FINANCIAL ADVICE ASSOCIATION AUSTRALIA

27 February 2026

The Treasury

Email: MISregulation@treasury.gov.au

Dear Treasury,

Consultation – Enhancing oversight and governance of managed investment schemes

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to Treasury on the governance of managed investment schemes (MISs).

We note that the time allowed for this consultation was less than three weeks, meaning that organisations have had insufficient time to conduct research, engage with stakeholders or form consensus views with other peak bodies. The Office of Impact Analysis has recommended a minimum of 30 days for consultations, and we would like to see their Best Practice Consultation Principles applied more frequently. This would ensure that external organisations have sufficient time to provide thoughtful and well-researched responses.

The FAAA believes that the Shield and First Guardian collapses clearly demonstrate a need for change to the regulation and governance of Managed Investment Schemes. We would prefer to be undertaking this consultation with the full knowledge of what went wrong at Shield and First Guardian, along with a number of other recent collapses such as Australian Fiduciaries Limited and Remi Capital. We do not know the nature of the compliance plans for these four MISs, the existence of compliance committees or the failings of the governance arrangements that were in place. **We recommend that the Government or ASIC publish details, at the appropriate time, on the governance failings when an MIS collapse of a material nature occurs.**

The collapses of these funds, that appear to have been caused by a combination of negligence, fraud and mismanagement, will inevitably have a significant consequence for the financial advice profession, as virtually the only remaining way for the clients of these funds to be compensated, is for them to make a complaint about financial advice. These clients understand that there is little utility in making a complaint against the funds themselves or against any of the other stakeholders involved.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

Amongst the most significant factors impacting the ability of these clients to get justice is the fact that clients of MISs are prevented from making a complaint to AFCA about the management of a scheme or fund as a whole. AFCA Rule C1.5 is a major obstacle to these clients getting restitution from a fund, or at least having the ability to make a claim. It is essential that AFCA Rule C1.5 is removed to better allow clients to make complaints against MISs. Another important impediment is that unpaid determinations by MISs are excluded from the Compensation Scheme of Last Resort (CSLR).

Unfortunately, many Australians have suffered greatly as a result of the collapse of these funds, both from a financial perspective and an emotional perspective. Australians would like to see clear consequences for those who have caused so much harm.

It is the view of the FAAA that this consultation excludes some additional options that ought to be investigated, including the following:

- Substantially tighter approval processes for higher risk MISs.
- Stronger personal liability provisions for those operating MISs.
- The development of a more comprehensive data informed early warning system, involving super fund trustees, Responsible Entities (REs) and advice licensees to help identify issues in the financial services market, across areas such as distribution, growth and management.
- Greater controls and obligations with respect to wholesale trusts. ASIC has very little data on wholesale trusts, yet registered retail trusts can readily invest in unregistered wholesale trusts, where the obligations and transparency are much reduced.
- The inclusion of MISs within the scope of the CSLR, alongside reforms enabling AFCA to apportion blame for client losses across multiple parties where appropriate. At present, the financial advice sector is paying for client losses related to MIS collapses, irrespective of whether failures also occurred within the MIS. This anomalous situation urgently needs to be resolved, to ensure the sustainability of the CSLR.

In terms of a future governance model, we believe that the obligations of REs should reflect the complexity and risk of the MISs that they manage. The obligations should be much greater for higher risk MISs that invest in things like direct property, property development, business ventures, business lending, infrastructure etc – assets where there are not readily available markets and transparent pricing. Where the MIS is investing in more standard, market listed investments, then the obligations can be less substantial.

The key matter involving the greatest cause of loss for the clients of UGC is the Global Capital Property Fund (GCPF). As we understand it, GCPF was a company, not an MIS. We therefore argue that in addition to reforms to provide greater protections for investors in MISs, there is also a need to consider situations when a company is used as the vehicle for investment. More detailed analysis of this failure would be beneficial to determine what changes are required for corporate structures.

FAAA Recommendations

The FAAA has five key recommendations:

- **Reporting on Fund Failures.** We recommend that the Government or ASIC publish information on the reasons, including governance failings that have contributed to the collapse of funds.
- **Higher Compliance Plan Standards.** We recommend that the requirements for compliance plans are more clearly defined and the standard is raised.
- **Restriction on Related Party Transactions.** We recommend that the Government legislate to prevent related party transactions and related party investments in defined circumstances.
- **MIS Reporting.** We recommend that the Government introduce MIS recurrent and real time reporting to ASIC to help in the development of an early warning system for MIS failures.
- **Super Switching.** We recommend that the Government introduce a superannuation fund switching alert reporting regime.

We have responded to each of the consultation questions, however we are better positioned to comment on some, rather than others.

FAAA Feedback

Proposal 1: Enhance the regulatory framework for compliance

1. What are your views on proposals 1.1 to 1.4 to enhance the compliance framework for MISs?

The FAAA's response to proposals 1.1 to 1.4 is as follows:

1. We support the introduction of stricter compliance plan requirements. Compliance plans should be tailored to the specific nature of the MIS, including the investment strategy and significant risks. Incorporation by Reference should not be the means by which compliance plans are prepared.
2. Whilst we don't oppose proposal 1.2, we are conscious that this is a matter of lowering standards such that liability only attaches to material contraventions of a compliance plan. We believe that if the obligations of compliance plans are clearer, then complying will be less complex and challenging. We are also concerned that having some elements of the compliance plan subject to the liability framework, whereas others might not be, will add additional complexity. In conclusion, however, if it is felt that this will assist directors to focus on what is most important, then we are prepared to support this.
3. We support making the audit and assurance standards mandatory for the audit of compliance plans. Audit standards, as opposed to assurance standards, should apply. We would also like to see analysis published on whether MIS audits were effective in identifying material issues impacting MISs that collapsed and if failings in the compliance plan audit regime occurred then

why. It appears that very few issues are reported by auditors to ASIC, which is concerning given the prevalence of fund failures.

4. We support the requirement for REs to notify ASIC of the appointment, removal or resignation of compliance committee members. We would go further and suggest that REs should publish the names of the compliance committee on their website.

2. Should the framework for compliance plans be amended to include more specific content requirements?

We support greater clarity with respect to the specific content of compliance plans. This will help to ensure that compliance plans are developed to a higher standard and are more consistent (although subject to the need to be tailored to the specific nature of the MIS).

3. Who should set and enforce standards for compliance plan audits?

It is our view that ASIC should set the standards for compliance plan audits and enforce these standards. ASIC is the regulator for both MISs and auditors, and thus appears to be the most appropriate party.

4. Are any other changes required to strengthen the compliance framework?

In addition to more specific requirements with respect to the content of compliance plans and improved audit practices, we suggest that there is merit in consideration of a declaration regime to ensure that key personnel have carefully considered all matters that need to be assessed as part of the compliance plan.

5. What would the impacts of the proposals be, including compliance costs?

We are not in a position to comment on the impact or cost of these changes.

Proposal 2: Require a majority of external directors on the boards of responsible entities

The data on MISs shows that there are 3,587 MISs across 405 REs. This suggests an average of 8.85 MISs for every RE. We further note that through ASIC's work in 2025, it reviewed 50 REs, who were responsible for 45% of MISs. On the basis of the above market level data, this suggests that these 50 REs are responsible for around 1,614 MISs. This is an average of 32 MISs per RE. It is our view that this is a lot of MISs for one board to manage, particularly if they have a broad range of types of funds. As discussed above, it is our view that the governance obligations of the RE and the underlying MISs should vary in terms of complexity and risk. The number of MISs is most definitely a risk factor and should be taken into account in the design of the governance regime.

6. Should responsible entities be required to have a majority of external board members?

We believe that there is merit in considering a requirement for REs to have a majority of external board members, however depending upon the effectiveness of the compliance plan and the compliance committee, having the existing model of an alternative option for a compliance committee with a majority of external members still holds merit.

We believe that one issue that has not been addressed is whether a compliance committee would still be required for an RE that has a majority of external board members. If there was a requirement for all RE boards to have a majority of external directors, then this could imply that compliance committees are no longer required. In the context of the importance of the compliance plan, the average number of MISs per RE and the potential for higher levels of complexity in some MISs, we believe that compliance committees should be retained, even for those REs that have a majority of external directors.

7. Are there enough external directors available in Australia to meet this proposal?

We are not in a position to answer this question, however we are aware of views in the marketplace that this is a genuine issue.

8. Are any other changes required to address conflicts of interest and ensure independent oversight of MISs?

The management of conflicts of interest is critically important and evidently the failure to appropriately avoid or manage conflicts is a substantial contributor to the recent high profile fund collapses. With recent cases, we have seen examples of conflicts of interest in the following areas:

- Having related parties provide services to the MIS, some of which may not be necessary or are charged on a non-commercial basis.
- Having the fund invest in related companies or investments when this may not be in the interests of investors.
- Failing to follow appropriate processes when investing in related party investments or failing to ensure that suitable documentation is prepared and security is obtained where necessary.
- Appointing people to important roles who may not have the necessary level of expertise or meet the requirements with respect to fit and proper.
- All of the above not being adequately identified through the audit process.
- Breaches of all of the above not being reported to the regulator.

9. What would the impacts of the proposal be, including compliance costs?

We are not in a position to comment on the impact or cost of these changes.

Proposal 3: Prohibit responsible entities of registered MISs from conducting related party transactions, with limited exceptions

Related party transactions and investing in related party entities is a very substantial risk factor for MISs, which has been demonstrated by cases like Dixon Advisory, United Global Capital, Shield and First Guardian. Clearly in these cases the ability to invest in related party companies or investments and the ability to contract related parties to provide services was highly problematic. This of course does not mean that every related party contract or related party investment is necessarily a problem for investors. This suggests that the way to solve this is to either define a detailed list of exceptions or alternatively to define what types of related party transactions and investments should be banned. We favour the second option to identify what must be avoided.

10. Should responsible entities of MISs be prohibited from investing or lending money to companies that are controlled by a member of the responsible entity's board or companies that are related bodies corporate of the responsible entity? What exceptions would be required?

We do not necessarily see a problem in an MIS investing in another fund that is within the same group and has the same RE, provided it is in the interests of investors. We would have concerns if the investment is in a fund where the linkage is to an RE board member in their personal capacity. We certainly have concerns about an MIS investing in companies or lending money to companies that are controlled by a member of the RE's board. This is a conflict of interest, that in our view, is impossible to manage. We would also argue that an MIS investing in or lending money to a related body corporate of the responsible entity should not be permitted. Once again, this is a conflict of interest that is very difficult to manage.

Whilst we appreciate that there may be valid exceptions to the rules that we have proposed, we are not familiar with any and would need to rely upon the presentation of justification for this by others.

11. Are any other changes required to ensure investment decision making by the responsible entity is in the best interests of scheme members?

There are broad obligations in the Corporations Act to manage conflicts of interest and this is supported by ASIC Regulatory Guide 181. It appears that these obligations have not been met by those responsible for the various MIS collapses. Reflecting back on the principles of managing conflicts of interest, avoidance is often the best solution. If that is not appropriate, then management and disclosure are necessary. We feel that more could be done to address disclosure of conflicts of interest. We would also suggest that auditors could play a greater role is assessing the management of conflicts of interest.

12. What would the impacts of the proposal be, including compliance costs?

We are not in a position to comment on the impact or cost of these changes.

13. Where a responsible entity has a separate investment manager, should the investment manager be prohibited from being a related party?

Whilst we have definitely seen issues with the collapse of funds where the RE and investment manager are related parties, this does not necessarily mean that this arrangement should be banned. It depends upon whether the investment manager is operating in the best interests of the investors, or in the best interests of themselves or a related party. We would suggest that banning unacceptable conflicts of interest is the first step along with actions to provide clarity on what is required.

Proposal 4: Amend the framework for setting financial requirements for responsible entities

Once again, we need to ask the question about the level of compliance with financial requirements by the REs of the funds that have recently collapsed. How much cash and NTA did each of them have, and did this comply with ASIC's requirements? We also ask the question more broadly of the MIS market in Australia – are they currently meeting the requirements of ASIC Instrument 2023/647? We are also aware that ASIC Instrument 2023/647 has a requirement for an audit opinion on financial requirements. We would like to know the extent to which these audit opinions are identifying failures with respect to the financial requirements obligation. We would also like to know if the auditors are being checked to confirm that they are correctly undertaking this assessment.

14. Should more specific financial resource requirements be imposed on responsible entities (in addition to the general obligation to have adequate resources under section 912A(1)(d) of the Corporations Act)?

More specific requirements are being imposed on REs by ASIC Instrument 2023/647, which evidently has the backing of the law. We appreciate that this is provided by means of ASIC modification of the application of the law through Section 926A of the Corporations Act. It is possible that it would be better for the power enabling the financial resource requirements to be more directly in the primary law, however this does not seem to be a major issue if ASIC Instrument 2023/647 is working and not being challenged.

We are conscious that other than consideration of utilisation of a custodian and scale of funds being managed, ASIC Instrument 2023/647 does not have much broader consideration of the risks of the funds the RE is responsible for. In our view, the financial requirements should be more directly linked to the level of risk that the MISs are involved with. There should be a higher level of NTA and cash holdings for REs who are responsible for MISs that are investing in higher risk investments. An increased level should also be required when there is an increased impact of related party investments, should this continue to be allowed. These additional requirements for financial resources would present a disincentive for taking unnecessary risk.

15. Should the MIS financial requirements (including the net tangible asset requirement for responsible entities) continue to be set by ASIC using its exemption and modification powers in the Corporations Act or should the requirements be set out in primary legislation or regulations?

We believe that there should be room for flexibility in the financial requirements, to allow for a range of circumstances along with evolving and emerging issues. Putting this into the primary legislation does not allow for flexibility. We would argue that either the regulations or an ASIC legislative instrument would be a better place to allow for flexibility. An ASIC instrument is a viable solution, however maybe this power should be explicit rather than through the modifications power.

16. Should the objectives of the MIS financial requirements be specified in primary legislation or regulations to provide more clarity about the purpose of the requirements?

Section 912A(1)(d) lacks sufficient explanation of the objective of financial requirements as this relates to all AFSLs. There may be further opportunity to be specific about this in the primary law, or through regulations, if that was the chosen means to set these requirements. It seems that there may be some difference in the objective across different AFSLs, so defining the objective for MISs may be better in secondary legislation. We note that there is also inadequate explanation of the objective of MIS financial requirements in ASIC Instrument 2023/647.

17. Are any other changes to the framework for determining MIS financial requirements required?

As discussed above, we think that the extent of exposure to higher risk investments and the extent of exposure to related party investments should be factors that increase the level of financial resources that are required.

18. What would the impacts of the proposal be, including compliance costs?

We are not in a position to comment on the impact or cost of these changes.

Proposal 5: Increase ASIC's data collection powers on the retail MIS sector

We agree with the issues raised with regards to the lack of data on MIS. This is particularly the case with wholesale or unregistered funds, where there does not appear to be any data. We would support a registration 'lite' option for wholesale funds, that would then enable the collection of more data on an annual basis, through the proposal below.

19. Should a new legislative framework be introduced for the recurrent collection of data by ASIC on MISs?

Yes, we strongly support an ongoing data collection regime for MISs. This is clearly a material gap and introducing a recurrent data collection regime may help to provide an initial basis for an early warning system, to help identify and address emerging issues and assist with the avoidance of much larger client detriment.

20. What types of recurrent data could help to detect risks, including conduct or fund level risks in the retail MIS sector?

We would suggest that the following data could help to identify emerging risks:

- Rapid growth or decline in the amount of invested assets.
- High turnover of clients.
- An over-exposure to higher risk assets.
- A high turnover of fund assets.
- An over-reliance on one distribution channel or a small number of licensees.
- A high volume of complaints.
- A high volume of material write-offs or write down of investment assets.
- A failure of governance, demonstrated by infrequent board or compliance committee meetings.
- High turnover of key personnel.

We also suggest that an analysis be conducted of past MIS failures to identify consistent factors that may be predictive of future failures, and that the results be used to enhance the recurrent data collection regime over time.

21. What data should be collected about MISs?

We suggest an annual data collection exercise, including the following:

- Asset amount at the end of the year, and the range during the year.
- Percentage/amount of portfolio in each asset class at the end of the year and the range during the year.
- Percent of funds held in illiquid assets.
- Percent of total fund investments that have been acquired during the year.
- Percentage and amount of assets in related party products.
- Percentage and amount of assets of the fund invested in other funds, including unregistered funds.
- Clients at the end of the year along with new clients in the year and departed clients.
- Percent of total and new investments by each of the top five advice licensees by assets under management.

- Complaints data (both IDR and EDR) at the MIS level.
- Details of any material write off or write down of investment assets.
- Number of board meetings and compliance committee meetings, and attendance.

Ideally this data would be collected in a form that enables electronic examination, including through the application of AI tools.

22. What event notifications should be provided to ASIC? For example, should there be a notification when redemptions are frozen or suspended?

Yes, we support an event based notification obligation. The events could be:

- A material volume of redemptions.
- Funds being frozen or redemptions suspended.
- A material write-down or write off of an investment.
- Change of control of any key supplier to the MIS, such as the investment manager.
- Loss of key personnel.

23. What would the impacts of the proposal be, including compliance costs?

We are not in a position to comment on the impact or cost of these changes.

Proposal 6: Alerts to ASIC about superannuation switching

We support this proposal in principle. At a more generic level, we think that super switching data should be reported for both incoming switches and outgoing switches. It would be useful to have reporting that shows where switching is coming from and going to, both by total AUM and proportion of AUM. This can help to identify patterns of behaviour that might reveal emerging trends and risks. This would be a form of periodic reporting, as opposed to alert based reporting which ideally is more real time.

Whilst we have focussed our response to the questions below on the role of financial advisers in super switching, we need to be very much awake to the fact that super switching can occur on the basis of no advice being provided or where only general advice has been provided.

24. Would a mandatory alerts regime for superannuation trustees be the most effective means of improving ASIC's visibility of problematic super switching behaviour?

Yes it would. This would be based upon risk triggers and would be delivered on a prompt basis, rather than as part of annual reporting.

25. What types of suspected conduct or patterns of behaviour should be reportable to ASIC?

The types of conduct or behaviours that we would like to see reported, include the following:

- A high volume of new business that is invested in a very limited number of investment options.
- Advisers with a materially higher average client allocation to risky assets.
- A situation where the majority of funds flow into an investment option is coming from one or a limited number of licensees.
- A large flow of clients for a single or small group of advisers, that is potentially above the expected capacity of any one adviser.
- Substantially higher than average adviser fees.

26. What, if any, existing barriers prevent transferring funds from:

- ***Reporting issues to ASIC where they identify potential concerns?***
- ***Identifying suspicious behaviour or potential misconduct by a third party, such as financial adviser or the receiving fund?***

This is best answered by the super funds.

27. What barriers may impact the ability of trustees to meet this new reporting obligation?

This is best answered by the super funds.

28. Under a data reporting approach:

- ***What data should be reported?***
- ***Are there existing data or reporting lines which could be leveraged?***

The types of data that we think should be reported include:

- The 10 most significant funds for switches in and switches out.
- An adviser where the proportion of new business that is invested in a single investment option is above a certain threshold.
- Advisers with an average allocation to risky assets above a certain agreed threshold.
- Data on situations where the volume of new business for a specific investment option is overly reliant upon a small number of licensees or representatives.
- Any adviser with the number of new clients in a 12 month period that is above an agreed threshold.
- Any adviser with average adviser fees above an agreed threshold.

Not all high risk switching behaviour is driven by financial advisers, and there would be value in collecting data on unadvised high risk switching also – such as unadvised switches to SMSFs, particularly those involving low balances.

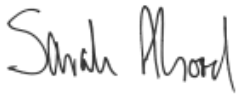
In terms of whether there are existing data or reporting lines that could be leveraged, we suggest that the super funds would be better placed to answer this question.

Conclusion

The FAAA welcomes the opportunity to provide feedback on MIS Governance. We believe that more can be done to reduce the risk to clients of poor governance of MISs. We also believe that there is material benefit in the collection of recurrent data for MISs and with respect to risk triggers related to super switching.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



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