



Stockbrokers and Investment  
Advisers Association

Serving the interests of investors

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Dear Sir/Madam

## Report 813: Regulatory Simplification

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants, and they provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found [here](#).

Thank you for the opportunity to provide feedback on *Report 813: Regulatory Simplification* (Report).

### Executive summary

- While we welcome ASIC's work in simplifying regulation and attempts to ease the regulatory burden, reduction of regulatory complexity will not be achieved without implementing the recommendations of the Australian Law Reform Commission's (ALRC) review of the Corporations and Financial Services Legislation.
- Significant changes to the legislative framework are the government's responsibility. SIAA strongly supports the implementation of the ALRC recommendations and we urge ASIC to continue advocating to government the importance of continuing this important work of reform.
- Without this legislative reform, it will be challenging for ASIC to make potential

improvements proposed in the Report that will result in the content of its Regulatory Guides being any simpler or more practical. Changes to Regulatory Guide naming and numbering would impose significant work on our members with no reduction in regulatory complexity and we do not support the proposal for these changes for this reason. We would support such changes if they arose from reform simplifying the legislation.

- A key reason stakeholders prefer prescriptive guidance is the complexity of the underlying law that the guidance is seeking to explain as well as the severe penalties imposed for non-compliance. Without reform of the underlying law, we do not consider that there will be appetite amongst ASIC's regulated population for less specificity in its guidance.
- SIAA has long raised its concerns about ASIC's guidance outlining its expectations of compliance with the law that exceeds what the law requires and we consider that in certain cases ASIC has not struck the right balance between providing sufficient clarity to support compliance and allowing flexibility for entities to apply the law in a way that is proportionate to their business model and circumstances. ASIC should not be using regulatory guidance to make law and impose more onerous obligations on its regulated population than those legislated by Parliament. ASIC *Information Sheet 283 Supervising your representative's business communications* is an example of this.
- The primary law is the best place for general principles while detail and prescription is best placed in legislative instruments. A recent example of regulatory complexity resulting from detailed and prescriptive requirements being included in primary legislation is the Ongoing Fee Arrangement provisions.
- There are many examples where a 'kitchen sink' approach to legislation has resulted in unnecessary complexity as Parliament or ASIC are later forced to carve out exceptions. An example of this is the critical business services provisions of the Market Integrity Rules.
- The Market Integrity Rules in their current form were largely adopted by ASIC from ASX Market Rules during the transfer of supervision in 2010. There are many rules that require reform, including the provisions regarding buybacks.
- Constant changes to ASIC Connect over the past few years have imposed a significant administrative burden on licensees. Updating advisers' details via ASIC Connect is cumbersome, costly and time-consuming. The modernisation work on ASIC Connect should be prioritised due to the large amounts of information that licensees are required to provide and the costs involved in doing so.
- We recommend that ASIC develops a safer way for licensees to transfer documents they are providing in response to RFIs and notices such as by way of ASIC's portal (the most secure) or via large file transfer. Currently, licensees are sending documents by way of email which is insecure.
- SIAA recommends that ASIC strongly urge the government to undertake a fundamental review of the reportable situations regime that takes into account the impact of the legislation on licensees. We consider that the reportable situations regime should be limited to those breaches that impact consumers in a meaningful way, rather than those that simply generate regulatory noise.

- A worrying and significant issue for the financial advice industry is the spate of recent decisions by AFCA that it will treat self-managed superfunds as retail clients unless they hold at least \$10 million in net assets. ASIC urgently needs to take action on this issue as AFCA's current approach is in direct conflict with ASIC's no action position and clarity is needed for the financial services industry.

## Overview

In its summary report *Confronting complexity: reforming corporations and financial services legislation* (Report 141 November 2023), the Australian Law Reform Commission (ALRC) described Australia's corporations and financial services legislation as follows:

*After more than 20 years of development, the legislative framework for corporations and financial services regulation is no longer fit for purpose. The existing legislative framework is unnecessarily complex, and complexity only continues to accrue. Parts of the legislative framework have variously been described as 'porridge', 'obscure and convoluted', 'shrouded in obfuscation', and likened to a 'maze'. The tools used to build and maintain the legislative framework — such as notional amendments, conditional exemptions, and proliferating legislative instruments — often create more problems than they aim to solve. In short, the legislation is ripe for reform.*

The ALRC identified the following problems:

- An unnecessarily complex legislative framework.
- 1,200 notional amendments.
- Poorly structured legislation.
- An incoherent legislative hierarchy, meaning anything could be anywhere.
- Fundamental norms obscured by excessive prescription.
- Unnecessary costs.

The solution, proposed by the ALRC in its 58 recommendations, aimed to achieve legislation that is easier to find, navigate and understand by:

- Restructuring and reframing financial services legislation.
- Applying a principled model to the legislative hierarchy.
- Clearly communicating fundamental norms.
- Making offences and civil penalties more visible.
- Making definitions easier to find and understand.

Unfortunately, this work has not been done and Australia remains stuck in the confusing maze of this legislative framework.

While we welcome ASIC's work in simplifying regulation and attempts to ease the regulatory burden, without implementation of the ALRCs recommendations by Parliament, reduction of regulatory complexity will not be achieved.

Significant changes to the legislative framework are the government's responsibility. SIAA strongly supports the implementation of the ALRC recommendations and we urge ASIC to continue advocating to government the importance of continuing this important work of reform.

### Specific feedback

We have provided specific feedback on various questions which we include below.

#### Section 1 – Improving access to regulatory information

##### **Question 1: Has our new website improved searchability and access to useful information for you? Do you have any suggestions for further improvement?**

Our members are frequent users of the ASIC website and are adept at navigating it for the information they require. The changes that ASIC have made to its website to improve searchability and access to useful information have not impacted our members.

Our members have no comments on the look and feel of the new website and have no suggestions for further improvement.

##### **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?**

We agree that ASIC guidance is targeted at technical users such as our members.

While ASIC guidance is specific and complex, this reflects the complexity of the underlying regulatory provisions that the guidance is attempting to explain. The unnecessary complexity and labyrinthine provisions of the Corporations Act have resulted in the need for lengthy and detailed regulatory guidance to assist users navigate the law and understand their legal obligations. Without changes to the relevant legislation, it will be challenging for ASIC to make potential improvements proposed in the Report that will result in the content of the Regulatory Guides being any simpler or more practical.

#### **The naming and numbering of guidance**

We note that ASIC proposes adopting a naming convention for Regulatory Guides and dispensing with the sequential numbering system. A change to the numbering and names of Regulatory Guides would have a significant impact on our members. The current sequential numbering system has been around for a long time. Our members' policies, procedures, manuals and training materials contain references to the relevant Regulatory Guide numbers and names and often include hyperlinks to the Regulatory Guides on the ASIC website. Our members' internal documents would need to be updated if ASIC made the proposed changes to naming conventions and abolished sequential numbering with no resulting benefit. We consider that this change would be counter-productive as it would create confusion to regular users of the Regulatory Guides such as our members who refer to them by number. Without reform of the underlying law, these changes to Regulatory Guide naming and numbering would impose significant work on our members with no reduction in regulatory complexity. We do not support this proposal for change for this reason.

Our members, as regular users of ASIC guidance, understand the distinction between ASIC Regulatory Guides and Information Sheets and do not require any explanation for the difference between the two.

**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?**

We consider that the primary audience for Regulatory Guides are not consumers but technical users such as our members. The complexity of the Regulatory Guides needs to match the complexity of the underlying law. We also consider that most of the ASIC website is aimed at an audience of technical users. Guidance materials for consumers are better placed on the ASIC Money Smart website which is the website aimed at an audience of consumers and small businesses.

**Principles-based versus prescriptive guidance**

We note that some of ASIC's stakeholders prefer prescriptive guidance that sets out clear expectations for how the law should be applied in practice, arguing that this provides greater certainty and helps to reduce the risk of non-compliance while others prefer a more principles-based approach.

We consider that the key reasons stakeholders prefer prescriptive guidance is the complexity of the underlying law that the guidance is seeking to explain as well as the severe penalties imposed for non-compliance. Licensees need to clearly understand their legal obligations and have risk, legal, governance and compliance frameworks, policies and procedures in place to ensure that they comply. They require regulatory certainty to operate their businesses. Without reform of the underlying law, we do not consider that there will be appetite amongst ASIC's regulated population for less specificity in its guidance.

We agree that very specific guidance can risk implying that there are requirements to comply with above and beyond the legal provisions. SIAA has long raised its concerns about ASIC's guidance outlining its expectations of compliance with the law that exceeds what the law requires and we consider that in certain cases ASIC has not struck the right balance between providing sufficient clarity to support compliance and allowing flexibility for entities to apply to law in a way that is proportionate to their business model and circumstances.

***Example: Supervising business communications***

For example, we wrote to ASIC in September last year expressing our members' key concerns arising from ASIC *Information Sheet 283 Supervising your representative's business communications* that appeared to impose obligations on our members exceeding those required by law. The Information Sheet made it very clear that ASIC considered that Market Participants had obligations concerning all business communications which were defined by ASIC as "any written, voice or electronic communications used by market intermediaries and their representatives to carry on their financial services business." However, as we pointed out, this expanded definition was not a legal one, but one used by ASIC for the purposes of the Information Sheet and was so broad as to raise real issues with our members as to whether the obligations contained in the Information Sheet could be practically complied with or aligned with our members' legal obligations. Our members are not legally required to record via telephone lines or other electronic devices all conversations with clients. Only those Market Participants subject to the Futures Markets rules are required to do so. However, we pointed out that the reference in the Information Sheet to the Futures Markets Rule requirements alongside those applying to all other licensees had the result that anyone reading it

would reasonably form the impression that all licensees were required to record (ie take tape recordings of) all business communications. While the Information Sheet was meant to be an “issues to consider” document to assist Market Participants to comply with their requirements to maintain records of client order instructions it ended up containing expectations exceeding those imposed by law which confused and concerned our members. Despite our concerns being communicated to ASIC the Information Sheet remains unchanged.

As a regulator, ASIC should not be using regulatory guidance to make law and impose more onerous obligations on its regulated population than those legislated by Parliament.

**Question 4: Do you think the small-company and financial advice regulatory roadmaps are helpful? Would you suggest any improvements?**

We limit our feedback to the financial advice regulatory roadmap.

We consider that to be useful, the roadmap needs to cross-reference the relevant provisions in the Corporations Act and the various Regulatory Guides. The current document is currently more a flow chart than a document that signposts a user’s legal obligations.

The roadmap contains an error. It currently states: *Individuals and businesses that give financial product advice must meet laws that aim, among other things, to ensure that those giving advice.....will act in the best interests of their clients.*

As the provision of general advice does not require the advice provider to act in the client’s best interests the roadmap needs to be amended to explain the difference between personal and general advice at an earlier stage of the document.

As we highlighted in response to Question 2, it is challenging to reduce the complexity and length of guidance in the context of the current complex regulatory provisions. Attempting to produce shorter documents may result in over-simplification of complex issues.

**Question 5: Should we consider piloting additional roadmaps? If so, for which sectors?**

We have no comment on this question other than to repeat our view that to be useful roadmaps need to include signposts to legislative provisions and Regulatory Guides.

**Question 6: Would alternative formats of the regulatory roadmaps be helpful (for example, hard-copy versions or podcasts)?**

We consider that providing guidance in alternative formats is a useful way to communicate information more broadly. However, these need to be additional formats available for reference, and not replacement formats for the written guidance.

**Section 2: Reducing complexity in regulatory documents**

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

This part of ASIC’s Report highlights the complexity of the regulatory framework that our members must navigate on a daily basis with around 273 legislative instruments in place to provide relief, exemptions or modifications to the law ASIC administers. While we welcome ASIC’s commitment to reducing regulatory complexity and support the proposed best-practice drafting principles, only

Parliament can pass the legislation needed to simplify and clarify the law because it is the Corporations Act that urgently requires reform.

### **The placement of detailed prescriptive rules**

We agree that adopting general principles rather than detailed prescriptive rules is the best way to address issues as general principles are more likely to remain relevant and can evolve as the market environment changes. However, we consider that the primary law is the best place for general principles while detail and prescription is best placed in legislative instruments.

#### ***Example: Ongoing Fee Arrangements***

A recent example of regulatory complexity resulting from detailed and prescriptive requirements being included in primary legislation is the Ongoing Fee Arrangement provisions. The detail of what information must be included in a fee consent form (including the account number of the account from which the ongoing fee was deducted) is included in section 962T of the Corporations Act. The consequences of the omission of an account number from the fee consent are severe – the fee consent form is considered invalid and the Ongoing Fee Arrangement is terminated. The deduction of fees in such a situation is considered a breach of the Corporations Act requiring licensees to lodge breach reports and attracting a civil penalty.

This has resulted in practical difficulties for the entire industry as the detailed and prescriptive provisions did not account for how business operates in practice. When a new client is onboarded by financial advice licensees, many clients choose to hold their assets on a third-party platform. As part of the onboarding process the client signs the Ongoing Fee Arrangement and fee consent at a time when the account number of the third-party platform provider has often not yet been generated. The generation of the third-party platform provider account number is outside the control of financial advice licensees and may not have been created by the time the client signs the original documentation. The legislation assumes that the onboarding process and the issue of the account number takes place at the same time. This has not been the case and resulted in many fee consents being left blank and later completed with the relevant account number when it became available.

Because of the severe consequences of the failure to include the account number in the fee consent form ASIC issued a no-action letter for Ongoing Fee Arrangements entered into after 10 January 2025. The industry has been required to ‘re-paper’ clients who entered into an Ongoing Fee Arrangement after 10 January 2025 where an account number was not included in the consent.

What is so dispiriting is that these provisions were intended to reduce red tape but resulted in additional red tape. The remediation process imposed a significant burden on our impacted members who were required to undertake additional administrative work to address a technical breach. The affected clients had already consented to the terms of the agreement by signing the original Ongoing Fee Arrangement and the fee consent, albeit without the exact account number being included on the fee consent at the time. The clients were made aware of the account number shortly after entering into the Ongoing Fee Arrangement in any case. The lack of an account number on the original fee consent did not cause any consumer detriment or impact investor protection, nor did it mean that clients were not properly informed of the arrangements they have agreed to. Clients suffered no loss.

The remediation process resulted in our members incurring compliance costs both to conduct the remediation and to report the breach to ASIC. While we have not received a detailed breakdown of costs that were incurred by our members arising from this remediation process, we have reason to expect that they were significant.

ASIC would have received large numbers of breach reports from licensees and platform providers providing no intelligence value or benefit to ASIC. These costs will ultimately be borne by SIAA's members via the ASIC Industry Funding Model.

Licensees have now had to modify their longstanding onboarding processes for clients with an Ongoing Fee Arrangement, creating ongoing confusion for clients, who will now in many cases have to go through multiple onboarding processes (one for opening an account and another for agreeing to fee arrangements). Where an account number is not available from the third-party platform provider as part of the initial client onboarding process, licensees have to arrange for the client to come back to sign the client consent at a later stage. This is a very inefficient process and will add to the already costly exercise of providing financial advice.

This is an example of where the fee consent detail should have been included either in guidance or a legislative instrument that was tailored to industry practice.

### **Minimising the use of exceptions to general principles**

We agree that the use of exceptions to general principles should be minimised where possible.

There are many examples where a 'kitchen sink' approach to legislation has resulted in unnecessary complexity as Parliament or ASIC are later forced to carve out exceptions.

#### ***Example: Critical business services***

An example of this is the *critical business services* provisions of the Market Integrity Rules under which participants are required to have adequate arrangements to ensure the resilience, reliability, integrity and security of their critical business services, including when those services are provided by way of an outsourcing arrangement. The obligations that flow from identifying a service as a critical business service are significant, particularly those relating to outsourcing. For example, participants are required to ensure that their agreements with service providers include specific terms that are impractical when dealing with large providers that use standard form agreements where there is little (if any) scope to add additional terms.

While the Market Integrity Rules did not specify telephony, power and e-communication services as critical business services, ASIC Regulatory Guide 265 provides that *Relevant infrastructure that delivers or supports critical business services may include telephony, power and e-communication services*. This broadened the scope of what participants needed to consider as a critical business service. As a result of the additional complexity created by this approach ASIC has recently granted class waivers that provide relief from some outsourcing arrangement requirements, where Market Participants may have classified large infrastructure (supply of energy or communications services) as critical business services. ASIC is also making minor changes to Regulatory Guide 265 Guidance on ASIC Market Integrity Rules for participants of securities markets and will notify industry when these are published.

This is a perfect example of the regulatory complexity that occurs when a broad approach is taken that ASIC has to 'row back' by providing regulatory relief.

We have pointed out to ASIC that it needs to make further carve-outs from the outsourcing requirements for services provided by globally significant providers such as a CrowdStrike or Microsoft as it is impractical to expect that our members can negotiate standard terms with a provider such as Microsoft.

Our member feedback is that rather than drafting for the majority and limiting exceptions, the preferred approach is to ensure that any exceptions are reasonable and there is awareness from the regulator of the potential unintended consequences that the drafting has on the minority.

**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.**

We have no comment on these proposals.

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

We have no comment on these proposals.

**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?**

The Market Integrity Rules in their current form were largely adopted by ASIC from ASX Market Rules during the transfer of supervision in 2010. There are many rules that require reform, including the provisions regarding buybacks.

***Example: Buy back rules***

Market Integrity Rule 5.14.1 has the impact of locking individual clients out of receiving advice on a buyback when their broking firm is acting for an issuer undertaking a buyback.

Our members who are Market Participants and provide advice to their clients have provided feedback that the clear conflict between the prohibition on providing a client with selling advice contained in MIR 5.14.1 and the obligation under section 961B of the Corporations Act to act in the client's best interests is a real issue for the provision of services to both their individual and issuer clients.

MIR 5.14.1. predates section 961B to act in the client's best interests as well as the licence obligations to have adequate arrangements for the management of conflicts of interest in section 912A (1) (aa) of the Corporations Act. The original rule prohibiting selling advice was contained in ASX Market Rule 20.5, introduced on 11 March 2004 (amended 28 November 2005), and was transferred to ASIC as part of the transfer of supervision in 2010.

MIR 5.14.1 is not limited in application to retail clients. Its application to wholesale clients causes frustration on the part of both advisers and clients as advisers are unable to provide selling advice to their clients on the buyback. Depending on the situation this can cause meaningful difficulties should a client require an advice service related to specific buyback securities. This is particularly the case as the prohibition is on the provision of 'any advice' – this includes both personal advice and general advice.

SIAA provided this feedback to ASIC in July 2024 and recommended that the relevant Market Integrity Rule be amended. We pointed out that it is hard to argue against changing MIR 5.14.1. Essentially, it creates a situation where certain investors are failing to receive advice concerning an on-market buyback. In particular, retail clients who are reliant on their adviser to advise them of the buyback and whether to sell into it are prevented from receiving this important advice if their broker is acting for the buyback issuer.

One of our member firms has provided us with an example of where the existing rules are preventing clients from receiving advice. Broker A is acting for an issuer (Company B) on a buyback. Broker A has a client who is the widow of a former director of Company B who has recently died. The widow is the executor of her late husband's estate, which contains a large parcel of shares in Company B, and needs advice on how to deal with the estate's assets. A key question will be whether to sell or transfer the shares in Company B. Broker A should be able to manage its conflict of interest in a way that will enable it to provide the client with advice in a way that satisfies the best interests duty as well as act for Company B in the buyback. Because of the current Market Integrity Rules, Broker A is unable to advise the widow to sell or transfer the shares in Company B into the buyback and must refer her to another firm to receive advice.

We consider that amending the Market Integrity Rule would be a 'quick win' for ASIC and would provide for regulatory simplification.

We also note that ASIC's response when we raised this issue was to request significant additional information from our members that in itself would have created a regulatory burden to comply with. We recommend that ASIC amend the Market Integrity Rule without imposing additional regulatory burden on our members.

### **Section 3: Making it easier to interact with ASIC**

**Question 11: With respect to interacting with ASIC, other than the work we have outlined, is there anything else we should prioritise?**

#### **A fragmented experience**

Our members are frequent users of ASIC Connect and the ASIC Regulatory Portal.

We agree that interactions with ASIC are fragmented, taking place across multiple portals, each with its own purpose and access method. This makes it harder for our members to meet their regulatory obligations efficiently. We also agree that inconsistencies and limited integration across portals make it difficult to complete tasks smoothly, particularly for those managing multiple roles or entities.

Our members have highlighted that dealing with multiple portals result in duplication of work. For example, if one of our members needs to update its address details it has to access both ASIC Connect as well as the ASIC Regulatory Portal (to update the address details on its AFSL). This work may also have to be undertaken by different members of staff as some staff members have access to ASIC Connect and others have access to the ASIC Regulatory Portal.

We note that ASIC is undertaking a multi-year program of work to modernise its platforms to consolidate ASIC's many external portals into one ASIC portal. This work is well overdue and needs to be undertaken on an urgent basis.

### ***Example: The problems with ASIC Connect***

ASIC Connect is the portal our members access to update their advisers' details. These details flow through to the Financial Advisers Register (FAR). They report that there has not been much change to the look and feel of ASIC Connect since it was introduced in about 2001. Licensees are charged \$37 to update or amend advisers' details and \$60 to add a new adviser. Updating advisers' details is cumbersome, costly and time-consuming. The portal is clunky and is known to crash.

Recently, ASIC has urged licensees to urgently review the accuracy of the information on the FAR regarding their financial advisers intending to provide personal advice to retail clients from 1 January 2026 due to concerns that, based on current information on the FAR, at least 3,459 financial advisers may be unable to provide advice after 31 December 2025 as their details do not support compliance with either the experienced adviser pathway or the approved qualification pathway.

As part of the transition, ASIC removed information about financial advisers accessing the experienced provider pathway and their education/qualifications from the FAR and placed it into a temporary dataset accessible via a link on the ASIC website. We assume this was done to cleanse the data that was on the FAR to ensure that going forward it was accurate and reflected the updated requirements. At the moment, this is a one-off, point-in-time dataset, and current as at 16 September 2025. If a financial adviser has been appointed and/or had their details updated on the FAR after ASIC prepared the dataset, these details may not appear in the spreadsheet. In any event, this process has created confusion with our members voicing frustrations to us as to why they are unable to access their advisers' accurate information on the FAR and having to be reminded that these details (as of 16 September 2025) can be found in the temporary dataset. This highlights:

- The administrative burden placed on licensees resulting from constant changes to ASIC Connect over the past few years. Licensees have had to review and continually update adviser records each time ASIC changes how information needs to be recorded.
- The limitations of the ASIC register. The FAR now contains much more information than before and licensees are required to update changes to these details within 30 days.

The modernisation work on ASIC Connect should be prioritised due to the large amounts of information that licensees are required to provide and the costs involved in doing so.

### ***Example: Lodgment of IDR data***

We have received feedback about issues our members have experienced lodging their IDR data. If there is an error in the file, it is rejected but the licensee is not immediately notified that the data has not been lodged.

**We recommend** that changes be made to the process so that licensees are alerted immediately if their lodgement was unsuccessful.

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

We have no feedback on this issue.

**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 have no further feedback on this matter.

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

We continue to receive feedback from our members that ASIC's information requests are all-encompassing and require our members to undertake a significant amount of work to comply with them. A recent example was ASIC's Request For Information on client onboarding processes. This request was issued to quite a few of our members who advised that its terms were very broad and captured data held in many different systems. It was not possible for our members to simply push a button and retrieve the data that was sought.

SIAA has previously provided feedback to ASIC on the importance of engaging with our members on the data it intends to collect before issuing notices. This helps ensure that the data collected is accurate, relevant and consistent and importantly, ensures that requests are practical and proportionate. We encourage ASIC to continue with this important engagement and to increase its understanding of the impact that its data requests have on our member firms' operations.

**We recommend** that ASIC develops a safer way for licensees to transfer documents they are providing in response to RFIs and notices such as by way of ASIC's portal (the most secure) or via large file transfer. Currently, licensees are sending documents by way of email which is insecure.

We agree with ASIC's existing practice of maintaining a blackout period during the Christmas to New Year closure during which it would be extremely challenging for our members to respond.

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

Our members usually engage with ASIC via their ASIC compliance representative. No issues were raised concerning this form of interaction.

**Section 4: Simplification through law reform**

SIAA strongly supports efforts by government to reduce regulatory burden. We are pleased that ASIC supports reducing red tape and simplifying existing laws. We agree that simplifying financial services laws will help promote innovation, productivity gains and increased competition allowing companies to focus more on providing services and less on compliance burdens.

We welcome ASIC's work with Treasury on areas of the law that may benefit from simplification. However, we would be concerned if that simplification work was limited to the reportable situations regime and substantial holding notices. As the Australian Law Reform Commission concluded, all of Australia's financial services laws require fundamental simplification to achieve a reduction in the compliance burden.

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

We have no feedback on proposed changes to substantial holding notices.

***Reportable situations regime***

We agree that the reportable situations regime has generated a significant compliance burden and is complex for all licensees, not just smaller licensees.

We note with interest that ASIC admits receiving a large volume of reports about one-off and trivial matters that are of limited regulatory value and that there is mixed compliance by licensees.

This was one of the reasons why SIAA objected so strongly to ASIC's proposal to use licensees' reportable situations data to publicly 'name and shame' them.

The reportable situations regime is an example of legislation that took a maximalist approach to what breaches would be reportable. Initially the reportable situations regime was so broad that it would have required our members to report each breach of the Market Integrity Rules as they were considered a core obligation. These are typically high volume but low impact breaches that would have rendered the legislation as unworkable. While, the regulations exempted breaches of these provisions from the definition of a core obligation, the regulatory burden of the regime has been so great that ASIC has been forced to provide relief from having to report various breaches.

Our members' feedback to the most recent consultation was that ASIC's proposed exemptions to the regime were so narrow that licensees would be unlikely to rely on them given the requirements that had to be met, namely:

- the breach has been rectified within 30 days from when it first occurred (this includes paying any necessary remediation), and
- the number of impacted consumers does not exceed five, and
- the total financial loss or damage to all impacted consumers resulting from the breach does not exceed \$500 (including where the loss has been remediated), and
- the breach is not a contravention of the client money reporting rules and clearing and settlement rules.

We cited a typical reportable situation where an error has been made in website material which is assessed as having no financial impact on consumers. In that case, the proposed relief would not apply and the licensee would be required to report because the website error is generally available to potentially hundreds or thousands of clients. This is the type of incident which gives rise to many reports that are of limited benefit due to the minimal impact the breach has on consumers.

To be useful, we recommended that the relief be re-worded so that the requirement for the number of impacted consumers to not exceed five be removed. This would reduce the reporting obligation in a more meaningful way for licensees but would not compromise consumers as the breach rectification and financial loss or damage requirements would remain. Unfortunately, our recommendation to remove the requirement that the number of impacted consumers not exceed five was not accepted.

We note that significant changes to the legislative framework is the government's responsibility and ASIC supports law reform in this area. We consider that the legislation requires reform. Further tweaking of the regime through regulatory instruments is not sufficient.

**SIAA recommends** that ASIC strongly urge the government to undertake a fundamental review of the reportable situations regime that takes into account the impact of the legislation on licensees. We consider that the reportable situations regime should be limited to those breaches that impact consumers in a meaningful way, rather than those that simply generate regulatory noise.

We have obtained initial member feedback on changes to the regime and have the following recommendations:

- The time in which licensees have to report should be changed from 30 days from when the situation first occurred to 30 days from the date on which the breach was detected. This reflects the reality that licensees cannot report situations of which they are not aware and that time should only start to run once the breach has been detected.
- The requirement to update a reportable situation after six months be removed. For our members, breaches can be complex, require more than six months to resolve, but are typically completed within 12 months. This results in our members having to make the initial report within 60 days, lodge the six-monthly update and then report once the situation is resolved. Removing the six-monthly update (particularly for the first year period) would reduce the reporting burden associated with each reportable situation.
- Currently, if an adviser provides a Record of Advice, and the licensee later identifies that a Statement of Advice should have been provided to the client instead, the licensee is required to report the situation as a breach and provide remediation to the client. In a single instance, the harm is corrected through additional disclosure of any missing elements, however the reporting obligation adds additional workload for little regulatory benefit. Change should be made to the provisions so that breaches such as this are not caught up in the regime.

**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?**

#### ***SMRs and SARs***

Some members report that they have been advised by ASIC to report to it the information they report to AUSTRAC via the SMR resulting in a duplication of notifications. It would greatly reduce regulatory burden on licensees if they could report once using one portal and for that information to be shared by both ASIC and AUSTRAC.

#### **Concluding questions**

**Question 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?**

**SIAA recommends** that ASIC prioritise the modernisation work on ASIC Connect and the ASIC Regulatory Portal due to the large amounts of information that licensees are required to provide and the costs involved in doing so.

**We also recommend** that ASIC strongly urge the government to undertake a fundamental review of the reportable situations regime and to implement the recommendations of the ALRC review of Chapter 7 of the Corporations Act.

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

We note a survey of FSC members earlier this year that found it costs \$3,800 in extensive documentation, senior executive time and auditor reviews every time a minor breach is reported to the ASIC Regulatory portal<sup>1</sup> under the reportable situations regime. This is just one example of the significant regulatory cost burden imposed that the current legislative regime imposes on licensees.

**Question 20: Are there any additional areas of simplification you would like us to consider?**

Our members have provided the following list of areas of simplification that they would like ASIC to consider.

***Treatment of self-managed superfunds as retail***

A worrying and significant issue for the financial advice industry is the spate of recent decisions by AFCA that it will treat self-managed superfunds as retail clients unless they hold at least \$10 million in net assets. AFCA has stated that it will hear and determine these complaints even where the self-managed superfund has been treated as a wholesale client by the relevant licensee and the self-managed superfund has invested in wholesale financial products.

The determination by AFCA that a self-managed super fund holding net assets of less than \$10 million as retail is in direct conflict with ASIC's statement of August 2014 that it will take 'no action' where a trustee with net assets of \$2.5m or more is treated as a wholesale client, and where the product or service provider has obtained an accountant's certificate to this effect.

SIAA has raised this issue with Treasury and government and highlighted the potential impact on the industry of AFCA's approach to categorising wholesale self-managed superfunds as retail. Self-managed superfunds typically hold net assets well below the \$10 million threshold, due to the contribution rules, so we are of the view that these determinations will impact close to 100% of wholesale self-managed superfunds.

The result of AFCA's determinations is that any self-managed superfund client in an underperforming wholesale-only product could claim that the investment was not appropriate and bring a claim to AFCA that it will accept. If a series of these complaints flow through to the CSLR, the impact on the personal financial advice sub-sector will be profound.

These determinations also have significant effects on the operations and risk management of our member firms who are entitled to rely on ASIC's 'no action' letter of August 2014 as the basis for categorising clients as wholesale.

This is an issue that ASIC urgently needs to take action on as AFCA's current approach is in direct conflict with ASIC's position and clarity is needed for the financial services industry.

***IDR reporting***

Currently licensees are required to report IDR data every six months. Changing this requirement to report annually would immediately result in a reduction of regulatory burden.

***Professional year requirement to provide written notification***

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<sup>1</sup> Chris Dastoor, 'Thousands set to report fee consent breaches despite ASIC relief,' *Professional Planner*, 31 July 2025.

Part 10 (5) of the *Corporations (Work and Training Professional Year Standard) Determination 2018* requires the licensee to ensure that, before a PY candidate has any direct or indirect interaction with a retail client, the client is informed in writing:

- that the candidate is undertaking supervised work and training; and
- of the name and contact details of the person's supervisor.

We have received feedback from members that this is a cumbersome and time-consuming requirement that is difficult to comply with, particularly as the provision is enlivened by 'indirect interaction with a retail client'. It is also not practical. When a PY candidate attends a meeting with their supervisor and the client, it would be more logical for the PY candidate or the supervisor to tell the client why the PY candidate is meeting with them rather than hand them a written notification.

SIAA recommends that this provision be removed from the legislative instrument as it is unnecessary. Licensees are already subject to significant obligations when providing financial advice to retail clients.

### ***Legislative changes***

As stated previously, we consider that regulatory complexity will not be removed unless there are changes to the primary legislation. While we note that amending legislation is outside of the scope of ASIC's report, we include our members' following suggestions on reforms that would improve and simplify the regulatory framework for financial advice.

### ***Definition of wholesale client***

It would be useful to consolidate the definitions of wholesale client that are within the Corporations Act and adopt consistent terminology as to what constitutes a 'sophisticated investor'.

### ***Delivering Better Financial Outcomes – Tranche 1 – FSG disclosure***

We note that following the passing of Tranche 1 of the Delivering Better Financial Outcomes legislation ASIC registered the *Corporations (Amendment) Instrument 2024/809* to extend the FSG website disclosure provisions to the financial service of dealing in a financial product to a client for the purpose of implementing financial product advice that the providing entity provided to that client.

This amendment was required as the original provisions only enabled advisers and licensees to rely on the FSG website disclosure provisions if they provided general or personal advice and did not extend to dealing in a financial product for the purposes of implementing financial product advice. As we pointed out to Treasury at the time, the amendment was unlikely to be helpful to our members as it only extended the website disclosure provisions to dealing in a financial product for the **purposes of implementing financial product advice**. Our member provide a range of financial services in addition to financial product advice, and in particular, execution-only services without financial product advice having been provided and the instrument did not cover the situation where a firm provides execution-only services to a client. We pointed out at the time that limiting the FSG reform provisions to situations where advice is provided actually increases the complexity for licensees, particularly those that provide financial services in addition to financial product advice.

As stated in the Quality of Advice Review Final Report, given FSGs are required to be provided by financial services licensees and their authorised representatives whenever they provide a financial

service, and not merely when they provide financial product advice, there is merit in undertaking a comprehensive review of the FSG requirements in the future. We recommended that Treasury undertakes a review of the FSG requirements to ensure the website disclosure provisions apply equally to all financial services, irrespective of whether financial product advice is provided or not, in order to clarify and simplify the FSG provisions. Such a review would be simple and straightforward, limited as it would be to the FSG requirements of the Corporations Act.

**SIAA recommends** that this review be undertaken as soon as possible.

### ***Delivering Better Financial Outcomes – Tranche 2 – advice disclosure***

The current exposure draft Bill containing the proposed amendments to the Statement of Advice provisions falls short of enabling more Australians to receive advice as it merely tinkers around the edges of the existing requirements. It does not deliver on the government's intent of a clear, concise and fit-for-purpose advice record. This is unfortunate because it is unclear when another opportunity to change the advice process will occur.

Our members have undertaken a comparison exercise between the exposure draft Bill and current requirements. They report that there is very little change to their regulatory obligations resulting from the Bill. This is a disappointing outcome from two years of regulatory review.

If the Bill proceeds in its current form our member firms will be required to re-engineer their systems and processes to comply with the change of name from Statement of Advice to Client Advice Record, including changes to their Statement of Advice templates, that is, a regulatory obligation to cut and paste a name change. This will result in costs being incurred for very little, if any, gain in effectiveness or efficiency. If our members are required to make these changes, a dividend should be delivered to both advice providers and their clients.

It is important that the government achieves the important outcome of a principles-based record that is clear, concise, effective and assists the client to make an informed decision on whether to act on the advice. SIAA supports a principles-based guiding statement in legislation that clarifies that the advice record:

- is for the benefit of the consumer, not the regulator,
- will be based on the professional judgement of the Financial Adviser, and
- will relate to the advice that has been sought.

The record should not be used to parrot the client's objectives, financial situation and needs. We also consider that it is important that the advice relates to the client's stated advice needs, not **every** need they have.

Clearly more work needs to be done on the advice disclosure provisions in order to achieve these important outcomes.

A significant source of volume in statements of advice is the disclosure of common risks. The length of a statement of advice could be dramatically reduced if common risks could be referred to briefly in the document and the client referred to a more comprehensive explanation of these risks via a link to the licensee's website. **We recommend** this as a sensible and practical way to reduce the length of an advice document that could be implemented before the passing of the proposed advice disclosure provisions.

## Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours faithfully

A handwritten signature in black ink, appearing to be 'JF' followed by a stylized 'x' or 'fox'.

Judith Fox  
Chief Executive Officer