

# SUBMISSION

## ASIC CS 23 – Proposals to Continue to Facilitate Digital Disclosures

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**15 August 2025**

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15 August 2025

Dear Dr Brownbill,

### ASIC CS 23 – Proposals to Continue to Facilitate Digital Disclosures

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to this consultation by ASIC on continuing to facilitate digital disclosures.<sup>1</sup>

#### About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

#### ASFA's General Comments on the Proposals

In general ASFA supports the Australian Securities and Investments Commission's (ASIC's) proposals to facilitate digital disclosures.<sup>2</sup>

We note that, as outlined in the consultation documents, most of these changes seek to - 'simplif[y] the guidance without changing its substance.'<sup>3</sup>

ASFA welcomes this approach, especially as it is consistent with the view of ASIC Chair Joe Longo, who has previously endorsed the simplification of corporations and financial services law. In Mr Longo's speech to the ASIC Annual Forum in 2025, quoting from the Australian Law Reform Commission (ALRC's) report on that topic which said:<sup>4</sup>

*Corporations and financial services legislation has become unnecessarily complex. Regulated entities incur unnecessary costs when complying with their obligations. Consumers find it difficult to identify their rights. Lawyers struggle to advise their clients with sufficient certainty. Judges have become all too familiar with confronting the 'usual labyrinthine provisions of the Corporations Act.*

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<sup>1</sup> ASIC, CS 23 – Proposals to Continue to Facilitate Digital Disclosures ([July 2025](#)).

<sup>2</sup> ASIC consults on proposals to facilitate digital disclosure ([July 2025](#)).

<sup>3</sup> ASIC, Attachment 2 to CS 23: Draft RG 221—Summary of changes ([July 2025](#)), 2.

<sup>4</sup> Joe Logo (ASIC Chair), Keynote Address to the ASIC Annual Forum 2024: Bridging generations – regulating for all Australians' ([14 November 2024](#)).

Mr Longo went on to say:<sup>5</sup>

*[I]f we're to aspire to more effective regulation – regulation that's easier to navigate, and better achieves its intended outcomes – it's time to ask: is this working, and if not, what should be done?*

ASFA supports the digital disclosures framework because it is one practical way to achieve more effective regulation, as outlined by Mr Longo above.

ASFA notes that ASIC proposes to continue to facilitate digital disclosures via the following:

1. Updating *Regulatory Guide 221 on Facilitating Digital Financial Services Disclosures* ([RG 221](#)).<sup>6</sup>
2. Remaking two electronic disclosure instruments which are currently scheduled to sunset on 1 October 2025, these are:<sup>7</sup>
  - The *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647* ([Instrument 647](#));
  - The *ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649* ([Instrument 649](#)).

In broad terms, these three items under consideration have the following functions:

### **RG 221**

RG 221 is a guide for financial services providers that use (or plan to use) technology, including email and the internet, to deliver financial product and financial services disclosures to clients.

RG 221 seeks to achieve the following:<sup>8</sup>

1. explain how under Pts 7.6–7.9 of the Corporations Act 2001 (Corporations Act) most disclosures can be delivered digitally;
2. outline ASIC's view that in most cases it will be clear from the context that a client has provided or nominated their electronic address for the purpose of receiving disclosure under the Corporations Act, and no higher standard of consent is required to send to an electronic address compared to non-electronic methods;
3. describe the relief available under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to facilitate the delivery of disclosures by making the disclosure available digitally and notifying the client;
4. describe the relief available under ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 to remove potential barriers to more innovative disclosure; and
5. sets out ASIC's 'good practice guidance' on digital disclosure.

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<sup>5</sup> Joe Logo (ASIC Chair), Keynote Address to the ASIC Annual Forum 2024: Bridging generations – regulating for all Australians' ([14 November 2024](#)).

<sup>6</sup> ASIC RG 221 on Facilitating Digital Financial Services Disclosures ([29 March 2016](#)).

<sup>7</sup> Ibid.

<sup>8</sup> ASIC, Facilitating Digital Financial Services Disclosures ([29 March 2016](#)).

ASFA thanks ASIC for having provided both:

- the [new version](#) of RG 221 proposed; and
- a concise [summary of the changes](#), in comparison to the existing version of RG221.

The provision of this summary has facilitated the review process and we encourage ASIC to continue to do this in relation to future consultations updating other Regulatory Guides.

ASFA notes that the updates ASIC is proposing to RG 221 seek to:<sup>9</sup>

1. simplify the drafting of the guidance
2. update any outdated references to legislation, regulations, and legislative instruments
3. revise **Section D** of RG 221 to centralise guidance on digital disclosure practices and include references to relevant legislative obligations, and
4. update examples of digital disclosures methods to better reflect that ASIC does not mandate a particular method of digital disclosure.

ASFA supports the changes ASIC has proposed to RG 221, noting as ASIC rightly indicates that these proposals aim, in ASIC's words, to - 'simplif[y] the guidance without changing its substance.'<sup>10</sup>

### **Instrument 647**

Instrument 647 is made pursuant to sections 951B(1)(c) and 1020F(1)(c) of the Corporations Act.

The instrument includes provisions which do the following:

1. Defines the term 'nominated electronic means' and indicates that communications can be provided via these means if:<sup>11</sup>
  - both parties have agreed that communication can be via electronic means.
  - if the person providing the communication notifies the receiving person they will communicate via these means, and the recipient does not elect to opt out of this method of communication.
  - certain other circumstances apply as outlined in the instrument.
2. Permits the use of digital communications as outlined above is stipulated to apply to:<sup>12</sup>
  - Financial Services Guides and Statements of Advice (FSGs);
  - Product Disclosure Statements (PDSs);
  - Commonwealth Government Security (CGS) Depository Statements;
  - Additional information requested in respect of a PDS;
  - Ongoing disclosures, periodic statements and additional information required to be provided under Part 7.9 of the Act by an issuer of a financial product or trustee of a superannuation entity.

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<sup>9</sup> ASIC consults on proposals to facilitate digital disclosure ([July 2025](#)).

<sup>10</sup> ASIC, Attachment 2 to CS 23: Draft RG 221—Summary of changes ([July 2025](#)), 2.

<sup>11</sup> Pages 5-11 of Instrument 647.

<sup>12</sup> Pages 8-11 of Instrument 647.

3. Allows the use of electronic addresses supplied by employers to trustees of standard employer sponsored superannuation funds.<sup>13</sup>

ASFA supports all these items, as outlined above.

### **Instrument 649**

Instrument 649 is made pursuant to 951B(1)(c) and 1020F(1)(c) of the Corporations Act.

The instrument includes provisions which do the following:

- Section 5 regulates the page length for electronic PDS documents.
- Section 6 stipulates that the obligation to provide a copy of the PDS in Part 7.9 of the Corporations Act can be met via electronic means.
- Section 7 similarly modifies obligations under Parts 7.7 and 7.9 of the Corporations Act so that the words required to be used 'on the cover or near the front of' a physical PDS can be used 'near the beginning' of an online disclosure.

ASFA supports these items, as outlined above.

### **ASFA's specific recommendations**

**Recommendation 1** – ASFA recommends that the changes proposed to RG 221 should be adopted and also that both Instrument 647 and 649 should be remade so that their substance continues to apply.

**Recommendation 2** - As ASFA has advocated for in other submissions where primary legislation is amended by subordinate instruments issued by ASIC, we recommend that the allowances provided for by ASIC in Instruments 647 and 649 should be moved into the primary legislation.<sup>14</sup> This would render the law clearer and more accessible by consolidating it in one location.

**Recommendation 3** - In relation to the provision of digital disclosures, further consideration should be given to allowing innovative ways to provide disclosures, including through:

- visual representations - including images, illustrations, infographics etc rather than just words, noting superannuation is available to every Australian worker, across a broad spectrum of financial literacy levels, and innovative solutions like this can assist in maximising accessibility;
- provision of disclosures in modular ways, so that the target audience does not get overwhelmed by receiving too much information at once;
- how to best facilitate the use of technologies which allow for personalisation, in order to encourage engagement with the information being disclosed.

**Recommendation 4** – ASIC should consider the creation of a regulatory sandbox for innovative approaches to digital disclosures, so that regulated entities have an avenue through which they can test a potential approach with ASIC directly before going to the market at large, to clarify if that approach meets regulatory expectations. This could be done as part of an expansion of the Enhanced Regulatory Sandbox (ERS), which ASIC introduced from 1 September 2020.<sup>15</sup>

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<sup>13</sup> Page 11-15 of Instrument 647.

<sup>14</sup> See for example ASFA's Submission in relation to other ASIC legislative Instruments of [4 September 2024](#) at pages 3-4 and 6.

<sup>15</sup> ASIC, Enhanced Regulatory Sandbox ([viewed in April 2025](#)).

**Recommendation 5** – Even if the expansion of the ERS, put forward in recommendation 3 is not adopted, ASIC should consider establishing a direct hotline or other pathway for regulated entities to be able to test new ideas in respect of digital disclosures with ASIC prior to going to the market at large. This would allow innovative solutions which can assist members with varying members of financial literacy to be tested without regulatory risk.

**Recommendation 6** - ASIC should also include future updates to RG 221 with worked examples on common ideas/scenarios. This promotes a common understanding of how Section D of R G221 and the six Good Disclosure Principles for PDSs are applied for digital disclosures.

We thank you again for the opportunity to contribute to this consultation on ASIC's proposals to continue to facilitate digital disclosures.

If you have any questions on our recommendation or would like to discuss them further , please feel free to reach out to ASFA Policy Director, Sebastian Reinehr via 0474 704 992 or [sreinehr@superannuation.asn.au](mailto:sreinehr@superannuation.asn.au).

Yours sincerely

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