

28 April 2026

Corporations and Schemes Team
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2001

By email: IM.sunsettingconsultation@asic.gov.au

Dear Sir/Madam

CS 47—Proposed Remake of Relief for Managed Discretionary Account Services

Background

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 the consultation statement for CS 47, released by the Australian Securities and Investments Commission (**ASIC**) on 23 March 2026.
2. The consultation concerns the proposed remake of *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968* (the **Instrument**), which is due to expire on 1 October 2026.

Submissions

Support for remaking the Instrument

3. The Committee supports ASIC remaking the Instrument. The MDA regime has operated under class instrument relief for an extended period, and there is an established market of providers and clients that relies upon it.
4. Permitting the Instrument to expire without replacement would create significant regulatory uncertainty. MDA providers that have structured their operations and contractual arrangements in reliance on the existing relief would face an abrupt change in compliance obligations, for which they are not currently constituted or resourced.
5. The Committee recommends that the Instrument be remade with its current policy settings maintained, pending the legislative reform discussed at paragraphs 9 to 11 below. The Committee does not consider the sunseting review process to be the appropriate occasion for substantive changes to the MDA regime. Any material policy changes should be the subject of a separate, dedicated consultation with sufficient lead time for industry to adjust.

Update to RG 179

6. The Committee recommends that RG 179 be updated concurrently with the remake of the Instrument. If the Instrument is remade with amendments, even simplification or drafting changes, there is a risk that RG 179 will no longer accurately reflect the applicable law. This creates the potential for confusion among industry participants who rely on RG 179 as the primary practical reference for their MDA obligations.
7. In particular, the Committee recommends that the updated RG 179:
 - (a) clearly identify the new instrument by its updated citation;
 - (b) ensure that all cross-references to specific provisions of the Instrument are updated to correspond to any renumbered or reworded provisions; and
 - (c) address any aspects of MDA practice that have evolved since RG 179 was last substantively updated, including in relation to technological changes in portfolio management and product or offering structures.
8. The Committee would welcome the opportunity to engage with ASIC on the review of RG 179 as part of this process.

Preferred long-term approach is legislative incorporation

9. While the Committee supports the immediate remake of the Instrument as a necessary short-term measure, it considers the current approach of regulating MDA services primarily through a class instrument to be unsatisfactory as a long-term framework. The sunseting cycle introduces periodic uncertainty for industry and requires ASIC to expend resources on successive remake exercises without addressing the underlying policy architecture.
10. The Committee's preferred position is that the MDA regime be incorporated directly into the Corporations Act, whether through primary legislation or regulations made under it. This would:
 - (a) provide industry with a stable and permanent legal foundation, reducing compliance uncertainty and the costs associated with recurring sunseting reviews;
 - (b) allow industry participants to understand their obligations by reference to the principal legislation, rather than having to navigate a combination of the Corporations Act and a class instrument;
 - (c) be consistent with the approach taken to other specialist financial services regimes under the Corporations Act; and
 - (d) provide Parliament with the opportunity to consider and debate the appropriate regulatory framework for MDA services, which have become a significant feature of the managed investments market.

11. The Committee acknowledges that legislative reform of this kind requires engagement with Treasury and cannot be achieved within the timeframe of the current sunset review. The Committee therefore recommends that ASIC, in reporting on the outcome of this consultation, note the case for legislative reform and recommend that Treasury initiate a separate process to consider incorporating the MDA regime into the Corporations Act.

Conclusion and further contact

12. The Committee would welcome the opportunity to discuss any aspect of this submission with ASIC. Please contact Ms Pip Bell, Member of the Financial Services Committee [REDACTED], or Ms Celeste Norman, Funds, Wealth and Consumer Lead of the Financial Services Committee, of the Business Law Section [REDACTED].

Yours sincerely



Adrian Varrasso
Chair, Business Law Section