

29 October 2025

Simplification Team
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: simplificationconsultativegroup@asic.gov.au

Dear Sir/Madam,

ASIC Report 813 *Regulatory simplification* (REP 813)

1. This submission in response to REP 813 is made by members of the Corporations Committee and the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **BLS**).
2. REP 813 was released by ASIC for public consultation on 3 September 2025. The BLS thanks ASIC for the opportunity to comment, and for allowing some additional time to submit this response.

General observations

3. We strongly endorse this ASIC initiative to make the information ASIC provides simpler and more accessible, and to make it easier to interact with ASIC. We also believe that simplification needs to become and remain an enduring commitment for ASIC, to break the cycle of excessive regulatory complexity which has become a blight on the Australian regulatory landscape.
4. In particular we note the following matters.

Key stakeholder

5. This initiative is of vital interest to the BLS. Our members engage on a daily basis with ASIC across the full range of its functions and responsibilities. We agree with suggestions in REP 813 that priority should be given in this project to addressing the needs of retail investors, the unsophisticated and small business. However, it is also in the national interest to work harder to remove red tape and reduce the cost of doing business generally.
6. As an organisation focusing on business law, we are particularly concerned with the quality and clarity of legislation, regulations and legislative instruments. We appreciate that, of these, only legislative instruments are within ASIC's control, so it is commendable that ASIC also refers in REP 813 to advocating for legislative change in key areas.

Telephone [REDACTED] • Email [REDACTED]

Unconditional support

7. This initiative has our unconditional support, both at an ASIC agency level and where law reform initiatives are required to achieve simplification objectives. We are prepared to provide comprehensive support to ASIC in its pursuit of this initiative.

Deep expertise

8. Our members have deep expertise and experience across the full range of areas that should be explored by ASIC. While many members of the Corporations Committee and the Financial Services Committee (the committees that have prepared this submission) have a background mainly with big business, we can also draw upon our specialist committees to assist ASIC as the initiative develops: our SME Business Law Committee, our Digital Commerce Committee and our Competition and Consumer Committee, among others, will be available to assist and make valuable contributions, which can assist ASIC in maximising the fitness for purpose of its publicly available resources and methods of engagement.

Long term approach

9. We encourage ASIC to plan this initiative as a heightened long-term priority that is further embedded in the DNA of its organisation and purpose. We consider that addressing questions of simplification and ease of interaction should be considered key policy underpinnings that inform all actions pursued by ASIC and that there should be a public commitment to do so. We would support a more methodical and prioritised Chapter by Chapter, Part by Part review of the *Corporations Act 2001* (Cth) over time, to investigate simpler and improved processes informed by developments in technology.

Short term action plans

10. In the limited time available since the September 2025 release of REP 813 our primary focus has been to mobilise internal support for this initiative. We would suggest that ASIC's short term action plan be to take its own experience and narrower interest group feedback and propose a short-term plan that prioritises retail investors, the unsophisticated and small business user needs. By way of example the financial reporting instrument initiative should be seen as high priority as it touches hundreds of thousands of reporting persons, including small businesses, in an immediate and direct way. Another example of a short-term objective, which ASIC seems to be strongly pursuing, is the excellent move to lodgement of all ASIC forms electronically rather than by post. This too will provide immediate benefits to many businesses.
11. **Approach to consultation.** We encourage ASIC to improve upon the quality of consultation processes. The BLS welcomes recent initiatives by ASIC to engage in targeted consultation on particular topics to inform the subsequent public consultation process. It is important to allow stakeholders adequate time to respond to consultation processes (and as a general observation we feel that

ASIC does this better than Treasury on most matters). As part of embedding simplification in ASIC's DNA, we would recommend that consultation processes include questions such as:

- Is the purpose clear?
- Is it easy for those affected by this proposal to understand what they need to do to comply?
- Is there anything that could be done to fulfil the purpose with less complexity?
- Could there be any unintended consequences of this proposal which ASIC has not identified?

12. We also consider that the Consultation Statements used for the remaking of legislative instruments, while simple, are sometimes so brief that they fail to articulate the policy rationale and do not provide enough background to enable any informed commentary on the merits of the relevant proposal.

13. **Legislative instruments.** A number of legislative instruments, which were made by ASIC as a temporary measure pending law reform to amend the Corporations Act, are being perpetually remade due to ongoing delay in law reform. While this is not an ideal situation, we respect that the law reform process is outside ASIC's control. What is within ASIC's control is the body of legislative instruments and how they are displayed. In the short term we would welcome a more logical arrangement of legislative instruments by category / subject area to make them easier to navigate so that users can actually find what is effectively the law. It would also assist navigability if the titles of the instruments (currently the only way to search for them) were more descriptive of their content.

14. Over the longer term we would welcome a more consolidated approach to legislative instrument making and having a smaller number of more comprehensive legislative instruments, which could be logically arranged by reference to Chapters and Parts of the Corporations Act, consistent with the work of the Australian Law Reform Commission in its Report 141. While ASIC's remit does not extend to primary legislation, it is well placed to pursue "bottom-up" reform of its own legislative instruments. We propose that ASIC undertake a consolidation and reorganisation of its nearly 300 instruments into a small number of integrated instruments—effectively, rule books—aligned with the structure of the Corporations Act. Each rule book would correspond to a Chapter or Part of the Corporations Act. Such a reorganisation would yield several benefits:

- it would make the law easier to locate, interpret and apply;
- it would provide a stable foundation for the implementation of the ALRC's broader reform agenda, should Parliament choose to proceed with that; and
- it would reduce reliance on extensive regulatory guidance and improve both compliance and enforcement outcomes.

15. The form of instruments included at Attachment A and Attachment B of REP 813 are a step in the right direction in terms of simpler and clearer drafting within the instruments.
16. In an ideal world, it would be beneficial to have publicly available documents that show in full the Corporations Act as modified by relevant ASIC legislative instruments (with different text style and/or annotation to differentiate between the primary legislation made by Parliament and the legislation made by ASIC). We believe that there are technological tools available which could automate the production process (noting that pre-publication human review would also be appropriate).

Data gathering

17. We acknowledge the importance of the role of data in ASIC decision-making and enforcement activities. However, it is important for ASIC to be mindful of the burden of producing data, and to consider whether imposing that burden is justified by the benefit ASIC expects to achieve. ASIC should be careful not to unfairly burden the regulated population by requesting information that ASIC does not reasonably expect to use for a demonstrable public benefit. We consider that this is a cost-benefit consideration which warrants closer attention from ASIC, particularly where similar data is already collected by other Government agencies.

Transparency

18. We believe the transparency of publicly available information could be improved in a number of ways, including making information that is of public benefit available through a free (rather than paid) search, having a link to the Consultations landing page on the front page of a website, ensuring that all news / media items continue to have an allocated number rather than just a title. This would make the ASIC Gazette easier to search and reinstate ASIC's reports of decisions on relief applications which have policy significance (so that the regulated population and their advisers can understand ASIC's position on regulatory issues and make more informed decisions about whether to seek relief).

Use of media releases, regulatory guides and information sheets

19. We caution against using non-legal documents to communicate views of the law that are not reflective of the wording of the relevant legislation. If ASIC considers that the law needs to do more to better protect consumers, then the law should be amended in a way that makes it clear to the regulated population what is required. Statements of ASIC's "expectations", which do not have legislative force and have not been ruled upon in court proceedings, are not compatible with a regulatory simplification objective. However, where court decisions are made, regulatory guidance that touches on the law should be promptly updated to reflect the current state of the law (for example, guidance on what constitutes personal vs general advice).

Attachment B Financial Reporting Instrument

20. Subject to what we have said in our comments under the heading **Legislative instruments**, we support, as an interim move, the collection of all financial reporting and audit instruments into one instrument with an index as proposed in Attachment B. However, we note that some of the instruments are difficult to interpret (for example, Part 9, item 36 **Relief from the requirement for small foreign-controlled proprietary companies to prepare and lodge an audited financial report**), especially for non-lawyers, and recommend that ASIC review all the instruments to see if they can be streamlined or clarified, as necessary, given available time and resources to do so.

Attachment C IDPS Instrument

21. We consider that this document represents an improvement upon the current situation because of its improved clarity in structure. We would like to see this design approach used in legislative instruments more broadly, acknowledging that this cannot be achieved quickly and would need to be rolled out over time.

Law reform: Reportable situations regime

22. Although this is an area where ASIC has previously consulted and provided recent and ongoing relief, we consider that it is an area that clearly requires further improvement. We support ASIC's advocacy for substantive law reform but also encourage ASIC to continue to use its modification powers to the extent available. A priority among those reforms and relief is further clarity on reporting thresholds because, as REP 813 itself notes, there continues to be a high level of reporting of low-level breaches with little regulatory benefit.
23. We would support ASIC continuing to engage with industry associations so that practical materiality thresholds can be set so that the administrative burden for licensees is more manageable and the reporting to ASIC more consistent and relevant. The BLS has also previously provided submissions in this area (including on CS 16¹) and we are keen to continue to engage with ASIC and Treasury on further reforms.

Law reform: Substantial shareholding notices

24. We encourage an end-to-end redesign of substantial shareholding and tracing notices as part of the introduction of the reforms contained in the Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025 (**the Bill**). The Bill affords ASIC the opportunity to refresh the prescribed forms, so they are clearer and more informative, as well as the way in which they are given.
25. We continue to have reservations, as set out in our submissions to Treasury, that the four new disclosure categories of deemed economic interest as well as the potential need to determine percentage interests in non-physically settleable derivative based holdings and offsetting short positions in accordance with ASIC instruments, risks creating complexity and the potential for investor confusion.

¹ BLS submission in response to ASIC Consultation Statement 16:
https://download.asic.gov.au/media/fjuj4vvp/law-council-of-australia-cs16-submission_redacted.pdf

26. Our interested members are very keen to work with ASIC to simplify and modernise this disclosure process, and also in the development of the ASIC instruments for “how to count” derivative interests. We see this reform as a good example that illustrates the General Observations we have made above.
27. We also expect the next stage of reform of beneficial ownership in relation to unlisted companies as flagged by Government to address tax avoidance and improve corporate transparency as a further illustration of that principle (noting current disclosure through the Form 484 mechanism as well as disclosure obligations under other legislation).

Law reform: Other

28. In addition to the specific issues discussed in detail above, we consider that there are a number of other areas that are ripe for law reform, including the following:
- a. **Civil penalties**—there should be an overhaul of the current regime and a consistent approach should be taken across legislation and regulators; serious penalties should be restricted to circumstances where a fault element has been established; defences or penalty reduction should be available where proactive steps have been taken to address the contravention (including to mitigate or reverse the harm); there should be clarity as to how multiple incidents relating to the same set of facts should be dealt with; there should also be alignment of the materiality of the relevant contravening conduct with the proportionality of the punishment or sanction;
 - b. **Unclaimed monies**—there is room for improvement in methods used to locate persons entitled to funds, and undue delay in permitting the use of funds where such persons cannot be located should be avoided. A broader question is whether the Australian Taxation Office, with the TFN information that it holds, might be better placed to assist with the process of returning the funds to the rightful owner;
 - c. **Company deregistration and reinstatement**—measures designed to prevent illegal phoenix activities are unintentionally creating difficulties and delay in resolution for legitimate small businesses and creditors;
 - d. **Provision of financial product advice**—it should be easier to provide limited personal advice to allow consumers to receive reliable information so that they are less likely to rely on unreliable information, disseminated by unlicensed providers, which is available online;
 - e. **Customer consent**—permitted methods for obtaining various required customer consents should be streamlined so that they are consistent, saving business significant costs by avoiding developing multiple processes to address differing consent obligations;

- f. **Anti-hawking**—the existing regulatory framework should be restricted to cover genuine pressure selling and more complex products. The restrictions should not cover the simpler financial products, nor should they restrict a product issuer from telling a customer about a product offering that is clearly consistent with the customer’s best interests (e.g. non-fee paying bank accounts as an alternative to accounts which charge fees);
- g. **Sustainability reporting**—consideration should be given to removing the requirement for Group 3 companies to meet the sustainability reporting requirements in section 292A for financial years commencing on or after 1 July 2027, given their smaller size relative to Groups 1 and 2 and the significant costs (and risks of inadvertently misleading disclosure) that such reporting involves. (This would not affect the separate application of the requirements to significant emitters and certain large funds.) Consideration should also be given to removing requirements for reporting on Scope 3 emissions for all reporting entities.
29. A further area of general concern for business law generally is conflicting sets of laws which can produce an outcome whereby compliance with one law is a breach of a different law: for example, warnings to customers about potential scams might infringe anti-spam legislation. We consider that broader consultation and more careful design are required in the law-making process.
30. It is also undesirable and inefficient to have multiple regulators with overlapping responsibilities for the same conduct. A concerted effort should be made to remove existing duplication and develop better processes to avoid it in future. We consider that this may be a suitable initiative to be progressed at the Council of Financial Regulators level.
31. Having different sets of laws which are similar in nature should also be avoided: for example, misleading conduct prohibitions across the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth). All the laws that are intended to address a particular objective should be located within the same statute. Materiality thresholds, fault elements and defences need to be consistent.

REP 813 Questions

32. In the limited initial time that has been available to us we have chosen to give more general initial feedback reflecting the broad range of contribution we expect to be able to make to this initiative going forward rather than responding to the 20 specific questions raised in REP 813.
33. However, we offer the following commentary on some of the specific questions:
- Question 8. See above (Financial Reporting Instrument).
 - Question 9. See above (IDPS Instrument).

- Question 18. We suggest giving priority to the interests of retail investors, the unsophisticated and small business, as outlined above. In that regard we appreciate that the measurement of cost savings in this context will be inherently uncertain and subjective, but believe the benefits of simplification and reduction of red tape to be self-evidently obvious and meritorious as a policy objective.
- Question 20. We have noted some potential further opportunities for simplification in our general observations. See above.
- In addition, there is a clear need for simplification of the process for applying for, or varying, an Australian financial services licence. From the perspective of facilitating pursuit of business opportunities in the financial services sector, the current standard timeframe of 5 to 8 months for grant of a licence or variation is a major impediment. There is also a significant cost to business of the licensing process, which is inevitably passed on ultimately to the consumer. Further, the licensing process is focused on the experience and qualifications of the proposed “responsible managers”, and underemphasises the context (such as whether the licence is for an existing reputable corporate group) and the proposed business model of the licensee (the most relevant factor in consumer protection). As a matter almost entirely within ASIC’s control, we urge ASIC to undertake a root and branch review of the most effective and efficient way to consider the grant and variation of licences, both for economic efficiency and to better protect investors.

Conclusion and further contact

34. The BLS would be pleased to discuss any aspect of this submission. Please contact [REDACTED], Chair of the Corporations Committee [REDACTED] and/or [REDACTED], Co-Chair of the Financial Services Committee [REDACTED] if you would like to do so.
35. We hope this is only the beginning of a more meaningful ongoing pattern of engagement with ASIC on simplification.

Yours faithfully

[REDACTED]

[REDACTED]

**Chair
Business Law Section**