Law Council
OF AUSTRALIA

Business Law Section

22 October 2026

Andre Moore
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Advice, Investments and Redress Branch
The Treasury
Langton Crescent
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By email: misregulation@treasury.gov.au

Dear Mr Moore

Enhanced data collection for managed investment schemes

1. This submission has been prepared by the Financial Services Committee of the Business Law Section of the Law Council of Australia (**Committee**) in response to the consultation paper titled C*onsultation on proposals to improve regulatory visibility of the managed investment scheme sector through enhanced data collection* (**Consultation Paper**), released on 23 September 2026.

2. The Consultation Paper seeks feedback on the following proposals to improve data collection for managed investment schemes (**MIS**s):

   (a) improve baseline regulatory visibility of registered MISs through enhanced registration data;

   (b) enhance regulatory visibility of the registered MIS sector through recurrent data collection, while streamlining existing reporting arrangements; and

3. collect limited and targeted data on the unregistered MIS sector

   (together, the **Proposals**).

Fundamental concerns of the Committee

4. The Committee has two broad concerns about the nature and extent of the Proposals, as detailed below.

Data collection should be limited to what is necessary to achieve the stated objective

5. The Proposals refer to the need for the Australian Securities and Investments Commission (**ASIC**) and other regulators to understand the "size, characteristics and connections to the broader financial system" of the MIS industry, and that an expanded data set would "enable ASIC to target regulatory activities more efficiently

including monitoring, identifying and responding to risks and target surveillance to better detect risks arising in the MIS sector with a risk based supervisory approach".

6. The Committee supports these objectives, but believes that the Proposals go well beyond what is necessary to achieve the objectives. For example, page 18 of the Consultation Paper suggests that data would be collected quarterly on the MIS's assets under management, investor attributes, net asset value of units, actual and benchmark asset allocation, domicile of assets, direct vs indirect investments, application and redemption information, distributions, leverage, assets and liabilities by type, distribution channels, and cross investment between MISs. The Committee is concerned that:

   (a) it would be excessively burdensome for the responsible entity (**RE**) to compile and provide this information;

   (b) some of that information would be commercially sensitive and there could be considerable resulting harm if the security of that information were compromised; and

   (c) the data collection may lead to a public misconception that, by merely having possession of such data, ASIC would be equipped to prevent any future investor losses. The Committee notes that the 1993 Corporations and Markets Advisory Committee report *Collective Instruments: Other People's Money* (which informed the establishment of the MIS regime under the *Managed Investments Act 1998* (Cth)) included the following statement:

   > *The law governing collective investment schemes cannot – and should not – try to eliminate the investment risks facing investors. If the law attempted this, it would fail.*[1]

7. The Committee submits that ASIC should only collect the data needed to achieve the stated objectives, namely, to give regulators an overall view of the size and nature of the MIS market, and for ASIC to understand the approximate size and risk level of each MIS to assist with the targeting of its surveillance activities. Treasury should explain how each proposed data field, and its collection frequency, would support those objectives.

8. The Committee submits that, in the first instance, ASIC should deploy its own human and financial resources to obtain information that is publicly or otherwise accessible (for example, received by ASIC pursuant to other existing statutory reporting obligations) to ASIC before a further expensive regulatory burden is imposed on the regulated population, bearing in mind that increased compliance costs can be expected to adversely impact investment returns.

9. Another possible consequence of increasing the regulatory burden and associated compliance costs is a potential challenge to the financial viability of RE businesses and MISs, which could result in a reduction in competition in the market and an impediment to the development of innovative new investment products. Therefore, it

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[1] Companies and Securities Advisory Committee and Australian Law Reform Commission, *Collective Investments: Other People's Money*, Report No 65, Vol 1 (1993), 9.

is critically important that a measured approach is taken in developing any new regulatory reporting regime.

Regulatory consequences of any reporting failure should be fair and proportionate

10. A significant omission from the Consultation Paper is any mention of the consequences for the regulated population of making an error in data submitted to ASIC or failing to submit a report on time. In the absence of any specific provisions governing liability, the default position is that section 1308 of the *Corporations Act 2001* (Cth) (**Corporations Act**), which deals with false or materially misleading content in documents lodged with ASIC, would apply. Subsection 1308(5) is a civil penalty provision that applies heavy penalties and potential breach reporting obligations if the person fails to take reasonable steps to ensure that data lodged is not materially false or misleading. "Reasonable steps" in this context implies a "due diligence" type process covering all data for every quarter, which the Committee submits would be burdensome and expensive and certainly not "proportionate, efficient and designed reduce unnecessary duplication across existing reporting obligations" as the Consultation Paper suggests should be the case.

11. The Committee submits that a penalty regime imposing simple fines for late submission of data and a safe harbour from section 1308 liability, except in the case of intentional or reckless misstatement, would be more proportionate and efficient. Unless liability is addressed in this way, the Committee anticipates that the Proposals would be more costly than "the regulatory burden on the MIS sector related to ad hoc data requests for thematic regulatory work", which is commonly achieved by ASIC issuing notices under section 912C of the Corporations Act (see page 17 of the Consultation Paper).

12. Below the Committee has addressed specific parts of the Consultation Paper and responded to those of the questions posed on which the Committee is able to comment.

Guiding Principles

1. Are the proposed guiding principles appropriate for guiding future data collection and sharing arrangements?

13. The Committee broadly agrees with the Guiding Principles canvassed in the Consultation Paper, but is concerned that some of the content of the Proposals would be incompatible with those Guiding Principles. In particular, each requirement should have a clear regulatory purpose, avoid duplication, impose costs proportionate to its expected benefit, and be supported by clear definitions, appropriate confidentiality safeguards and fair consequences for non-compliance. Please refer to our earlier comments and responses to relevant questions below.

Proposal 1: Improve baseline visibility of registered MISs through enhanced registration data

2. What additional data, if any, should be collected at the point of registration? Conversely, are there data fields that are currently collected that should be removed or streamlined?

14. As noted in the Law Council's submission to Treasury of 5 March 2026 on *Enhancing oversight and governance of managed investment schemes* (to which the Committee contributed):

> *The Financial Services Committee supports the increase in ASIC's data collection powers specifically designed to assist ASIC in risk-based supervisory work and fostering the more effective exercise of its existing powers where appropriate.*[2]

15. Consistent with that view, the Committee supports the proposal for ASIC to collect additional information about MISs at the point of registration, so long as it would enhance ASIC's supervision and surveillance and would ordinarily be available at the time of registration of the MIS.

16. At the time of registration, the proposed RE will generally be able to state the following expected key features of the MIS:

    (a) a general description of the target investments;

    (b) whether interests in the MIS will be listed or quoted for trading on a financial market;

    (c) whether the MIS will be open for applications and redemptions on an ongoing basis (open-ended);

    (d) the key service providers to be engaged by the RE; and

17. whether the RE proposes to borrow or otherwise gear the assets of the MIS

    (together, the **Core Data**).

18. The Committee strongly recommends that any collection of additional data be restricted to the Core Data.

19. The Committee is not aware of any redundant data fields. However, it should be noted that ASIC no longer makes the Form 5100 (which is completed by the proposed RE of a registered MIS to apply for registration) available for downloading from the website. It is only accessible to financial services licensees via their ASIC regulatory portal account. This does not seem compatible with public transparency.

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[2] Law Council of Australia, *Enhancing oversight and governance of managed investment schemes* (Submission, 5 March 2026), 15.

3. Does providing additional data at the point of MIS registration significantly increase regulatory burden for REs? If so, how could this be mitigated?

20. Non-Core Data matters listed on page 15 of the Consultation Paper concern information an investment manager would want to know if it was managing the MIS, a lot of which will only be known when the MIS's product disclosure statement or other offer document (if the MIS is not offered to retail clients) is prepared, which would ordinarily be completed some time after registration. These include performance benchmarks, valuation practices, terms of unit classes, specific conditions for withdrawals, ESG commitments and fees. Much of this detail will be in the offer document when it is issued, and the relevance of this information to the purpose of ASIC's categorisation of funds for surveillance is not clear to the Committee. Requiring this information at MIS registration could create unnecessary work and require subsequent corrections. Treasury should explain why this information is needed at registration and how ASIC would use it for risk-based supervision. It is also not clear whether ASIC would have the capacity, recognising that its resources are finite, to make meaningful use of such data in any event.

21. The regulatory burden should therefore be mitigated by restricting the collection of the information to the Core Data.

4. How should any obligation to keep registration information up to date be designed to minimise unnecessary burden?

22. The Committee considers that an obligation to keep registration information up to date on an ongoing basis would be unduly burdensome and submits that it should not be pursued. It would effectively subject all MISs to the same level of continuous disclosure obligations as those which currently apply to a registered MIS that is listed on a financial market.

23. The Committee considers that it would be unduly burdensome to impose a continuous disclosure obligation in addition to the periodic reporting obligation canvassed in Proposal 2.

Proposal 2: Enhance regulatory visibility of the registered MIS sector through recurrent data collection, while streamlining existing reporting arrangements

5. Should there be recurrent data collection for registered MISs? If not supportive of a recurrent data collection, is there an alternative way that ASIC could access timely, regular and reliable data on MISs to support a risk-based approach to oversight and enforcement?

24. The Committee is not averse to recurrent data collection, provided that it is limited in scope to what is reasonably necessary to achieve the overarching objectives.

6. How often should recurrent data be collected? Is the proposed quarterly collection appropriate?

25. The Committee considers that an annual reporting obligation would be a fair and reasonable outcome for MISs generally. Therefore, the Committee does not agree that a quarterly collection for all registered MISs would be appropriate. For example, it is difficult to conceive what regulatory benefit ASIC would gain from demanding quarterly reporting from an exchange traded fund (**ETF**) quoted on the AQUA market which, under its terms of issue, tracks the ASX-200 index and is not leveraged, as the only Core Data variable that would change over time would be the size of the MIS. The Committee also notes that under existing regulatory arrangements ASIC is made aware of which ETFs are "complex" through the labelling requirements (where ETFs are required to use certain words in the name if they meet certain criteria).

26. If there were specific types of MISs which ASIC considered posed more significant risk, then supplementary, targeted, risk-based reporting for the relevant sub-sector(s) could be introduced. This would be more compatible with the Guiding Principles than imposing a quarterly reporting obligation on all registered MISs.

7. Which data fields would be most valuable for identifying emerging risks?

27. The Committee submits that the objectives of the Proposals could be achieved by restricting the recurrent reporting obligation to cover only the following matters:

    (a) material changes to Core Data since the most recent data collection date;

    (b) gross asset value at the end of the reporting period;

    (c) net asset value at the end of the reporting period;

    (d) aggregate funds received from additional investments during the reporting period; and

    (e) (if redemptions are available) aggregate funds redeemed by investors during the reporting period.

28. Additional information (such as type and location of assets, liabilities and expenses, benchmarks and sources of investment) should only be requested if ASIC has first formed the view that the relevant MIS warrants additional targeted scrutiny due to its heightened risk level. The scope and frequency of those requests by ASIC should be proportionate to the need.

8. Is it possible for the RE of a MIS to report on the source of investor funds, that is have funds come from an investor directly, a SMSF, a superannuation fund or wealth platform or via a wealth manager?

29. Investors must complete an application form to acquire interests in a MIS. The RE will know from the name on the application form whether the investor is an individual, SMSF, superannuation fund or wealth platform. An RE may also lack visibility of underlying investors or funding sources where investments are made through nominees, platforms or other intermediaries. Any reporting requirement should reflect the information reasonably available to the RE and should not assume access to underlying investor data.

9. What are the barriers to this proposal, and what is industry's capacity to adapt its data reporting to changing government requirements, recognising this capacity will vary across the sector?

30. To mitigate the regulatory burden associated with the proposal, the Committee considers that careful attention must be given to ensure that:

    (a) commercially sensitive information is adequately protected from unauthorised access, use or disclosure;

    (b) the reporting involves using standardised terminology and systems; and

    (c) information the Government already holds is not re-requested, in adherence to the "tell us once" principle which was articulated by Australia's Treasurer Dr Jim Chalmers as part of the federal budget announcements in May 2026.[3]

10. Should Investor Directed Portfolio Services (IDPS) platform providers be included in the scope of a recurrent registered MIS collection? Would it be feasible for there to be a recurrent data collection at a portfolio level for all types of managed accounts? What would be an appropriate definition of 'managed account' to ensure relevant arrangements are properly captured?

31. The Committee notes that having an IDPS platform providers report would likely introduce additional complexity to the data set.

32. The Committee recommends restricting any reporting regime initially to registered MISs. Any later extension to IDPS platform providers should follow an evaluation of the initial regime, identify a material information gap and demonstrate that the expected benefit justifies the additional burden.

11. What would be appropriate data fields for agencies to collect at a portfolio level for managed accounts?

33. The Committee recommends restricting any reporting regime initially to registered MISs and then, post implementation, assessing whether there is a genuine need to expand the reporting obligation to managed accounts.

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[3] The Hon Dr Jim Chalmers MP, *Budget to boost productivity and cut regulatory costs by $10 billion* (Media Release, 12 May 2026).

Proposal 3: Collect limited and targeted additional data on the unregistered MIS sector

34. Proposal 3 consists of Proposal 3A (Require unregistered MISs to notify ASIC at scheme commencement or cessation) and Proposal 3B (Require unregistered MISs to provide limited and targeted recurrent data).

35. The Committee perceives that imposing data reporting requirements on MISs that are not currently regulated by Chapter 5C of the Corporations Act would pose some practical difficulties because:

    (a) those MISs would not be set up with an ASIC regulatory portal account and it would take some time to build the relevant reporting systems; and

    (b) due to the broad definition of MIS, if all unregistered MISs were to be captured, it would include MISs which are not required to be operated by a licensed trustee and institutional joint ventures which are not the subject of regulatory supervision.

12. Should MISs offered exclusively to wholesale investors be required to notify ASIC when the MIS commences or terminates?

36. As noted above, the Committee considers that the net would be cast more widely than necessary if all MISs offered exclusively to wholesale investors were within the scope of a reporting regime. The Committee recommends restricting any reporting regime initially to registered MISs and then, post implementation, assessing whether there is a genuine need to expand the reporting obligation to unregistered MISs.

37. If an obligation to notify ASIC were imposed for unregistered MISs, then the Committee submits that, rather than capturing all unregistered MISs, unregistered MISs offered exclusively to professional investors (as defined in section 9 of the Corporations Act) should be outside the scope of the reporting regime. This is because professional investors are less likely to require protection from the regulator than wholesale clients who are high net worth individuals.

38. It may also be the case that, if the relevant monetary thresholds for the “wholesale client” test under Chapter 7 of the Corporations Act were indexed or otherwise increased, those investors ASIC considers require protection might be treated as retail clients in any event, and further regulation of unregistered MISs offered only to wholesale clients may not be necessary.

13. What baseline information should be in scope of the notification regime?

39. The Committee refers to its comments pertaining to Proposals 1 and 2 above, and reiterates that only information necessary to achieve the objectives of the Proposals should be provided.

40. As noted above, the Committee recommends restricting any reporting regime initially to registered MISs and then assessing whether there is justification to expand the reporting obligation to unregistered MISs.

14. Would it be feasible to collect limited and targeted recurrent data on unregistered MISs?

41. The Committee refers to its response to questions pertaining to Proposal 2 above, and notes that the Consultation Paper has not proposed what the frequency of collection of recurrent data would be for unregistered MISs.

42. As noted above, the Committee does not support quarterly reporting for all registered MISs and considers that, unless ASIC has particular concerns about a particular MIS or sub-sector of the MIS industry, annual reporting would suffice.

43. In the case of unregistered MISs, it is more difficult to justify the data collection because unregistered MISs are not regulated by Chapter 5C of the Corporations Act, which means ASIC's enforcement powers are restricted to enforcing financial services licensee obligations (if the trustee or other operator is licensed) and laws prohibiting misleading or deceptive conduct.

15. What information would be most useful for assessing interconnectedness and transmission of risk between unregistered MISs, registered MISs, superannuation funds, platforms and private market investments, including private credit funds?

44. The Committee is not sure what is meant by "interconnectedness and transmission of risk". The Committee believes that having information about investing vehicles' portfolio exposure to different asset classes (e.g. direct real property, private equity, private credit, domestic equities, international equities) expressed as a percentage might be relevant to this purpose. However, broad asset allocation alone would not establish links between particular entities or how risks could be transmitted. Any additional fields should be targeted to a defined risk and assessed for availability, confidentiality and compliance cost.

16. Stakeholders are invited to comment on whether the existing terminology for MIS— including 'registered' and 'unregistered'—remains appropriate. If not, what alternative terminology should be considered?

45. It strikes the Committee as somewhat strange that the Consultation Paper has not actually defined what it means by the term "registered" MIS.

46. The Committee considers that if a MIS is registered with ASIC under Chapter 5C of the Corporations Act (specifically under Part 5C.1), then it is appropriate to call it a registered MIS, and conversely it is appropriate to call a MIS that is not so registered an unregistered MIS.

Corporate collective investment vehicles (CCIVs)

47. The Committee notes that the Consultation Paper is silent on whether the Proposals would extend to CCIVs. The Committee considers that the regulatory treatment of retail CCIVs and registered MISs ought to be consistent.

Importance of pre-commencement testing

48. If and when a new reporting regime is developed, it will necessarily involve the development of new technological reporting infrastructure, which will need to be stable, reliable and user friendly (as technological difficulties for users would compound the additional regulatory burden).

49. The Committee recommends that ASIC adopt a similar pilot testing approach to that which was taken with respect to the reporting of internal dispute resolution data by financial services licensees who provide financial services to retail clients under *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*. This would help ensure that the design of the relevant systems was appropriate and allow unanticipated system glitches to be dealt with before the entire regulated population is bound to comply with the new obligations from the "go-live" date.

Next steps

50. Members of the Committee would be happy to be involved in discussions with Treasury to inform future policy development. Please contact the Committee's Funds, Wealth Management and Investor Protection Lead Celeste Norman [redacted] if Treasury wishes to further engage with the Committee at this time.

Yours sincerely



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