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Enhancing oversight and governance of managed investment schemes: Joint submission by Super Consumers Australia and CHOICE

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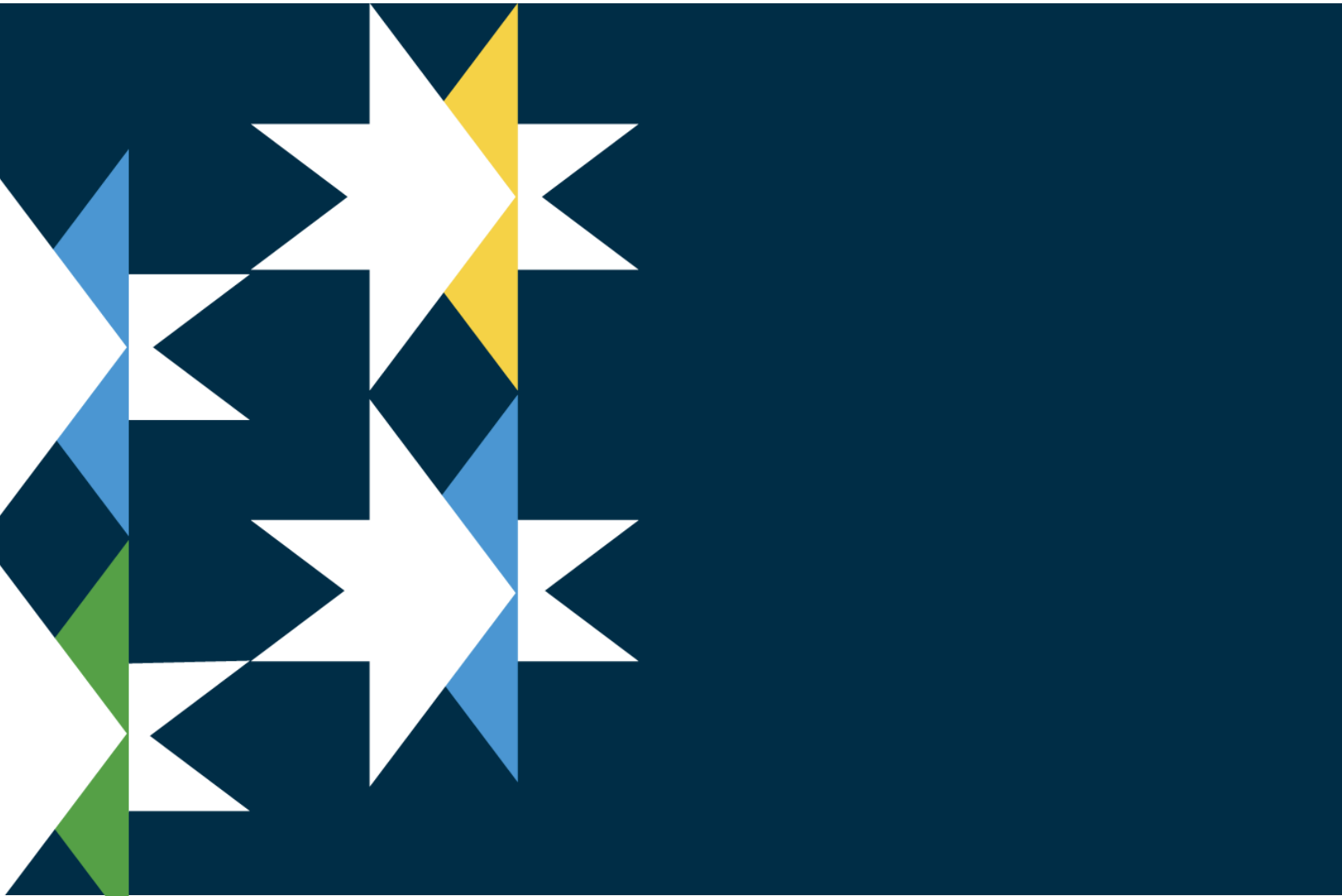
Super Consumers Australia is the people's advocate in the superannuation sector. Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.



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Introduction

Super Consumers Australia and CHOICE welcome the Government's proposals to enhance oversight and governance of managed investment schemes (MISs). The past 20 years have seen a string of high-profile MIS failures, with thousands of Australians losing significant amounts of money—including their superannuation savings—due to inappropriate or conflicted investments.

We broadly support the reform proposals in Treasury's consultation paper, and recommend they be strengthened to more effectively prevent future misconduct in the MIS sector. We favour approaches that give ASIC stronger tools and powers to proactively intervene, while also putting more onus on other players in the system—including superannuation trustees, financial advisers and ratings companies—to act when risks start to emerge.

We strongly support the prohibition of related-party transactions in retail MISs and reforms to strengthen data collection to provide better oversight of MIS investments and superannuation switching behaviour, including adviser-driven switches to MIS products or SMSFs that may not be in a person's best interests. These reforms should be implemented in a way that enhances broader system transparency by making MIS-level data available publicly.

We also call on the Government to commit to implementing key reforms that were foreshadowed in Treasury's earlier 2023 consultation on MIS regulation. This includes reforms to raise the wholesale investor thresholds, which would limit scope for people to be pressured to enter into risky or inappropriate investments without the protections afforded to retail investors. Findings from this review were provided to the Government in May 2024 but are yet to be released or acted on.

We also call for reforms to the superannuation performance test and product labelling rules to reduce the risks of people investing in MISs that deliver poor performance or are labelled in ways that misrepresent their risks and features.

Broader reforms are needed

In most, if not all, of the high-profile MIS failures over the past two decades, ordinary Australians were advised or pressured to transfer their savings—including superannuation—into investments that offered very poor value, people did not understand, or which did not meet their needs.

The recent failures of Shield and First Guardian occurred within a broader context of alleged high-pressure sales, harmful financial advice, defective oversight by superannuation funds and sloppy reviews by ratings companies. Many people caught up in these schemes thought they were doing the right thing by trying to get on top of their super, only to find themselves pressured into making rushed decisions. Many now have significant portions of their retirement savings frozen in collapsed MISs, with no guarantee they will have their savings returned or be paid compensation. ASIC and liquidators are still cleaning up the mess, with many investors still unaware they have been affected.

While reforms to prohibit related-party transactions in MISs and raise the wholesale investor thresholds will help, more needs to be done to deter future misconduct. We welcome the

Government's announcement that it will also be focusing more broadly than just mismanagement of MIS investments, and will consult on reforms to stop inappropriate lead generation, strengthen anti-hawking laws, introduce waiting periods for superannuation switching, limit inappropriate financial advice fee charging and strengthen platform governance.

We look forward to engaging in these consultations, as well as other consultations on customer service standards in superannuation and the Compensation Scheme of Last Resort.

Broader reforms are essential to give Australians confidence that when they engage with their superannuation or are recommended investments, they will not be taken advantage of—and that when things go wrong, they can access compensation.

Summary of Recommendations

Recommendation 1: Prohibit related-party investment and expenditure transactions in retail MISs, and ensure that any exceptions for legitimate structures are as narrow as possible and have a low risk of consumer harm.

Recommendation 2: To safeguard against a prohibition being undermined:

- require Responsible Entities of MISs to publicly disclose all related-party transactions and asset holdings in a publicly available register; and
- extend to MISs the investment governance and conflicts management obligations that superannuation trustees currently have.

Recommendation 3: Include MISs in the Compensation Scheme of Last Resort.

Recommendation 4: Task ASIC to collect data on MISs on a recurrent basis, modelled on APRA's existing superannuation reporting standards, with ASIC required and resourced to publish data on the sector.

Recommendation 5: Strengthen data on superannuation switching by:

- expanding APRA's existing superannuation reporting standards to collect more data on switching patterns across the industry, and publishing the data on a regular basis; and
- requiring super trustees to report to ASIC on specific events involving individual third parties (such as advice licensees or advisers), based on clear definitions and thresholds.

Recommendation 6: Reform the wholesale/sophisticated investor financial thresholds by:

- increasing the asset thresholds so they align with the original policy intent;
- automatically indexing the thresholds on a periodic basis;
- excluding the family home from the thresholds;
- requiring people to meet 2 of the 3 financial thresholds;
- standardising consent requirements across the wholesale and sophisticated investor tests, with consumer testing of the content and form of any consent documentation;

- requiring consumers to obtain independent advice about the consequences of being treated as a wholesale/sophisticated investor before signing any consent documentation; and
- prescribing penalties for the misuse of accountant's certificates.

Recommendation 7: Amend the definition of liquid asset in the Corporations Act to introduce a more prescriptive and objective definition of liquidity, informed by consumer research to understand consumer expectations in relation to 'liquid' investments.

Recommendation 8: Require Responsible Entities to:

- notify ASIC of any material changes to the MIS investment strategy; and
- amend a MIS constitution when directed to do so by ASIC, in situations where the constitution no longer complies with legislative requirements because of post-registration changes made by the Responsible Entity.

ASIC should also have the power to deregister a MIS if the Responsible Entity fails to notify ASIC of material changes in the investment strategy or refuses to comply with a direction to amend its constitution.

Recommendation 9: Extend the annual performance test to cover account-based pensions, transition to retirement products and externally managed multi-sector options (including MISs offered through super funds). Explore options to apply performance testing at the member level to ensure that all super members can benefit from strong protections against underperformance.

Recommendation 10: Review MIS and superannuation product labelling practices and consult on a labelling regime that prescribes acceptable terminology, informed by robust consumer testing. This could be based on the process currently underway on sustainable investment product labelling.

Policy principles

Super Consumers Australia and CHOICE recommend reforms that would:

- give ASIC, as the regulator of MISs, stronger tools and powers to more proactively intervene when there are risks of significant consumer harm in MISs—ideally before the harm occurs or escalates; and
- equip professional entities across the financial system with better data and ability to monitor what is going on and to act early when concerns of misconduct arise—including auditors, financial advisers, ratings companies, superannuation trustees and platform operators.

It is important that ASIC is not relied on as the only line of defence against misconduct. The regulator will always find it difficult to detect and respond to every issue when there are over 3,500 registered MISs in the market[1] and it receives thousands of reports of misconduct each year.[2]

Treasury's proposals

Super Consumers Australia and CHOICE broadly support the reform proposals in the consultation paper. In general, we support reforms that would help lift MIS governance requirements by aligning them with the stronger requirements and consumer protections already in place for Corporate Collective Investment Vehicles.

Strengthening the regulatory framework for compliance (proposal 1)

We support the proposals to:

- Introduce stricter MIS compliance plan requirements (proposal 1.1).
- Make existing audit and assurance standards mandatory for auditors of compliance plans (proposal 1.3).
- Require Responsible Entities to notify ASIC of the appointment, removal or resignation of compliance committee members (proposal 1.4).

We would also support the Government prescribing requirements for the experience, competence and qualifications of compliance committee members.

We do not support the proposal to attach liability only to material contraventions of a compliance plan (proposal 1.2). It is unclear how this proposal would incentivise higher-quality plans, and it risks diminishing Responsible Entities' focus on fully complying with all elements of their compliance

[1] Treasury (2026), Enhancing oversight and governance of managed investment schemes, Consultation Paper, p. 3.
[2] Dastoor, C. (2025), "ASIC investigating role of platforms in high profile failures", Professional Planner, Available: https://www.professionalplanner.com.au/2025/07/asic-investigating-role-of-platforms-and-researchers-in-high-profile-failures/

plans. In practice, ASIC and the courts would consider the materiality and consequences of a contravention when deciding what action to take. Adding a materiality threshold would create uncertainty over what amounts to a 'material' contravention and unnecessary regulatory complexity.

Requiring a majority of external directors (proposal 2)

We generally support proposal 2, noting that external directors can help to safeguard against conflicts of interest in how MISs are operated and the assets they invest in. However, it is far from clear whether this would translate to a material improvement in MIS governance, or prevent MISs from being set up by people seeking to inappropriately benefit at the expense of investors. For example, it is not clear that the definition of external director would rule out a family member or someone with a commercial interest in how money is invested.

It is also unclear whether Treasury is proposing that adopting proposal 2 would mean that compliance committees become redundant (noting that currently a compliance committee is only required when less than half of the directors of a responsible entity are external directors). Should this be the case, Treasury should ensure that Responsible Entities and their directors have, at a minimum, the same obligations and responsibilities as compliance committees and their members currently do.

Further ways to strengthen the quality and accountability of Responsible Entity directors should also be considered. This could include prescribing requirements for directors' skills, experience, competence and qualifications, with the requirements based on APRA's prudential standards and guidance for superannuation trustee governance. ASIC could be tasked with establishing a register of Responsible Entity directors, with entities required to notify ASIC when there is a change in directors.

Prohibiting related-party transactions (proposal 3)

The use of MIS investor assets to make related-party investments, loans and payments—and attempts to cover up these transactions—goes to the heart of much of the misconduct seen in high-profile MIS failures. We strongly support reforms to prohibit related-party transactions, which would help to prevent investor assets being siphoned off to related parties.

At a minimum, the prohibition should apply to all related-party investment and expenditure transactions of retail MISs, with exceptions only for narrowly defined types of transaction with a low risk of consumer harm.

We also recommend, as a further protection, that Responsible Entities be required to publicly disclose all related-party transactions and asset holdings, including those covered by any exceptions and/or which were in place prior to a prohibition coming into effect. This could be done by requiring Responsible Entities to maintain a public register on the website which sets out, in a standardised format, each related party investment, loan or expense, who the related party is, and the amount (in dollars and as a percentage of scheme assets).

Enhanced disclosure of related-party transactions and asset holdings would allow other entities—including financial advisers, ratings companies and platform operators, as well as ASIC—to

monitor when a significant proportion of MIS assets are being invested in a related party. Giving other entities clear visibility of this can enable them to act early to stop or reduce investor losses, while making it easier for ASIC to take action against these other entities for failing to meet their oversight obligations.

Although disclosure alone is not a sufficiently strong consumer protection, it would help to safeguard against industry finding ways to get around the prohibition or ways to undermine it. For example, defining exceptions for legitimate structures may prove difficult. If an exception is made for related-party investment managers, the prohibition would still need to apply to the underlying assets otherwise it could be easily circumvented.

We also note that the proposal would set a stronger requirement than applies to superannuation trustees. Trustees are not prohibited from engaging a related party investment manager or investing in products issued by a related party. However, they must comply with requirements including the SIS Act covenants and prudential standards on investment governance and conflicts management. We also recommend, as a further safeguard, that the investment governance and conflicts management obligations that superannuation trustees currently have be extended to MISs.

In the event the Government does not proceed with the prohibition, the disclosure and governance safeguards should still be implemented.

Recommendation 1: Prohibit related-party investment and expenditure transactions in retail MISs, and ensure that any exceptions for legitimate structures are as narrow as possible and have a low risk of consumer harm.

Recommendation 2: To safeguard against a prohibition being undermined:

- require Responsible Entities of MISs to publicly disclose all related-party transactions and asset holdings in a publicly available register; and
- extend to MISs the investment governance and conflicts management obligations that superannuation trustees currently have.

Amending the framework for financial requirements (proposal 4)

We have no objection to proposal 4. However, stronger financial requirements for MISs will not prevent every scheme from failing or being unable to meet obligations to investors.

It is crucial that the Government also includes registered MISs in the Compensation Scheme of Last Resort, so that consumers can receive full financial compensation when dispute resolution rulings are found in their favour, regardless of whether the responsible financial firm continues to operate.[3]

[3] For more detail, see the joint consumer groups submission to the Review of the Compensation Scheme of Last Resort, Available: https://www.choice.com.au/wp-content/uploads/2025/12/2025-02-28-review-cslr.pdf

Recommendation 3: Include MISs in the Compensation Scheme of Last Resort.

Increasing ASIC's data collection powers on the MIS sector (proposal 5)

We support proposal 5 and recommend tasking ASIC with collecting data on MISs on a recurrent basis, modelled on the existing APRA data reporting standards for superannuation products and investment options. For example, APRA collects recurrent data on:

- asset allocation, fees and costs, investment returns, total investments and number of members (at the fund, product and investment option levels);
- member and asset inflows and outflows;
- fund expenses, including related-party transactions;
- liquidity, securities repurchase and resale, securities lending and borrowing; and investment valuations.

In the MIS context, recurrent collections should also include data on:

- the share of money invested in the MIS through self-managed super funds, APRA-regulated superannuation funds, and non-superannuation monies;
- the share of money invested through platform structures; and
- the use of leverage and financial derivatives.

This reporting will give ASIC much greater visibility over the investments made by MISs, providing more opportunities to intervene (e.g. using the product intervention power) when there are emerging risks of significant consumer detriment.

In addition, ASIC should be required and resourced to publish data on MISs at both a sector-wide and individual MIS level, similar to how APRA publishes data on superannuation funds. This would provide a much-needed uplift to transparency across the sector. It would also give other entities such as financial advisers, super fund trustees and ratings companies greater visibility of how MISs are investing, making it easier for them to identify risks and harder for them to turn a blind eye.

We strongly support separate reporting by Responsible Entities to ASIC for specific events, including when redemptions are frozen or suspended, as contemplated in the consultation paper.

Recommendation 4: Task ASIC to collect data on MISs on a recurrent basis, modelled on APRA's existing superannuation reporting standards, with ASIC required and resourced to publish data on the sector.

Enhancing superannuation switching data (proposal 6)

We support ASIC having access to timely and detailed data on superannuation switching, including where member funds are being switched into an SMSF or MIS. However, we have reservations

about relying on super trustees to report to ASIC "suspicious or anomalous patterns of behaviour, which the trustee reasonably considers could place their membership at risk of significant detriment".

Our reservations are that:

- requiring super trustees to make their own decisions about what counts as "suspicious", "anomalous" or "risk of significant detriment" could result in significant inconsistency in what is reported, noting these are subjective terms;
- some trustees may make less effort than others to monitor member or adviser behaviour, with those that stand to benefit from adviser-driven switching having a commercial incentive to take a minimalist approach to detecting suspicious or anomalous patterns; and
- relying on behind-closed-doors reporting to ASIC does not promote public transparency of switching behaviour in the superannuation system. It also does not enable trustees, other system players or consumer groups to identify patterns across the industry or identify where an individual trustee is an outlier.

We therefore recommend a two-pronged approach to enhancing superannuation switching data, by:

1. Expanding APRA's existing superannuation reporting standards to collect more data on switching patterns across the industry, and publishing the data on a regular basis. ASIC would be able to access this data (including any items that cannot be published for confidentiality reasons) through existing data sharing arrangements between APRA and ASIC; and
2. Requiring super trustees to report to ASIC on specific events involving individual third parties (such as advice licensees or individual advisers), based on clear definitions and thresholds.

Switching data should be reported through APRA collections as far as possible. Leveraging APRA's existing data collection infrastructure for superannuation offers a more efficient approach to collect data across the industry. The collection should target switching patterns where there is a risk of consumer harm, including patterns that may not necessarily be visible to individual super trustees. For example, it could include measures such as:

- the number of new fund members (e.g. who joined in the past 12 months) investing in each investment option (including MIS options), the average proportion of balance invested in the option, and the share of these members who have a financial adviser;
- the average size of advice fee deductions, the proportion of accounts with deductions over various thresholds (e.g. more than $10,000 a year) and average balances for those accounts; and
- the average balance and age of members entering or exiting the fund via a rollover, as well as where they have rolled over to or from (e.g. an SMSF or specific APRA-regulated fund).

This would complement the detailed data APRA already collects and has recently started publishing on investment returns, fees and costs, member accounts and assets for individual investment

options.[4] Publishing data on switching patterns would improve transparency while strengthening super trustees' ability to identify risks and promote members' best financial interests.

More granular data relating to the conduct of individual third parties should be reportable directly to ASIC, based on clearly defined reporting triggers and thresholds. For example, this could include obligations to report when the number of advice-fee deductions by a single adviser or licensee increases above a defined threshold, or when a trustee terminates an adviser's fee deduction arrangements or platform access. Data that is reportable to ASIC could also be required to be provided immediately, rather than waiting until the end of a set period (e.g. quarter) as is the case for most APRA reporting.

These arrangements could be complemented by a principles-based obligation to report suspicious matters, but as a backstop rather than the primary mechanism.

Recommendation 5: Strengthen data on superannuation switching by:

- expanding APRA's existing superannuation reporting standards to collect more data on switching patterns across the industry, and publishing the data on a regular basis; and
- requiring super trustees to report to ASIC on specific events involving individual third parties (such as advice licensees or advisers), based on clear definitions and thresholds.

Unfinished business from the 2023 review

We call on the Government to respond to the 2023 review of MIS regulation by progressing key reforms that were foreshadowed during this earlier consultation. Treasury provided the findings of this review to the Government in May 2024, but the Government has neither released the findings nor introduced reforms to better protect consumers from misconduct and harm in the MIS sector.

Raise wholesale investor thresholds

The individual wealth and product value tests for wholesale/sophisticated investor eligibility all use financial thresholds that have not been updated since introduction of the thresholds in 2001. When people who meet these thresholds become classified as wholesale/sophisticated investors, they forgo a range of important consumer protections, including most of the consumer protections for registered MISs (if they invest in a wholesale MIS), the best interest duty for financial advice, and the ability to access AFCA's dispute resolution scheme.

Increasing numbers of people are finding themselves eligible for wholesale/sophisticated investor arrangements even though they may need and expect the protection afforded to retail investors. Research from the Australian National University found that just over 100,000 Australian households

[4] APRA (2025), "Quarterly Superannuation Product Statistics", Available: https://www.apra.gov.au/quarterly-superannuation-product-statistics

(1.4%) met the sophisticated investor thresholds in 2002. By 2021, this had risen to over 1 million households (11%) and was projected to exceed 4 million households (34%) by 2041.[5]

The Government should increase the thresholds to align with the original policy intent and reduce the number of people who could qualify to be wholesale/sophisticated investors. The thresholds should also be indexed (so they can no longer fall in real terms) and the family home excluded (as it is not an appropriate assessment of whether a person requires retail client protections).

Additional reforms are needed to reduce the risk of people inadvertently being classified as wholesale/sophisticated investors, or being pressured to enter into risky investments without understanding the consequences—including by a financial adviser. Specifically, people should be required to meet 2 of the 3 financial thresholds to reduce the risk that those who require retail investor protection do not accidentally qualify as a wholesale investor because they meet a single threshold. Consent requirements should be standardised and consumer tested, and consumers should be required to obtain independent advice about the consequences of being treated as a wholesale/sophisticated investor. Finally, penalties should apply to accountants that falsely or negligently certify that a client meets the thresholds when they do not.

Recommendation 6: Reform the wholesale/sophisticated investor financial thresholds by:

- increasing the asset thresholds so they align with the original policy intent;
- automatically indexing the thresholds on a periodic basis;
- excluding the family home from the thresholds;
- requiring people to meet 2 of the 3 financial thresholds;
- standardising consent requirements across the wholesale and sophisticated investor tests, with consumer testing of the content and form of any consent documentation;
- requiring consumers to obtain independent advice about the consequences of being treated as a wholesale/sophisticated investor before signing any consent documentation; and
- prescribing penalties for the misuse of accountant's certificates.

Strengthen consumers' rights to withdraw from a MIS

The Corporations Act prescribes specific requirements for how members can withdraw from a non-liquid MIS (such as a MIS that invests in unlisted equities or property). These requirements help to ensure withdrawals are processed in a fair and orderly manner. However, no such requirements apply to a 'liquid' MIS, where a redemption request must be met within a specified timeframe.

However, this timeframe is not specified in legislation—it is up to each Responsible Entity to pick its own timeframe when forming the MIS constitution. This means a scheme can technically be 'liquid' because redemptions are able to be met within the timeframe in the constitution, even though that could be a very lengthy period. ASIC has observed some schemes being classified and promoted as liquid even though the constitution specifies a period of 365 days (or longer) to process redemptions,

[5] Phillips, B. (2021), "Research Note: Sophisticated investor projections", ANU Centre for Social Research and Methods, Available: https://polis.cass.anu.edu.au/files/docs/2025/6/Research_Note_Sophisticated_Investor.pdf

and investors' money is invested in typically illiquid assets such as mortgages, property or infrastructure.[6] Consumer confusion is amplified where promotional materials or the PDS indicate withdrawal timeframes that do not align with the constitution.[7]

There needs to be a more prescriptive and objective definition of liquidity, ideally informed by consumer research to understand what people expect when they are told an investment is liquid. MISs that do not meet this definition would have to comply with the legislative requirements for illiquid schemes.

Recommendation 7: Amend the definition of liquid asset in the Corporations Act to introduce a more prescriptive and objective definition of liquidity, informed by consumer research to understand consumer expectations in relation to 'liquid' investments.

We also support ASIC's recommendations, made in its submission to Treasury's 2023 review,[8] to:

- prevent Responsible Entities from issuing new interests in a MIS when a MIS is frozen and redemptions are suspended;
- require Responsible Entities to notify ASIC when a MIS becomes frozen and when it ceases to become frozen; and
- introduce a tailored statutory insolvency regime for MISs to facilitate more orderly and timely winding up of insolvent MISs and result in better outcomes for investors.

Give ASIC stronger powers to intervene when MISs are changed

The proposed data collection powers will give ASIC greater ability to detect emerging risks. These detection powers need to be complemented with appropriate intervention powers to curb this risk. For example, a MIS constitution can be modified—but ASIC does not have the power to direct the Responsible Entity to amend the constitution if it does not comply with legislative requirements.

This should be further strengthened by requiring Responsible Entities to notify ASIC of any material changes to the investment strategy (in addition to existing requirements to lodge an updated copy of a MIS constitution if it is modified). ASIC should also be given powers to deregister schemes when the Responsible Entity does not comply.

Recommendation 8: Require Responsible Entities to:

- notify ASIC of any material changes to the MIS investment strategy; and

[6] ASIC (2023), Review of the regulatory framework for managed investment schemes: Submission by the Australian Securities and Investments Commission, paragraph 101, Available: https://download.asic.gov.au/media/5owl5seg/asic-submission-review-of-the-regulatory-framework-for-miss-september-2023.pdf
[7] ASIC (2023), Review of the regulatory framework for managed investment schemes: Submission by the Australian Securities and Investments Commission, paragraphs 115-117.
[8] ASIC (2023), Review of the regulatory framework for managed investment schemes: Submission by the Australian Securities and Investments Commission.

- amend a MIS constitution when directed to do so by ASIC, in situations where the constitution no longer complies with legislative requirements because of post-registration changes made by the Responsible Entity.

ASIC should also have the power to deregister a MIS if the Responsible Entity fails to notify ASIC of material changes in the investment strategy or refuses to comply with a direction to amend its constitution.

Additional consumer protections

Extend the performance test to MIS investments offered through super funds

Many Australians invest in MISs through APRA-regulated superannuation funds, which make MISs available as discrete investment options through platforms and non-platform choice products. However, many MIS investment options are currently excluded from the superannuation performance test, even if they offer a similar investment strategy to pre-mixed investment options. At present, all investment options offered in the retirement phase of super are excluded from performance testing, as are accumulation phase options which are externally directed (i.e. where the super trustee or a related party does not set the investment strategy or manage the investments). This means that 90% of accumulation assets invested in 'choice' options on platforms are untested, leaving a significant gap in consumer protections.

Superannuation members do not always understand when they will or won't be covered by specific consumer protections. They are often confused about why some protections only apply to specific parts of the superannuation system. This is clear to see in the views expressed by people impacted by Shield and First Guardian via their Facebook group.[9] On a news article outlining the differences in consumer protection across the super system people responded with comments like the following:

> "*I only wanted a fund with less fees as I assumed the rest of the funds we're ruffly the same. More fool me." Commenter 1*
>
> *"There should be no such thing as 'riskier super funds', isn't that why we have laws and a regulator?" Commenter 2*

The performance test should be extended to cover account-based pensions and externally managed options. Members who hold their retirement savings in these products have as much right as other members to be protected from investment options that offer poor value because of their investment

[9] ASIC (2023), Review of the regulatory framework for managed investment schemes: Submission by the Australian Securities and Investments Commission.

performance or fees. Extending the performance test would also put greater scrutiny on super funds for the performance of the products they offer.

However, the performance test is not designed to assess the performance of single-sector investment options or those have been offered for less than 7 years. It is also of limited help for members who are invested across several investment options to understand whether or not their portfolio is underperforming. The Government should explore options to apply performance testing at the member level to ensure that all super members can benefit from strong protections against underperformance, regardless of how their super is invested and whether or not they use a financial adviser.

Recommendation 9: Extend the annual performance test to cover account-based pensions, transition to retirement products and externally managed multi-sector options (including MISs offered through super funds). Explore options to apply performance testing at the member level to ensure that all super members can benefit from strong protections against underperformance.

Strengthen product labelling rules

Some MISs are marketed using product labels that misrepresent their true risks and features. This can (and does) confuse or mislead people into thinking they are investing in a particular way which is different to how their money is actually invested, leaving them unaware of the risks. ASIC has identified examples of MIS and superannuation product labels that are inconsistent with the underlying asset allocation or liquidity profile, such as 'cash enhanced' products that are riskier and less liquid than cash, and 'balanced' products with significant allocations to high-risk illiquid assets.[10]

While ASIC has powers to go after the most egregious misrepresentations for misleading conduct, a lack of regulatory or industry standards makes it harder to tackle confusing labels in the market. Even when detailed disclosures are accurate, many people do not read or understand these documents.

The Government has recognised the problems that arise for sustainable investment labels and is currently consulting on a product labelling regime. It should also explore ways to strengthen product labelling rules more generally, including labels relating to a product's risk profile, asset class exposure and portfolio management style. This could involve developing a set of standardised terms and/or restricting the use of specific terms. The process should be informed by robust consumer testing to understand how different consumers understand various product labels.

[10] ASIC (2020), "ASIC tells fund managers to be 'true to label'", Media Release, Available: https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-218mr-asic-tells-fund-managers-to-be-true-to-label/; Eccleston, J. (2022), "Are your superannuation investment options consistent and 'true to label'?", ASFA, Available: https://www.superannuation.asn.au/are-your-superannuation-investment-options-consistent-and-true-to-label/

Recommendation 10: Review MIS and superannuation product labelling practices and consult on a labelling regime that prescribes acceptable terminology, informed by robust consumer testing. This could be based on the process currently underway on sustainable investment product labelling.