

ABA / Member Feedback on ASIC Report 813

Regulatory Simplification

Focus Area	ABA / Member Bank Feedback
Section 1 - Improving access to regulatory information	<p>General comments:</p> <p>The ABA welcomes ASIC taking steps to improve access to regulatory information. We agree there is value in providing clarity in how different types of regulatory guidance operate together, the role and function of different forms of ASIC guidance and assisting entities to identify the guidance materials which are relevant to them.</p> <p>In relation to ASIC's specific questions about how it might improve access to regulatory information we provide the following comments:</p> <p>Question 1: Has our new website improved searchability and access to useful information for you? Do you have any suggestions for further improvement?</p> <p>ASIC's redesigned website is a welcome improvement. To further enhance usability, we suggest that ASIC consider:</p> <ul style="list-style-type: none">• Embedding direct links to relevant Regulatory Guides, FAQs and forms in areas such as breach reporting.• Including a direct shortcut to the ASIC Regulatory Guide index, grouped by licensee category to improve accessibility.• Providing key guidance in foreign languages to support Australia's linguistically diverse community. <p>Question 2: Which of the proposals to enhance our guidance materials do you think will have the biggest impact and should be prioritised – or do you have other suggestions?</p> <p>Of the proposals outlined, we believe ASIC should prioritise consolidating dispersed guidance materials as it would have the greatest impact. We suggest the following in that regard:</p> <ul style="list-style-type: none">• Grouping guidance by topic and sector into a single source to make it easier for regulated entities to better understand their obligations and reduce time spent navigating multiple documents. <p>Question 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?</p>

	<ul style="list-style-type: none"> We support a balanced approach between principles-based and prescriptive guidance, and the best approach may depend on the topic. Principles-based guidance is preferred in some cases as it offers flexibility and adaptability, particularly for well-established and understood areas of law, while prescriptive guidance provides clarity and certainty in emerging or complex areas, particularly where there is exposure to significant penalties or other consequences in the event of a breach. <p>The DDO is an example of regulation that is still relatively new, with untested concepts and relatively little case law and potentially significant consequences for breach, which might benefit with more detailed prescriptive guidance on ASIC expectations.</p> <p>Question 5: Should we consider piloting additional roadmaps? If so, for which sectors?</p> <ul style="list-style-type: none"> The ABA is supportive of ASIC piloting further roadmaps, however we would encourage ASIC to further consider how such guidance will best assist industry in relation to more complex areas of regulation. We see some potential for roadmaps to set out the basic elements of an area of regulation but include reference to other material such as ASIC guidance and legislative instruments that together, reflect ASIC’s position and expectations. In this way, roadmaps can act as a type of directory for regulated entities and help address the problem in some areas of regulation (in particular Chapter 7 of the Corporations Act) where material that may impact the application or interpretation of substantive obligations such as no action positions, regulatory relief and regulatory guidance are dispersed across multiple sources and are therefore, difficult for regulated entities to navigate.
<p>Section 2 –</p> <p>Reducing complexity in regulatory instruments</p>	<p>General comments:</p> <ul style="list-style-type: none"> The ABA has previously provided feedback to the 25 June 2025 ASIC Simplification Consultative Group on consultation which considered in some detail related legislation, guidance / expectations of other regulators and, an assessment of where proposals sit in the published Regulatory Grid of Reforms. The ABA’s paper recommended that ASIC and relevant regulators should adopt a requirement to consult with one another prior to issuing guidance or expectations that places financial institutions in a position where they may either breach another regulatory regime or, face increased complexity in determining how to comply with overlapping obligations. The paper also recommended that ASIC include standard questions in consultations to encourage respondents to identify any overlaps or conflicts with other regulatory regimes and, host regular “compliance sessions” with industry representatives to proactively address potential issues of 'overcompliance' before consultations or formal recommendations are issued. To assist ASIC in this regard, an example of ‘best practice’ ASIC consultation in the remaking of Class Order 14/1262 in early 2025 was highlighted. The core element of providing a draft of the instrument for review before its release reduced complexity by improving banks flexibility in providing Term Deposit maturity / rollover notices, including the ability to notify customers by digital methods.

	<ul style="list-style-type: none"> • We recommend that ASIC consider similar consultation approaches for regulatory instruments (and indeed regulatory guidance) to simplify and streamline bank compliance while also producing better consumer outcomes. • On a related complexity point, we recommend that ASIC update RG271 Internal Dispute Resolution to make explicit that Consumer Data Right complaints cannot be lodged via the ACCC Service Management Portal, which is meant to capture technical issues only between Accredited Data Recipients. • RG271 should also be updated to remove the redundant requirement to lodge nil returns. <p>Question 7: Are our best-practice drafting principles useful? Is there anything you would change?</p> <ul style="list-style-type: none"> • Broadly, best practice drafting principles are useful and providing transparency in what these are is also helpful for stakeholders to understand. • We appreciate that ASIC’s principles are designed at creating general principles and drafting for the majority whilst avoiding exceptions. Whilst this may be a helpful starting point, we encourage ASIC to consider adding a principle or encouraging an approach which is also receptive to considering where treatment in regulatory documents of exceptions may be appropriate. <p>Question 8: Is our consolidation of financial reporting, accounting and audit instruments helpful? If not, please provide any feedback on how it could be improved.</p> <ul style="list-style-type: none"> • We consider the consolidation of financial reporting, accounting and audit instruments helpful, in particular it is helpful to group instruments by different types of reporters as defined under the Corporations Act (public companies, large proprietary companies, disclosing entities, or registered schemes). <p>Question 9: Is our simplification of the platform instruments helpful? If not, please provide any feedback on how it could be improved.</p> <ul style="list-style-type: none"> • We consider that ASIC’s simplification of the platform instruments is helpful. <p>Question 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?</p> <ul style="list-style-type: none"> • In our view, Corporations Act instruments and relief are the most difficult to navigate. If consolidated, it would be most helpful for consolidation of instruments to be organised by topics.
<p>Section 3 –</p>	<p>General comments:</p> <p>We offer the following suggestions in this area:</p>

Making it easier to interact with ASIC

- Upgrade the ASIC portal to lengthen time limits for “batch” input and simplify report lodgement follow up. Currently there is no ability for banks to simply update an event in the portal once the status is completed e.g. amend previous submitted reports via a message or similar.
- Where appropriate (e.g. non-specific knowledge teams), centralise ASIC contact points like the APRA model. Multiple ASIC contact points / teams with little coordination adds to complexity to deal with and extended timeframes
- Regarding ASIC portals, the ability to message ASIC from ASIC’s own Regulatory Portal should be created. Similarly, ASIC should consider the consolidation of multiple portals including AFS Licensees / Governance / Connect / Financial Advisers Register and Regulatory Portal.

Question 11. With respect to interacting with ASIC, other than the work we’ve outlined, is there anything else we should prioritise?

ASIC Regulatory Portal

- Remove word limits on the “description” to allow complete updates for extended and complex breaches.
- Enable the portal to support updates to completed reportable situations - currently such updates require direct contact with ASIC. This functionality would improve flexibility and efficiency, particularly for complex or evolving breach scenarios where additional context or corrections may be necessary post-submission.

Paper Based Forms

- We suggest digitising remaining ASIC paper-based forms as well as accepting electronic signing for all forms.

Question 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?

- We support ASIC’s progress on implementing a beneficial ownership register. This reform will simplify AML/CTF compliance and help meet Australia’s international commitments. Transparency International Australia has called for a central, publicly accessible and independently verified register to close loopholes that enable financial secrecy and corruption.

Treasury’s updated proposal outlines a staged implementation with limited initial access, a narrowed definition of beneficial owner (25% threshold), and tailored obligations for trusts, director-owned companies, and wholly-owned subsidiaries.

ASIC will be the primary enforcement authority. Accelerating implementation will enhance transparency, reduce regulatory burden, and support Australia’s performance in the upcoming FATF evaluation. A central register will also make it easier for businesses to meet their compliance obligations by streamlining KYC processes and improving access to verified ownership information.

	<ul style="list-style-type: none"> • More generally, we support streamlining (e.g. reducing) the number of registers required to manage company and licence details. <p>Question 14: Do you have feedback on our proposal to engage earlier with industry on data requests and revise our consultation approach?</p> <ul style="list-style-type: none"> • In addition to our general comments above, we welcome ASIC’s intention to engage earlier with industry on data requests. Early engagement will help to ensure timely responses and should assist in addressing any challenges with the request. <p>We also encourage early engagement on information requests and continued engagement with industry after the material has been received, in particular where ASIC is drawing conclusions from it.</p> <p>Question 15: How would you prefer to interact with ASIC more generally? What else can we improve?</p> <ul style="list-style-type: none"> • While we note ASIC’s blackout period for issuing requests or notices, we would request that efforts are made to avoid due dates during and in the lead-up to known holiday seasons when staff availability is typically limited.
<p>Section 4 - Simplification through law reform</p>	<p>General comments:</p> <p>We recommend that ASIC focus on law reform of a targeted and tactical nature, such as:</p> <ul style="list-style-type: none"> • implementing recommendations 31 and 32 in the Australian Law Reform Commission’s Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation ¹ would simplify and align the definitions of “financial product” and “financial service” between the Corporations and ASIC Acts for all market participants. • fixing differences in legislation vs regulatory guidance. Such as ASIC’s review of RG274 which proposed a “must” requirement in relation to distribution conditions inconsistent with primary legislative “reasonable steps” requirement. Alignment of data retention requirements with other legislation could also be prioritised. <p>Question 16: What changes, if any, should be made to the reportable situation regime and substantial holding notices?</p> <p>We appreciate ASIC’s efforts to improve the reportable situations regime and acknowledge the recent relief measures. However, we believe further changes could help reduce complexity and improve consistency, particularly for larger institutions managing high volumes of reports.</p> <p>For example:</p> <p><u>Misleading and Deceptive conduct breaches:</u></p>

¹ ALRC Report 141. November 2023. Pages 26,27.

- We support a proposal to remove the misleading or deceptive conduct obligation from ‘deemed significance’ treatment under the law. This could enable licensees to report material instances of this conduct or report and minimise reports of limited / no regulatory intelligence value.

Question 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?

Whilst we recognise that law reform decisions are ultimately a matter for the Government, we appreciate ASIC’s interest in understanding and exploring opportunities to help shape a more streamlined and effective regulatory framework.

We make the following observations about areas where we think there may be opportunities to work towards simplification through law reform:

- Harmonise the definition of “small business” across the ASIC Act and Corporations Act (for Unfair Contract Terms purposes), the Fair-Trading Act (NSW), and the proposed Scams Prevention Framework Act. Aligning thresholds and terminology (e.g. “annual turnover” versus “turnover for the last income year”) would reduce confusion and compliance burden.
- Section 195 of the Australian National Consumer Credit Code (NCC) concerns the method for giving documents to a debtor and states that a credit provider can give the relevant documents to an address nominated in writing. What may be an unintended effect of the wording of this provision is that it restricts the ability of a customer to provide or update their address verbally, or via phone.

It would be helpful if the provision could be amended or relief granted to enable customers to nominate addresses verbally, or via phone. We consider amending section 195 of the National Credit Code to remove the requirement that the person nominating their address for notice give that nomination in writing would make it easier for consumers to engage with licensees and reduce compliance burden.

- Alignment of electronic communication rules across financial services and consumer credit: There are currently discrepancies in the legal frameworks relating to electronic communications / notices, with more restrictive rules applying for consumer credit notices. It would be helpful if there could be consolidation / alignment and consistency in the approach.
- Publish and notify method and the National Consumer Credit Protection Act: The National Credit Code contains requirements (e.g., s. 194) relating to the ‘giving’ of notices. Some case law (e.g., the case of Blood Enterprises Pty Ltd v Commissioner of Taxation [2022] FCA 1112), draws a distinction between ‘giving’ a document and ‘making it available’.

Prior to 2020 the Electronic Transactions Act Regulations specifically recognised the publish and notify’ method as a delivery method for documents under the NCC if certain conditions were met. However, those provisions were repealed in 2020 making the position less clear. It would be helpful if the position was clarified and permitted the publish and notify method as a method for delivery of documents under the NCC.

- Hardship notices: The National Credit Code requires credit providers to provide responses to customers who provide a hardship notice under section 72 within strict timeframes. Such responses constitute notices required by the Code and are governed by section 196(b) which applies an assumption that a notice is 'given' to a consumer on the later of the date on the notice **or** the date the notice would be delivered in the ordinary course of post.

Where such notices are sent by post, we think the requirement to allow for 'ordinary course of post' (a time period that has continued to increase in recent years) imposes unnecessary and increased time constraints on a credit provider's consideration of a hardship notice.

Also, given such responses to hardship notices are confirmatory only – and therefore not time critical as they confirm agreements that have usually already been made verbally – such constraints appear unnecessary and act against consumers' interests.

- We support ASIC's consideration of ways to streamline administration of the Financial Accountability Regime (FAR), which is now in effect across banking, insurance, and superannuation sectors. To further reduce complexity, ASIC could consider the following:
 - removing the requirement to include key functions to the FAR register. The introduction of key functions has led to additional administrative overheads (maintaining multiple lists and generating additional lodgements) with limited benefit in clarifying accountability owing to their broad and at times overlapping descriptions compared to FAR prescribed responsibilities.
 - align regulatory guidance to the legislated requirements for an accountability map and the FAR Regulator Rules by limiting the details of reporting lines to the role the accountable person reports to (rather than also including the roles reporting into an accountable person). Meeting the current regulatory guidance has resulted in more than double the number of map lodgements than would otherwise be required.
 - streamlining the APRA Connect portal for FAR lodgements for group entities with more than one accountable entity (e.g. enabling single sign-in across accountable entities for authorised users). For Groups with numerous accountable entities, lodging a FAR return for one simple change applying to all accountable entities is a cumbersome process with the same information being logged multiple times and with the administrator needing to log in and out of each entity, thereby increasing the administrative complexity and cost.
 - adding reporting functionality to APRA Connect to enable accountable entities to download transaction history reports by time period or by accountable person or by form type.
 - opportunities to reduce duplication for in-scope entities, particularly in relation to the fit and proper and responsible manager regimes. APRA has already taken steps to align its fit and proper framework with FAR reporting, and we encourage ASIC to coordinate with APRA to reduce regulatory burden and improve consistency.