection could be achieved by modification of the use and purpose of the target market determination (TMD) for a financial product. The purpose of the TMD under Division 2 of Part 7.8A of the Corporations Act is to require issuers to produce a document that guides distributors to market products only to a target market of consumers for whom the product is suitable. There is no requirement for the TMD to be given to prospective investors. What has occurred in practice is that the information in the industry standard template TMD¹² is so useful for investors that issuers typically make it available along with the product disclosure statement (PDS).

It is well documented that investors typically do not read product disclosure statements, any more than they read the terms of a software update before clicking 'accept'. The traffic light system in the TMD - red for stop (and think about the risk), green for safe to go, against each characteristic of a product - is a form of communication that is much more likely to be absorbed by consumers making investment decisions. A low paperwork / high impact change that could be adopted is to make a simplified form of the TMD (eg without distribution conditions) into a required client-facing document. As a second step a TMD-like document could, with the addition of a one or two page description of the product, replace the PDS for unlisted products. In addition, investment platforms could be required to include with the name and code of each product on their menus one or more colour-coded dots that reflect the categorisation in the TMD. Detailed information on products would still be required for analysis by investment advisers and investors who are interested but could be available on line.

Certain aspects of the financial product disclosure regime are within ASIC's control and simplification would be welcomed. For example, ASIC has published several regulatory guides setting out specific disclosure guidance such as ASIC RG 240: *Hedge funds: Improving disclosure* ASIC RG 45: *Mortgage schemes: Improving disclosure for retail investors* etc. These Regulatory Guides set out ASIC's expectations for product disclosure statement content

¹² As prepared and updated by the Financial Services Council, and adopted by many issuers

with reference to relevant benchmarks and disclosure principles. These expectations result in very lengthy and complex disclosure documents, some of which require content to be produced for all underlying funds. This raises the question as to whether the additional compliance burden is improving consumer protection or is in fact hindering readability and accessibility for consumers.

Directors' duties and the business judgment rule

ASIC could seek amendments to the business judgment rule (that provides a safe harbour from certain obligations when directors make certain business judgments) to extend the rule to cover decisions relating to compliance matters that require business judgments, such as continuous disclosure obligations and forward looking statements. This could reduce compliance costs by making the process for such decisions simpler and more nimble.

Technical simplification

(a) Moving certain ASIC instruments into the Act or the Corporations Regulations

Examples of modifications of the Corporations Act currently in ASIC instruments that do not really belong in the Rule Books referred to in question 10 above and that should more properly be in legislation include:

- The instruments relating to custody of assets (Instruments 2024/16 and 2024/17) could move into more simply drafted regulations, as was done for CCIVs. The differences between the Instruments and the CCIV Regulations largely relate to reducing paperwork, and the relative simplicity assists with accessibility.
- A small sample of others that might be considered for the Act or Regulations include the platform regulatory regime set out in the pilot instrument released with the Report, Instrument 2016/1054 (Top up PDS relief) and Instrument 2020/1090 (DDO for ETFs).

Some ASIC Instruments stand out as most likely not suitable to be legislated due to being unnecessarily prescriptive, such as Instrument 2019/1070 (Disclosure of fees and costs), and the unit pricing Instrument 2023/693.

(b) The wholesale client test

In addition to the policy changes to the wholesale client test that have been under consideration, technical aspects of the test could be improved. There are multiple Corporations Regulations that affect the meaning of section 761G, and these are dispersed across Parts 7.1 and 7.6 of the Regulations¹³. To the extent practicable, they should be incorporated into the drafting of the Act so the law is clear on its face, particularly as this is such an important test, applied across a wide range of products and services and a “need to know” provision for issuers, advisers and consumers. Changes to the tests to ensure they are unambiguous and specific would also be beneficial both for simplicity of compliance and because increasingly, investment is conducted on-line and without human intervention, so rules need to be capable of being systematised.

¹³ Key modifications include Regulations 7.1.11 to 7.1.28 and 7.6.02AB to 7.6.02AF, but there may well be others hidden in the detail.

6 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.

The highest priority changes are to simplify the reportable situations regime, to streamline and change the focus of AFS licensing, and to make the law accessible by reorganising ASIC instruments.

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

We are not in a position to provide specific cost estimates, but observe that every time a client seeks our advice on a question arising from undue complexity in financial services regulation, that represents a cost borne somewhere in the economy.

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

See our combined response at question 17.

7 The economic case for simplification

Royal commissioner Kenneth Hayne recommended in his 2019 report that the law be simplified so that its intent is met. Both the ALRC and ASIC have commented that complexity in financial services law and its administration is an impediment to productivity in the sector. Compliance costs amount to billions of dollars across the industry. Initiatives to reduce the volume and improve the focus of compliance tasks have both an economic and a social purpose.

8 Contacts

If we can provide any further detail on the matters covered by this submission, or assist ASIC in any way with its further work on the simplification project, please contact us at the details below.

Yours faithfully

King & Wood Mallesons

Contact details

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