Law Council
OF AUSTRALIA

Business Law Section

13 August 2025

Australia Securities and Investments Commission

By email: rri.consultation@asic.gov.au

Dear Sir/Madam,

ASIC's Consultation on Proposals to Facilitate Digital Disclosure

1. This submission is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) in response to Consultation Statement 23: Proposals to Continue to Facilitate Digital Disclosure (**CS 23**), which was issued by the Australian Securities and Investments Commission (**ASIC**) on 9 July 2025.

2. The Committee thanks ASIC for the opportunity to provide feedback on CS 23 and for granting a short extension of time for this submission to be prepared.

Background

3. In CS 23, ASIC has released an updated draft of Regulatory Guide 221 *Facilitating digital financial services disclosures* (**RG 221**).

4. ASIC indicates that the proposed changes to RG 221 involve simplifying the drafting of the guidance, updating references to regulatory provisions, and updating the examples of digital disclosure to better reflect that ASIC does not mandate a particular method of digital disclosure.

5. ASIC has also proposed amendments to its good practice guidance for digital disclosure in Section D of RG 221, including through express references to certain relevant legislative obligations.

6. ASIC indicates in CS 23 that it proposes to remake the following legislative instruments (**Instruments**) for a period of five years:

   (a) ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647; and
   (b) ASIC Corporations (Removing Barriers to Electronic Disclosure) 2015/64.

7. ASIC has not provided draft versions of the proposed new legislative instruments.

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Submission

Instruments

8. The Committee agrees that the Instruments should be remade. The Instruments provide financial services licensees with essential relief to provide disclosure documents, reporting and notifications to their clients in the ordinary course of business through digital facilities.

9. The Committee also submits that the relief constituted in the Instruments is uncontroversial in nature and should ultimately be incorporated by Parliament into the *Corporations Act 2001* (Cth) as part of regulatory simplification and stewardship of Treasury portfolio laws.

10. The Committee notes that the 'publish and notify' method of communication facilitated by Instrument 2015/647 continues to be essential for transitioning financial services clients to the utilisation of standard electronic portals or apps, as is becoming more common with other essential services providers.

11. The Committee observes that, in the Exposure Draft of the *Treasury Laws Amendment Bill 2025: Delivering better financial outcomes* (which Treasury released for public consultation on 21 March 2025), proposed section 950E of the Corporations Act would specify how targeted superannuation prompts could be given by superannuation trustees to their members. This would include "displaying it on a website or digital application designed for the purpose of providing access to the person's superannuation account" (paragraph (b) of proposed s.950E). Draft proposed s.950E does not provide for the issuing of targeted superannuation prompts in any way agreed to by the member.

12. Notwithstanding the above, the Committee considers that the opt-out process attaching to the publish and notify mechanism in Instrument 2015/647 remains appropriate for mandatory disclosure, reporting and notification documents such as Product Disclosure Statements, Statements of Advice, periodic statements and significant event notices.

13. The Committee considers that it would be consistent with best practice in regulatory transparency to include draft instruments and explanatory materials when consulting on a proposal to make a legislative instrument.

RG 221 update

14. The Committee supports the drafting of updates and simplification to RG 221, subject to the following comments.

15. The Committee notes that the legislative references in the guidance for digital disclosure in Section D of proposed updated RG 221 in Attachment 1 to CS 23 include the following:

    (a) In Guidance item 6 on retaining copies of versions of digital disclosure, ASIC refers to the record-keeping obligations of financial services providers under specific provisions of the Corporations Act and the pro forma PF 209 licence condition. ASIC indicates that it considers the record-keeping responsibilities of providers are part of the duties of AFS licensees to do all

things necessary to ensure they provide financial services covered by their licence efficiently, honestly and fairly under s.912A(1)(a) of the Corporations Act; and

(b) In Guidance item 8 on additional messaging in electronic communications to clients about security risks such as phishing and internet scams, ASIC states that its guidance reflects the efficiently, honestly and fairly duty of s.912A(1)(a).

16. The Committee is concerned that somewhat piecemeal references to s.912A(1)(a) may be misconstrued. The guidance and measures in question may, for example, be considered sufficient to meet this obligation, regardless of the specific circumstances or changing risks over time.

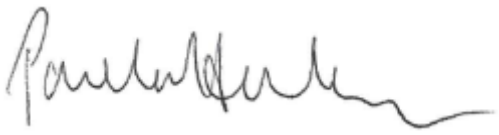
17. The Committee also considers that it would be appropriate for ASIC to issue centralised guidance for the management of information security risk by financial services licensees. This may assist in clarifying ASIC's expectations on the standards or frameworks for the management of technology and cyber security risks that ought to be instituted by licensees. Such guidance may primarily be in the context of the obligations under s.912A(1)(d) concerning adequate resources (including technological and human resources) and s.912A(1)(h) for adequate risk management systems.

18. The Committee also considers that it would be useful for RG 221 to, in addition, cover Division 2 of Part 1.2AA of the Corporations Act—at least to the extent that it concerns the use of digital methods to convey information and documents that are required to be given by issuers of financial products to their investors. The Committee is uncertain whether (and, if so where) ASIC has issued guidance on this topic.

Conclusion and further contact

19. The Committee is happy to be consulted further in relation to these matters. Please contact Co-Chair of the Committee Pip Bell [redacted] if you wish to further discuss any aspect of this submission or related matters.

Yours faithfully



Dr Pamela Hanrahan
Chair
Business Law Section