



Attachment A to REP 813: Context paper

REGULATORY SIMPLIFICATION CONTEXT PAPER

Prepared by Andrew Godwin* and Ian Ramsay AO**
for the Australian Securities and Investments Commission

This Context Paper accompanies the Regulatory Simplification Report (the ‘ASIC Regulatory Simplification Report’) issued by the Australian Securities and Investments Commission (‘ASIC’) in relation to the regulatory simplification project (the ‘Regulatory Simplification Project’).

Its purpose is to provide context so that readers can inform themselves of relevant concepts and issues and engage with the ASIC Regulatory Simplification Report accordingly. It is intended to be accessible to a general audience.

* Professor of Commercial Law, Melbourne Law School, The University of Melbourne.

** Redmond Barry Distinguished Professor Emeritus, Melbourne Law School, The University of Melbourne.

This paper has been written by the authors in their personal capacity and does not represent the University or its views.

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1. Introduction

In general terms, the concept of simplification can apply to either the legislation governing an area of regulation, such as financial services, or the administration of legislation by regulators. The administration of legislation refers to the process by which regulators implement and enforce legislation, and exercise the functions and powers that the legislation confers on them. In the case of ASIC, for example, the *Australian Securities and Investments Commission Act 2001* (Cth) (the '**ASIC Act**') provides that ASIC has the functions and powers that are conferred on it by that Act and by other legislation.

Note: Section 1(2) of the ASIC Act provides that in performing its functions and exercising its powers, ASIC must strive to do various things, including monitoring and promoting market integrity and consumer protection in relation to the Australian financial system and the payments system.

As applied to the first context – namely, the legislation governing a certain area of regulation – the concept of simplification can be referred to as 'legislative simplification' and covers both primary legislation and delegated legislation. The concept was relevant to two recommendations in the Final Report of the Financial Services Royal Commission, which were couched in terms of simplification 'so that the law's intent is met' (Royal Commission Final Report, 496).

That report noted that programs to simplify the law relating to income taxation and to reform corporate law had extended over many years and that 'simplifying the law that relates to the financial services industry would be a large task' (Royal Commission Final Report, 16). Previous simplification projects include the corporations law 'simplification task force' established by the Commonwealth Attorney-General in the 1980s and the Corporate Law Economic Reform Program in the 1990s.

The task of simplification as recommended by the Royal Commission was subsequently taken up by the Australian Law Reform Commission ('**ALRC**'), when it received Terms of Reference from the Attorney-General to undertake a Review of the Legislative Framework for Corporations and Financial Services Regulation in September 2020 and published its final report in November 2023 (the '**ALRC Final Report**'). The [Terms of Reference](#) provided that in referring the review to the ALRC, the Attorney-General had regard to 'the Government's commitment in response to the [Royal Commission] to simplify financial services laws.'

The ALRC Final Report, which made 58 recommendations in response to the Terms of Reference (see ALRC Final Report, 15-25), and other related ALRC publications will be referred to in this Context Paper.

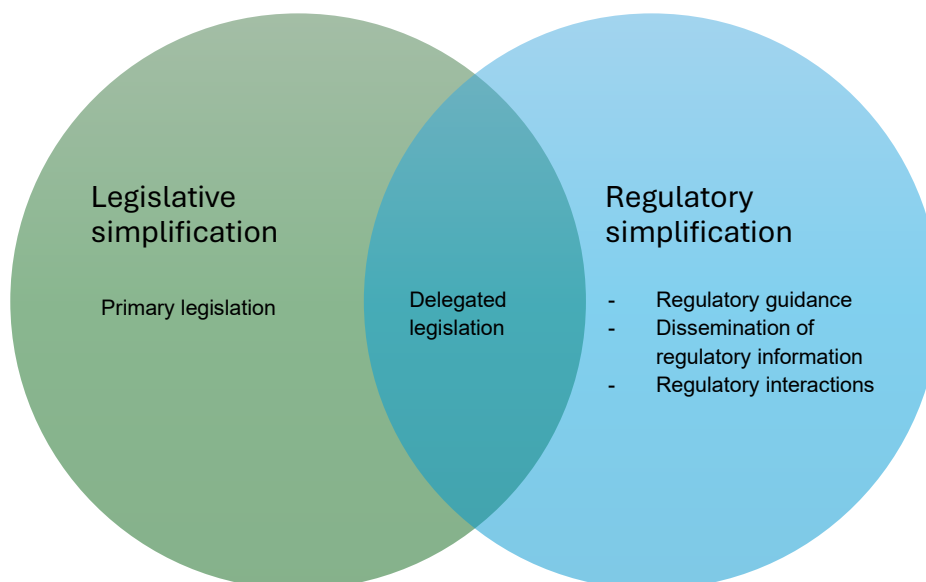
As applied to the second context – namely, the administration of laws by regulators – the concept of simplification can be referred to as 'regulatory simplification'. Regulatory simplification overlaps with legislative simplification to the extent that it relates to the

simplification of delegated legislation made by regulators, such as legislative instruments.

Note: As stated on the [Federal Register of Legislation website](#), legislative instruments are 'laws on matters of detail made by a person or body authorised to do so by the relevant authorising legislation.' In the case of ASIC, they include legislative instruments authorised by the *Corporations Act 2001* (Cth) and other legislation that ASIC administers.

This overlap is illustrated in Figure 1 below. However, the concept extends to other areas relevant to a regulator, including regulatory guidance produced by the regulator, the channels through which regulatory information is disseminated by the regulator (including via its website) and the ways in which the regulator and the regulated community interact in areas such as reporting requirements and the lodgement of regulatory forms.

Figure 1: The overlap between legislative simplification and regulatory simplification



The focus of this Context Paper is on regulatory simplification as outlined above. It is structured as follows: Part 2 explores the meaning of 'regulatory simplification', and discusses why it matters, including for the purpose of reducing unnecessary complexity. Part 3 outlines previous experience with regulatory simplification in Australia. Part 4 examines the causes of complexity in the regulatory framework. Part 5 outlines some of the ways in which regulatory simplification can be achieved. Part 6 locates the Regulatory Simplification Project within the context of international developments. Part 7 concludes by suggesting 10 guiding principles for regulatory simplification.

2. Regulatory simplification

For the purpose of the Regulatory Simplification Project, ASIC has adopted the following working definition of 'regulatory simplification':

the process of increasing the navigability, clarity, consistency and practical utility of regulation for the end user and reducing unnecessary regulatory complexity (ASIC Regulatory Simplification Report, Appendix A).

As noted in the Introduction above, the concept of regulatory simplification extends to the broad range of areas that are relevant to ASIC, including the legislative instruments made by ASIC and the design of regulatory guidance.

It is important to distinguish simplification from 'deregulation', as the latter term is sometimes used to refer to 'watering down obligations, or weakening consumer protections' (ALRC Background Paper FSL2, 6, [26]; ALRC Interim Report A, 52, [2.6]). There can be an overlap between simplification and deregulation where the process of simplification results in the removal of unnecessary regulations. However, a key objective of regulatory simplification is to ensure that the existing policy of the regulator is expressed clearly and coherently and that interactions between the regulated community and the regulator are as efficient as possible.

Simplification has been described as 'the process of reducing complexity to its necessary core' (ALRC Interim Report A, 6, [26]). Simplification and complexity – particularly unnecessary complexity – are interrelated concepts and might be referred to as two sides of the same coin. Modern law and regulation are, by necessity, complex.

As has often been suggested, the challenge is to reduce unnecessary (or avoidable) complexity. The reduction of unnecessary complexity has been identified as an objective of legislative design (ALRC Background Paper FSL2, 5, [22]).

This is particularly relevant in respect of financial services and corporations legislation. Chapter 7 of the *Corporations Act*, which regulates financial services and financial products, has been described as 'particularly complex' (ALRC Background Paper FSL2, 41, [1.20]).

Managing and reducing regulatory complexity matters for a range of reasons. First, regulatory complexity complicates the process of complying with the law. It can also lead to a lack of understanding about the purpose of the law and encourage regulated entities to undertake a 'box-ticking' approach to compliance (ALRC Background Paper FSL2, 7, [29]).

Second, regulatory complexity increases the cost of compliance as a result of the difficulties for the regulated community in ascertaining the regulatory requirements and determining how to comply with them. As a consequence, regulatory complexity increases the cost of obtaining financial services and products. It also increases the costs to regulators, including the cost of producing regulatory guidance, and the costs to business.

Note: ALRC Final Report, 48, [2.7]: 'For businesses, complexity makes it harder to operate and innovate, as they more frequently require legal advice and adopt compliance processes that are made more costly by unnecessary legislative complexity.'

Third, regulatory complexity undermines economic efficiencies and productivity and imposes broader economic costs (ALRC Final Report, 48, [2.9]). One of the five reform areas (known as the ‘five pillars’) that the Government recently referred to the Productivity Commission is ‘creating a dynamic and resilient economy’, a key element of which is ‘[reducing] the impact of regulation on business dynamism.’ As noted by the Productivity Commission:

Regulation can help to achieve important economic and social objectives, but excessive or inappropriate regulation can stifle business dynamism, resilience and productivity.

Reducing regulation, if done judiciously, can lower costs of doing business, allow more firms to enter the market, lower prices for consumers and support innovation. For more than a decade we have heard that the burden of government regulation has increased, and we have an opportunity to shift regulatory focus towards growth outcomes (PC Media Release, May 2025).

In short, the objectives that regulatory simplification is designed to achieve include the following:

- increasing meaningful compliance, and thereby reduce ‘tick the box’ compliance and regulatory arbitrage;

Note: The ALRC has drawn a distinction between ‘general compliance’ and ‘meaningful compliance’ on the basis that the former ‘refers to the extent of compliance to be achieved (that is, compliance with the law generally) and the latter refers to the nature of compliance to be achieved’. ‘Meaningful compliance requires the regulated community to accept responsibility for determining how to achieve compliant conduct, rather than seeking to shift that responsibility to a regulator. For example, it may be more “meaningful” for a financial adviser to comply with the law by actively inquiring into and assessing the suitability of financial products for their clients, rather than by simply following a list of prescriptive procedural requirements, or by blindly complying with regulatory guidance’ (ALRC Interim Report A, 57, [2.24]; [2.26]).

The ALRC has attributed the prescriptive or rules-based approach to regulation in the area of financial services to ‘an attempt to prevent or respond to regulatory arbitrage, or ‘gaming’ of the system.’ The ALRC has cautioned, however, that ‘the level of prescription may incentivise further regulatory arbitrage, as industry may design or adapt products and situations so as to fit them within a more convenient (or less burdensome) prescribed category’ (ALRC Interim Report A, 71, [2.81]).

- improving the clarity, coherence and navigability of regulation through simplifying regulatory guidance, legislative instruments and forms; and
- increasing the efficient and effective administration of the law by ASIC, including interactions between ASIC and the regulated community.

3. Previous experience with regulatory simplification

(i) Financial sector regulators

The concept of regulatory simplification is not new to ASIC. Previous initiatives in this regard include the ASIC Better Regulation Initiative in 2007 and the Regulatory Efficiency Unit ('**REU**'), which was announced in November 2021 and operated as a precursor to the Regulatory Simplification Project.

At the time the Better Regulation Initiative was adopted, ASIC stated that its purpose was to provide 'better access to ASIC's decisions, policies and approaches' and 'to achieve better and more transparent regulation' (ASIC Media Release 07-30 2007). As noted in the media release:

ASIC decisions, policies and approaches will be easier to find and simpler to understand from 5 July 2007 following the launch of new regulatory documents and a road map on the agency's website.

The Better Regulation Initiative involved a reduction in the number of regulatory documents produced by ASIC, the use of simpler document layouts and templates, and the adoption of a road map, which was designed 'to help people find relevant class orders and regulatory documents on ASIC's website' (ASIC Media Release 07-36 2007). Along similar lines, the use of regulatory roadmaps has been proposed by ASIC as part of the Regulatory Simplification Project and is discussed in Part 5 Section (iii) below.

As stated in ASIC's Annual Report 2021-22, the purpose of the REU was:

to promote better regulation by making it easier for businesses to fulfil their regulatory requirements effectively... to minimise the cost and burden of regulatory requirements, reduce the impost on industry, and drive better compliance while ensuring that consumer protections remain strong (ASIC Annual Report 2021-22).

Similar to the Regulatory Simplification Project, the REU had as one of its aims 'identifying initiatives that can improve the efficiency of ASIC's interactions with [the] regulated community' (ASIC Annual Report 2021-22, 22). The scope of the Regulatory Simplification Project, however, is broader and, in addition to industry consultation, involves a partnership with stakeholders through the ASIC Simplification Group Consultative.

The Australian Prudential Regulation Authority ('**APRA**') has also undertaken a simplification project in recent times. In July 2024, APRA announced that it had completed its program to modernise the prudential architecture (the '**MPA program**'). The MPA program was launched in 2021 'with the goal of making APRA's regulatory framework for banks, insurers, and superannuation trustees clearer to understand, simpler to navigate, and more adaptable to ongoing changes in the operating environment' (APRA Media Release 2024). The MPA program included the publication

of the final version of APRA's new digital [Prudential Handbook](#). As stated in APRA's media release:

The new Prudential Handbook... brings together all of APRA's prudential standards, prudential practice guides and relevant supporting information into one place. The digital format ensures the Prudential Handbook can be easily navigated, and caters to a range of different users across regulated industries and in the broader community. (APRA Media Release 2024).

Several common objectives underpin regulatory simplification by ASIC and APRA. These include improving navigability, making compliance easier through clearer regulation and reducing unnecessary complexity, and increasing the efficiency of regulatory interactions – all of which should be achieved by maintaining and, ideally, enhancing consumer and investor protection.

ASIC's previous experience with regulatory simplification raises a question as to the rationale behind the current Regulatory Simplification Project. ASIC's Chair has identified the increasingly complex legal and regulatory framework and the wave of legal reforms in recent years as relevant factors in this regard (Longo Speech 2024). These reforms include those arising out of the Royal Commission and the review by the ALRC. A further factor is 'complexity in the administration of the law: in the practices of regulators – how they implement the law – and how they interact with each other' (Longo Speech 2024).

The causes of regulatory complexity are discussed in Part 4 below.

(ii) General initiatives

General regulatory simplification initiatives have been adopted at both the Commonwealth level and the State and Territory level.

At the Commonwealth level, previous initiatives include the Report of the Taskforce on Reducing Regulatory Burdens on Business, 'Rethinking Regulation' in January 2006. The Taskforce was established to identify actions to address areas of regulation that were 'unnecessarily burdensome, complex, redundant, or duplicate regulations in other jurisdictions' (Taskforce Report 2006, A1). That report made the following observation about the regulatory environment at the time:

...a 'regulate first, ask questions later' culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration. Further, agencies responsible for administering and enforcing regulation have tended to adopt strict and often prescriptive or legalistic approaches, to lessen their own risks of exposure to criticism. This, in turn, has contributed in some areas to excessively defensive and costly actions by business to ensure compliance (Taskforce Report 2006, ii).

The report noted the key role of the financial and corporate sectors and observed as follows:

...it is crucial that regulation is designed, implemented and administered effectively. In particular, regulation should:

- seek to maintain an appropriate balance between achieving safety and investor protection and ensuring that regulated entities are not unduly constrained in conducting business;
- be applied flexibly in recognition of the diversity within the sectors and the pace of structural change and innovation; and
- allow for decision-making to occur within a framework that promotes transparency and public confidence (Taskforce Report 2006, 89).

In the area of financial regulation, these objectives are as applicable today as they were 20 years ago. This is particularly so in view of the increasing complexity of financial products, as reflected in the emergence of digital assets, and the use of technology for the provision of financial services, as reflected in the use of big data and artificial intelligence.

Regulatory simplification initiatives have also been adopted by State governments and regulators. An early example is the Queensland Regulatory Simplification Plan 2009-2013, which outlined how the Government would 'review the existing stock of Queensland regulation to achieve the Queensland Government's initial target for reducing the compliance burden to business and the administrative burden to government.' Part of this plan involved the reduction in 'unnecessary and excessive legislative requirements' and the streamlining of 'administrative and procurement processes' (Queensland Regulatory Simplification Plan 2009-13, 2).

More recently, in 2021, the Queensland Productivity Commission issued a research paper on improving regulation (Queensland Productivity Commission Research Paper). This paper discusses the economic impact of regulation, including regulatory costs incurred by business and governments, and identifies 'the main tools governments can use to deliver improved regulatory outcomes,' (at 17) including developing policy to improve regulation (at 20) and managing the stock of regulation (at 21).

4. Causes of regulatory complexity

An understanding of the factors that cause complexity assists in identifying what tools or measures might be adopted to achieve the objectives of regulatory simplification.

Specific causes of regulatory complexity that have been identified as part of the Regulatory Simplification Project include the following:

- (i) difficulties in navigating websites of regulators and finding relevant resources for compliance and other purposes;

Note: This is a key driver behind ASIC's website redesign.

- (ii) misalignment between the needs of the regulated community and the design of online systems in areas such as filing and reporting;

Note: This is a key driver behind ASIC's RegistryConnect Program, which is designed to 'deliver reliable, secure, trusted, and efficient registry services to support the economy for the benefit of all Australians' (ASIC Regulatory Simplification Report).

- (iii) The ongoing reliance on paper-based forms and communications, including the requirement for wet signatures, instead of fully utilising digital technology;

Note: See Mizen 2025. In addition, requirements for certain payments to be made by cheque continue to create regulatory complexity.

- (iv) Unclear and cumbersome reporting requirements in areas such as the reportable situations regime, complaints data and data requests; and

- (v) Inconsistencies between regulatory regimes, resulting in uncertainty and 'overcompliance'.

Various approaches for dealing with these causes of regulatory complexity and achieving simplification are considered in Part 5 below.

The ALRC has identified a number of factors that cause legislative complexity, many of which are relevant in the context of regulatory complexity more broadly. These include the following:

- complexity arising from real-world factors relevant to the legislation;
- subject matter complexity;
- stakeholder demands and external influences;
- policy complexity; and
- legislative design decisions (ALRC Background Paper FSL2, 9, [36]).

In relation to the first two factors, the ALRC has noted that 'the complexity of the subject matter that specific legislation addresses is...a significant cause of legislative complexity, and linked to the idea of real-world complexity' (ALRC Background Paper FSL2, 10, [39]).

Treasury has commented on the third factor – namely, stakeholder demands and external influences – as follows:

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

The fourth factor – policy complexity – has increased with the complexity of transactions, products and services and has been identified as a cause of complexity generally.

Note: See ALRC Background Paper FSL2, 11, [46]: 'Complexity in policy can also contribute to complexity in legislation. In the Australian context, the Attorney-General's Department has pointed to unnecessary 'complexity in the underlying policy' as a cause of legislative complexity',

citing Attorney-General's Department (Cth), *Causes of Complex Legislation and Strategies to Address These* (2011), 2.

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

The prescriptive, rules-based nature of the legislative framework means that it is necessary to utilise delegated legislation, including legislative instruments made by ASIC, to ensure that rules are appropriately targeted and calibrated, and also to reduce the regulatory burden on particular entities. Accordingly, ASIC has powers delegated by legislation to create exclusions, to grant exemptions, and to modify statutory provisions.

The use of delegated legislation can, however, itself be a source of complexity, particularly where delegated legislation makes notional amendments to the primary legislation.

Note: See ALRC Final Report, 51, [2.11]: 'Notional amendments are a major source of complexity and incoherence affecting corporations and financial services legislation. Notional amendments, also known as modifications, are provisions that change the legal effect of another provision without changing the text of that provision. Notional amendments can be made by either the Minister (via regulations) or ASIC. Stakeholders have almost universally observed that notional amendments make the law harder to navigate and understand.'

The ALRC has suggested that the increase in the volume of legislation, including legislative instruments, means that 'the effective management of legislative complexity matters more than ever' (ALRC Final Report, 41, [1.19]; 59, [2.30]). The existence of multiple sources of rules – legislation, case law and regulatory guidance – compounds the challenges in this regard as a reader needs to consult multiple sources to understand the regulatory position. Related to this is overlap, duplication and inconsistency between the rules and also between the regulatory information that is provided by different regulators (Taskforce Report 2006, 166-171).

A further factor that causes complexity is 'the processes by which law and policy are made' (ALRC Background Paper FSL2, 64, [2.45]).

Note: See ALRC Final Report, 64, [2.45]: 'Problems with law-making processes and legislative maintenance are both a cause and a symptom of complexity in the existing legislative framework. Short timeframes for new legislative initiatives and insufficient legislative maintenance may contribute to the complexity of the existing legislative framework.'

Legislative maintenance includes management of the existing stock of regulation, as discussed in Part 5, Section (iv) below.

Complexity is also caused by the tendency – what might be referred to as the default position – of legislators and regulators to create new rules whenever challenges arise instead of clarifying and applying the existing rules. This can result in a ‘set and forget’ approach to rule-making, a lack of coherence between regulatory regimes and frameworks, and a disproportionate focus on maintaining the ‘flow’ of regulation over managing the ‘stock’ of regulation. Indeed, sometimes the best solution to new challenges lies in options that do not involve the creation of new rules.

5. Achieving regulatory simplification

In broad terms, simplification can be achieved through various approaches, five of which are as follows:

- Adopting an outcomes-focused approach to regulation and regulatory systems;
- Improving the way in which rules and regulatory guidance are drafted and presented;
- Improving navigability;
- Managing the ‘regulatory stock’; and
- Facilitating regulatory interactions.

These approaches are assisted by the application of principles to guide regulatory simplification, such as the principles listed in Part 7 below. Each approach is discussed below.

(i) Outcomes-focused approach

In August 2024, the Department of Finance released a ‘whole-of-government Framework, supported by a suite of tools and targeted programs, [to] drive better regulatory policy, practice, and performance, [and support] the delivery of fit-for-purpose regulation’ (Performance Framework 2024, 6). The Framework identifies six principles for designing, implementing, managing, and evaluating regulation to ensure it is fit-for-purpose. One of the principles is that regulatory systems should be ‘continuously improved and outcomes-focused’:

Regulatory systems must be monitored and evaluated to minimise risks of regulatory failure and ensure they are fit-for-purpose, meeting the identified need and achieving desired regulatory outcomes — i.e. an outcomes-focused approach (Performance Framework 2024, 13).

The benefits of an outcomes-focused approach have been recognised in the context of legislative design (ALRC Interim Report A, [2.117] – [2.128], 78 – 81).

Note: See ALRC Interim Report A, [2.127]: ‘[s]ome recent financial services regulatory reforms in Australia appear to signify a shift towards more outcomes-focused regulation, such as the introduction of Design and Distribution Requirements and Product Intervention Orders.’

More broadly, clarity in regulatory outcomes is important for the purpose of facilitating and enforcing compliance, evaluating and improving regulation, and achieving

appropriate outcomes in areas such as consumer and investor protection. The ASIC Chair has commented on the need for more effective regulation in terms of regulation that ‘better achieves its intended outcomes’ (Longo Speech 2024).

(ii) Drafting and presentation

The Regulatory Simplification Report acknowledges the need to reduce the complexity of regulatory instruments and notes that ASIC has consulted with the Office of Parliamentary Counsel and Treasury to develop best-practice principles for drafting ‘clearer, simpler regulatory documents’. Further, ASIC intends to use these principles as a guide in preparing future legislative instruments.

The Regulatory Simplification Report also identifies initial actions to ensure that regulatory guidance is ‘clear, concise and helpful to all users’. Such an approach is consistent with calls for simplification to be ‘aimed at making the law comprehensible by those whose conduct is governed and by those whose interests might be affected’ (ALRC Final Report, 110-111, [133]).

Initiatives to improve the way in which rules and regulatory guidance are drafted and presented include the simplification and consolidation of legislative instruments. The ASIC Regulatory Simplification Report notes that ‘there are [currently] approximately 273 legislative instruments that provide relief, exemptions or modifications to the law that ASIC administers’ and acknowledges feedback ‘that these can be unnecessarily complex and difficult to find and understand.’ Accordingly, there is a need to consolidate, simplify and improve the navigability of legislative instruments.

ASIC has conducted two pilots: one to demonstrate how it can achieve regulatory simplification and one to demonstrate how it can achieve consolidation. The simplification pilot simplifies and consolidates the text of ASIC instruments relating to managed investment scheme platforms. The consolidation pilot consolidates ASIC’s financial reporting, accounting and audit-related instruments. The ASIC Regulatory Simplification Report suggests that this ‘will make it easier for ASIC’s regulated population to navigate [ASIC’s] instruments to understand the full extent of their compliance obligations.’

Similarly, the ALRC has noted that simplification tools include the consolidation of duplicative and overlapping legislative instruments and regulatory regimes, and that such tools assist to overcome complexity caused by amending legislation ‘that does not make clear how existing and new legislation fit together’ (ALRC Background Paper FSL2, 27, [115]; 28, [122]).

(iii) Navigability

The ALRC has defined a ‘navigable’ legislative framework as ‘one that enables readers to locate relevant provisions with sufficient ease’ (ALRC Interim Report A, 56, [2.20]).

The same principles can be applied to regulatory guidance that ASIC provides on its website and the design of ASIC’s website generally. The ASIC Regulatory

Simplification Report notes feedback that ASIC's website has been difficult to navigate and that 'it is challenging for stakeholders to identify what regulatory obligations apply to them, with information in multiple locations and no over-arching sector-based approach to outlining key obligations.' Further, 'it is unclear how [ASIC's] different types of regulatory guidance operate together'.

Accordingly, ASIC has launched a new, improved website with 'a single, easy-to-use search function' and 'subject-specific hubs that organise all information – including articles, regulatory document, forms and instruments – under key topics.' ASIC has stated that the website improvements 'are designed to help people find the right information and perform key tasks more easily, improve search functionality for regulatory resources and forms, and ensure links to key information are accessible via global features' (ASIC Media Release June 2025).

The ASIC Regulatory Simplification Report further notes 'challenges stakeholders can face with identifying and understanding their obligations'. Accordingly, ASIC has developed regulatory roadmaps 'to help people navigate the regulatory requirements most relevant to them.'

Such an approach builds on recommendation 19 of the ALRC Final Report:

Recommendation 19 The Australian Securities and Investments Commission should publish additional freely available electronic materials designed to help users navigate the legislation it administers. Such materials should include annotated versions of the *Corporations Act 2001* (Cth), *National Consumer Credit Protection Act 2009* (Cth), and *Australian Securities and Investments Commission Act 2001* (Cth) (ALRC Final Report, 17).

If this recommendation were accepted in full, annotated versions of legislation would contain the text of legislation as modified by notional amendments made pursuant to regulations or legislative instruments. This would resolve a current problem in relation to legislation; namely, the absence of a 'readily available version' of the *Corporations Act* 'which integrates, rather than simply cross-references' the relevant legislative instruments (ALRC Interim Report B, 218-219).

Such an approach could be supported through the use of technological aids such as hyperlinks. It is also possible at some point in the future for legislation to be drafted and published in a machine-readable format so that 'stakeholders may be able to update their compliance systems more efficiently' (ALRC Interim Report B, 300).

(iv) Management of the 'regulatory stock'

The ALRC has noted that 'a risk when administering legislation as large and rapidly evolving as the *Corporations Act* and *Corporations Regulations* is to focus on new reforms (the "flow" of legislation) at the expense of updating existing provisions (the "stock" of legislation)' (ALRC Final Report, 64, [2.47]; 255, [10.68]).

Along similar lines, the OECD has observed that '[w]hen the stock of regulations builds up over time and it is left unchecked, it can create cumulative burdens on business and citizens' (OECD 2022, 4). It is therefore important to undertake 'regulatory stock management', common forms of which include 'embedding review clauses and regulatory offset arrangements such as one-in-one-out (or one-in-x-out) rule' (OECD 2022, 4). Under this rule, 'individual regulatory agencies should not be able to adopt a new regulation without simultaneously abolishing an existing regulation, thus leading to no net change in the overall number of implemented regulations' (OECD 2022, 5).

The Report of the Taskforce on Reducing Regulatory Burdens on Business, 'Rethinking Regulation', acknowledged the attractiveness of such a rule but suggested that 'it would be better to require the proponents of a new regulation to demonstrate a strong case for it, having regard to the effectiveness of any existing related regulations' (Taskforce Report 2006, 172).

The OECD has also observed the gains that would arise from improvements in the quality of the regulatory stock:

the stock of regulations will generally be much larger than the flow, with the aggregate impacts commensurately greater. Therefore, even a small improvement in the quality of the regulatory stock could bring large gains to society (Taskforce Report 2006, 2).

As a means of managing the regulatory stock more effectively, the ALRC has suggested 'greater emphasis on a "stewardship mindset" when designing and maintaining legislative frameworks,' involving 'a long-term commitment to the quality, accessibility, and navigability of legislation by bodies who create and administer Acts and legislative instruments' (ALRC Final Report, 256, [10.72]).

Such stewardship 'could be enhanced to better emphasise the proactive management of unnecessary complexity in the stock of existing legislation' and includes 'requirements for sunseting legislative instruments and periodic reviews of the legislative framework' (ALRC Final Report, 257, [10.73] and [10.76]). The process of simplifying and consolidating legislative instruments, as referred to in section (ii) above, is an example of such a review.

The Department of Finance has identified 'a system-wide practice of stewardship to evaluate and improve regulation' as part of the principle that regulatory systems should be 'continuously improved and outcomes-focused' (Performance Framework 2024, 13).

(v) Regulatory interactions

Regulatory simplification includes facilitating interactions between regulators and the regulated community. The Report of the Taskforce on Reducing Regulatory Burdens on Business, 'Rethinking Regulation', made recommendations in relation to improving communication and interaction with business, while acknowledging the inevitable tensions that exist:

There will inevitably be a degree of tension in the relationship between regulators and the regulated. Regulators are required to take a different perspective in many cases and to maintain their independence or distance from regulated entities, so as to ensure impartial decision-making. But they also need to have an open mind and engender trust in their relationships with those they regulate. Effective two-way information flows help regulators do their job well and promote business confidence in the regulatory environment. (Taskforce Report 2006, 163)

As noted in the ASIC Regulatory Simplification Report, simplification work that ASIC is undertaking to enhance interactions with ASIC includes: allowing email lodgement of forms; accepting digital signatures where possible (and, conversely, reducing the forms that require 'wet signatures' and lodgement by paper); enhancing the ASIC regulatory portal; and expanding the number of payments that may be made electronically.

Note: The [regulatory portal](#) is expressed to be the portal 'where [the] regulated community can access ASIC's increasing suite of digital services.'

Another area identified by the ASIC Regulatory Simplification Report is how ASIC can engage earlier with industry on potential data requests.

6. An international comparison

As noted by Deloitte in 2021:

Regulators from around the world are rethinking their approaches and adopting agile, iterative, and collaborative models to drive regulatory reform. There is an unprecedented need to analyse the vast corpus of regulatory stock, to simplify, modernise and transform regulation (Deloitte 2021).

One recent development in this regard is the UK Financial Conduct Authority (the 'FCA') 2025 five-year strategy for reducing the regulatory burden (the '**Strategy**') (FCA Strategy). This development reveals parallels with the Regulatory Simplification Project.

As part of the Strategy, in March 2025, the FCA released a Feedback Statement, which followed a Call for Input (FCA Call for Input) in response to the introduction of the Consumer Duty, and outlined a programme of action 'to simplify...requirements of firms' (FCA Feedback Statement, 3, [1.1]). The FCA Feedback Statement noted the FCA's wish 'to address longstanding concerns from firms about the length and complexity of...rules and guidance' (FCA Feedback Statement, 3, [1.2]).

Note: Under the Consumer Duty in the UK, firms must act to deliver good outcomes for retail customers and address issues that risk causing consumer harm.

Although arising in the context of the regulatory framework governing the Consumer Duty, many of the actions proposed by the FCA have parallels with the actions proposed by ASIC in the Regulatory Simplification Project. First, the FCA has identified

the relevance of drafting issues, including consistency in the use of definitions (FCA Feedback Statement, 3, [1.5]).

Second, the FCA proposes to ‘remove or review outdated requirements and areas of unnecessary complexity, to reduce regulatory costs and provide greater clarity about [the FCA’s] expectations so firms can help deliver better consumer outcomes.’ As part of this process, the FCA proposes to publish a ‘smaller firm guide’, which would enable smaller firms to understand the requirements ‘in one place’ and, if considered appropriate, to roll this out more broadly (FCA Feedback Statement, 10-11, [2.26]-[2.27]).

Third, the FCA is also developing a new FCA Handbook website and has launched a beta version for public comment.

Relevantly, stakeholder feedback that the FCA had received in response to the Call for Input indicated that ‘most respondents’ were supportive of the ‘aim to make...rules and guidance simpler and more flexible’ and said that the FCA could achieve this through various actions. These actions included ‘[improving] the drafting and navigability of rules’, ‘[finding] a balance between high-level and detailed rules’ and ‘updating rules in light of technological change and consumer preferences, e.g. to make digital transactions easier’ (FCA Feedback Statement, 13).

At the same time, ‘many respondents said a review of [FCA] rules and guidance could lead to additional risks’, including the following:

- the resourcing costs of implementing change and the need to grant enough time for the industry to adapt;
- concerns that smaller firms, new entrants, fintechs and mutuals may lack the compliance resources of larger firms and would struggle without detailed rules;
- loss of regulatory certainty without detailed rules, leading the industry to become more risk averse, less likely to innovate, and less attractive for new entrants;
- a move away from detailed rules might also reduce consumer protection;
- the need for additional, and more practical, guidance if the FCA relies on high-level rules without detailed rules prescribing necessary actions; and
- the FCA’s work sometimes overlaps with other regulators and legislators and taking a different approach can increase complexity (FCA Feedback Statement, 13).

Commentary has suggested that the FCA Feedback Statement ‘signals a clear shift in the FCA’s regulatory philosophy—from one that prescribes, to one that enables’ and that ‘[i]t is not about deregulation, but rather about recalibration.’ Further, the FCA ‘is moving towards a model that encourages firms to think critically about outcomes, rather than simply ticking compliance boxes.’ Significantly, ‘[s]implication does not mean weakening standards’ but ‘creating a smarter, more coherent regulatory environment that better serves both firms and consumers’ (Fulcoli 2025).

Commentary has also suggested that the Strategy and the FCA Feedback Statement evidence ‘the difficult balancing act the FCA must perform to ensure it is adhering to

the government's growth agenda, reducing the regulatory burden and championing innovation, whilst maintaining robust standards and sufficiently protecting consumers from harm.' Further, the 'FCA wants to give firms more flexibility in how they apply regulatory requirements, so that the regime becomes more outcomes-focused.' Streamlining requirements 'will include targeted work to remove or review outdated requirements, or areas of unnecessary complexity' (Moulton et al 2025).

7. Guiding principles

As noted in Part 5 above, the process of regulatory simplification can be guided by the application of principles. The authors suggest the following 10 principles that should guide regulatory simplification, including ASIC's Regulatory Simplification Project:

- **First**, there should be a preparedness to learn from history, including ASIC's experience with the 2007 Better Regulation Initiative.
- **Second**, regulatory options need to be assessed within a cost-benefit framework. 'Costs' should be defined broadly to include not only the compliance costs incurred by industry (and the flow-on costs incurred by consumers and investors) but also the costs incurred by the regulator.
- **Third**, the process of simplification needs to consider the role of technology in managing regulatory complexity. Technology has the potential to expand our capacity to manage complexity. Developments in areas such as big data, artificial intelligence and machine learning create scope to accommodate complex data and tasks within user-friendly and lower-cost regulatory systems.
- **Fourth**, there must be effective consultation with regulated parties. Different types of consultation are needed according to the type of information ASIC seeks and also the best way to obtain this information. This includes the publication of consultation papers as well as the use of focus groups with key stakeholder and expert groups.
- **Fifth**, throughout the simplification process, there needs to be an ongoing focus on the purpose of the particular regulation that is under review and a focus on a key overriding question – will simplification assist in achieving the goal of the particular regulation? The goal that ASIC is seeking to achieve needs to be clear to regulated entities and clear to ASIC personnel.
- **Sixth**, there needs to be a focus on both substantive regulations that ASIC creates (such as legislative instruments) and administrative procedures that can be simplified. Depending on the area under review, it may be that the greatest benefits are to be obtained from focusing on administrative procedures that can be simplified.
- **Seventh**, for both substantive regulations and administrative procedures that are being considered for simplification, criteria for assessing whether the process of simplification has been successful need to be developed. In the case of substantive regulation, these criteria would include that a relevant ASIC document is appropriate to deal with a policy issue, it is accessible (that is,

easily located), comprehensible and useable to those who need to rely on it, its policy intent is clear, and it can be administered efficiently by ASIC. Another criterion is proportionality – that is, ensuring that the burden of regulation is proportionate to the importance of the problem the subject of the regulation. Proportionality addresses the fact that complex regulation involves a particular burden for smaller or less sophisticated regulated entities. In the case of administrative procedures that are being considered for simplification, the starting point is to identify what procedures best serve the needs of regulated entities and the needs of ASIC. For example, to what degree can accessible platforms be used, where businesses can receive guidance on requirements and handle required approvals in one place, such as ‘one-stop-shops’?

- ***Eighth***, once the current simplification process is completed and a reasonable period of time has passed, there needs to be a post-implementation review. This is to ensure that the simplification process has achieved its objectives, or if some objectives have not been achieved, to understand why this is the case and consider improved options.
- ***Ninth***, there needs to be a process to ensure that the goals of the current regulatory simplification project are embedded into ASIC’s ongoing processes. If this is done successfully, then the need for future ‘one-off’ regulatory simplification reviews will be reduced.
- ***Tenth***, and finally, there is a role for education. ASIC undertakes a significant amount of valuable education. Given the increasing attention being given to the costs of unnecessary regulatory complexity and increasing concern by business about this, there is a role for ASIC in educating regulated entities about the purpose of specific regulations. This is because increasing awareness of the purpose of regulatory requirements that are necessary, in combination with action by ASIC to reduce those that are not, and to simplify ongoing regulatory requirements, will improve business interactions with ASIC and business confidence in the work of ASIC.

8. References

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