Law Council
OF AUSTRALIA

Business Law Section

13 August 2025

Australia Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: rri.consultation@asic.gov.au

Dear Sir/Madam,

Proposed update to ASIC's Regulatory Guidance 168 on Product Disclosure Statements

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 Consultation Statement 22: Proposed update to ASIC's guidance on Product Disclosure Statements (**CS 22**), which was released by the Australian Securities and Investments Commission (**ASIC**) for consultation on 9 July 2025.

2. The Committee thanks ASIC for the opportunity to provide feedback on CS 22 and for granting a short extension of time for this submission to be prepared.

Background

3. ASIC is proposing to update Regulatory Guide 168 *Product Disclosure Statements (and other disclosure obligations)* (**RG 168**), so that it will be a comprehensive source of guidance on content and related requirements for Product Disclosure Statement (**PDSs**), and will no longer include material relating to other types of disclosure documents that must be given to retail clients (which ASIC considers is already adequately covered separately in other regulatory guides).

Key Points

4. The key matters that the Committee wishes to bring to ASIC's attention are as follows:

   (a) The Committee supports ASIC's proposal to consolidate guidance on PDSs into a single comprehensive guide, which will improve accessibility and reduce regulatory complexity. However, this must be implemented with appropriate safeguards to preserve quality and maintain accuracy in technical detail.

   (b) The Committee has identified critical technical guidance in each of Information Sheet 94 *Notification requirements for Product Disclosure Statements* (**INFO 94**), Regulatory Guide 65 *Section 1013DA disclosure*

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guidelines (**RG 65**), and Regulatory Guide 219 *Non-standard margin lending facilities: Disclosure to investors* (**RG 219**), which the Committee believes should be covered in greater detail in RG 168 to maintain the effectiveness of the ASIC regulatory guidance which is currently available.

(c) The Committee recommends that the new RG 168 include comprehensive coverage of digital disclosure challenges for PDSs, building on but going beyond the general guidance in Regulatory Guide 221 *Facilitating digital financial services disclosure* (**RG 221**).

Submissions

Overall approach to consolidation

5. The Committee welcomes ASIC's initiative to consolidate PDS guidance into a single document. This approach addresses a longstanding industry concern about the fragmented nature of ASIC's guidance on PDS obligations.

6. The Committee believes that the consolidated approach aligns with ASIC's broader regulatory simplification objectives and will potentially reduce compliance costs while improving the quality and consistency of disclosure documents across the financial services industry.

Proposed incorporation of other existing ASIC guidance into RG 168

7. The Committee wishes to emphasise the significance of inadvertently losing important technical guidance in the process of combining a number of separate documents which were each developed with a specialised focus. Some examples where the Committee believes the inclusion of nuanced guidance on particular matters in RG 168 is warranted are set out below.

INFO 94

8. The Committee supports the incorporation of INFO 94 content into Section F of the updated RG 168. However, the Committee notes that notification requirements under sections 1015D and 1015DA of the Corporations Act are complex and contain specific timing and procedural requirements which are critical to compliance.

9. The Committee recommends that Section F:

(a) clarify the interaction between lodgement requirements for continuously quoted securities and notification requirements for other products; and

(b) include specific guidance on the regulatory consequences of late notification or non-notification.

RG 65

10. Section 1013DA of the *Corporations Act 2001* (Cth) requires the PDS to include disclosure of how labour standards or environmental, social or ethical considerations are taken into account in investment decisions. The Committee

acknowledges that ASIC is proposing to incorporate the section 1013DA disclosure guidelines that are currently in RG 65 into Appendix 2 of RG 168.

11. However, given the increasing regulatory and market focus on environmental, social and governance considerations, particularly following the implementation of sustainability reporting requirements under section 292A of the Corporations Act, the Committee submits that these requirements warrant more prominent treatment and should therefore be captured within the main body of the RG 168 document.

12. The Committee recommends:

    (a) making the section 1013DA guidance a discrete subsection within section B of the updated RG 168; and

    (b) including an explanation of the inter-relationship between the 1013DA requirements and:

        (i) general anti-greenwashing principles established in Information Sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products* (**INFO 271**); and

        (ii) sustainability reporting and mandatory climate-related financial disclosure obligations.

RG 219

13. The Committee supports the incorporation of RG 219 into Section C of the updated RG 168 and notes that non-standard margin lending facilities can present unique disclosure challenges due to their complex risk profile and the transfer of beneficial ownership structures which they typically involve.

14. The Committee considers that it would be preferable for Section C to:

    (a) maintain the detailed risk disclosure requirements currently set out in RG 219, particularly regarding counterparty risk and the risks associated with title transfer; and

    (b) address the interaction between non-standard margin lending disclosure and the market integrity obligations under Part 7.2A of the Corporations Act.

Good disclosure principles

15. The Committee supports the retention and enhancement of the good disclosure principles framework in Section E of RG 168. The Committee believes that these principles serve a useful purpose in providing guidance for achieving the overarching requirement in section 1013C(3) of the Corporations Act that PDSs be ‘clear, concise and effective’.

16. However, the Committee recommends that ASIC consider the following specific enhancements to improve upon Section E:

(a) the discussion of Principle 3 (promote product understanding) could include specific guidance on presenting complex information in digital formats, including navigation requirements and accessibility standards consistent with the *Disability Discrimination Act 1992* (Cth); and

(b) insights from behavioural economics regarding how consumers process disclosure information, particularly for complex products, could be included.

Transaction-specific PDSs and continuous disclosure

17. The Committee considers that the guidance on transaction-specific PDSs in Section C appropriately incorporates material from Regulatory Guide 66 *Transaction-specific disclosure for PDSs* and notes the importance of clear guidance about the interaction between a product issuer's continuous disclosure obligations and transaction-specific PDS requirements.

18. The Committee recommends providing further guidance in Section C to:

(a) clarify when material changes in an issuer's circumstances during a transaction-specific PDS's currency would require either withdrawal and replacement of the PDS or issue of a Supplementary PDS; and

(b) address the use of transaction-specific PDSs for rights issues and other corporate actions where timing pressures for the raising of capital may conflict with the potential completeness of disclosure.

Digital disclosure and accessibility

19. While RG 221 addresses digital disclosure generally, the Committee recommends that RG 168 include specific guidance tailored to PDS disclosure, including:

(a) guidance on presenting layered fee structures (particularly for superannuation and managed investment products) in digital formats while maintaining clarity and comparability;

(b) standards for electronic PDSs to ensure clients can locate relevant information efficiently; and

(c) how PDSs can comply with accessibility standards under the *Disability Discrimination Act 1992* (Cth) and relevant Australian Standards.

Tailored PDS requirements

20. The Committee supports the comprehensive coverage of tailored PDS requirements in Section C.

21. However, for the shorter PDS regime applicable to superannuation products, simple managed investment schemes and simple sub-fund products, the Committee would welcome additional worked examples showing how page limits apply when multiple investment options are offered, and clearer guidance on the interaction between shorter PDS requirements and superannuation choice obligations under the *Superannuation Industry (Supervision) Act 1993* (Cth).

Corrections and suggestions for technical improvement

22. The Committee has identified the following corrections and specific technical improvements and/or clarifications which could be made:

(a) Section B, RG 168.15: state that the "applicant's" name (rather than "clients: name) must be on the application form;

(b) Section B, RG 168.16: avoid commenting on matters which are outside the scope of content obligations of regulation 7.9.74 of the *Corporations Regulations 2001* (Cth) (which merely requires the application form to contain an address for the applicant);

(c) Section B, RG 168.31: to avoid confusion, refer to the "director of the trustee" of an SMSF rather than "director of the SMSF" (which is a nonsense because self-managed superannuation funds are not companies and therefore do not have directors);

(d) Section C, RG 168.54: clarify the application of transaction-specific PDS rules to securities that transition from unlisted to continuously quoted status, and that the meaning of "securities" in this context does not cover securities the disclosure for which is regulated by Chapter 6D of the Corporations Act. The unnecessary comma between "securities" and "can" should also be removed;

(e) Section C, RG 168.55: reference to "previous disclosures the issuer has made to the market about its activities, financial standing and prospects (e.g. in their financial reports)" makes sense for an issuer of Chapter 6D-regulated securities. However, in the case of continuously quoted securities which are the subject of a PDS, the issuer may not be issuing securities in itself—for example, in the case of a registered managed investment scheme, the information provided to the market is about the registered scheme, not about its responsible entity (the issuer);

(f) Section D: the heading "What are some disclosure considerations for a PDS" is a question without a question mark and, in any event, it would be preferable to substitute this heading with "Potential sources of concern for PDS disclosure", followed by a short paragraph explaining that what follows in Section D are examples of circumstances that could cause a PDS to be "defective", what "defective" means and what avenues of enforcement action ASIC might have if a PDS is defective;

(g) Section D, RG 168.72: this paragraph has been framed in a confusing manner which leaves the reader wondering whether the past performance warning should say “past performance is not necessarily a guide to future performance” or “past performance is not necessarily a guide to future performance or the PDS may be defective”. A clearer way to express the concept would be:

> “If there is a statement about past performance in the PDS, the PDS may be defective if it does not include a prominent warning to the effect that past performance is not necessarily a guide to future performance”;

(h) Section D, RG 168.73: similar to the point made above, a clearer way to express the concept would be:

> “A PDS may be defective if it contains statements for which the issuer does not have a reasonable basis”;

(i) Section D, RG 168.79: it is not clear why this statement about disclaimers has become definitive (as compared to current RG 168.157), noting that this is inconsistent with the way that most other statements in this section are framed and it is not clear how this can always be true. The statement would better read “… may not counterbalance …” to acknowledge that the use and prominence of disclaimers may involve judgement (for example, a disclaimer, no matter how prominent, may not be appropriate for a misleading statement).

(j) Section E, RG 168.102: the first sentence could be more clearly expressed as: “The appropriate level of risk disclosure will vary from product to product” (rather than “The level of risk disclosure will vary from product to product”);

(k) Section E, RG 168.110: the text after the colon in paragraph (d) should be on a new line, because the cross-references to regulations 7.9.16J—7.9.16N are relevant to all of the financial products listed in paragraphs (a) through to (d), and the way the text is currently arranged might suggest that those regulations are only relevant to the financial products named in paragraph (d) (namely, securities in a CCIV);

(l) Appendix 1: update the table of other relevant ASIC guidance to include Regulatory Guide 280 *Sustainability reporting* and INFO 271 (greenwashing guidance); and

(m) Key terms section: ensure definitions are consistent with terminology used in other recent ASIC guidance and legislative amendments. In particular, the Committee considers that the term “consumer” could be used in place of “client” and defined as a person to whom a PDS must be given because that person is a retail client for the purposes of Chapter 7 of the Corporations Act. This is because the term “client” is often used in the context where a financial service provider has an existing relationship with a consumer, whereas the provision of a PDS may or may not result in the formation of a client / investor relationship between the consumer and the product issuer.

Implementation considerations

23. The Committee recommends that, when ASIC publishes the updated RG 168 and withdraws other material, an index is provided showing to what parts of RG 168 the relevant material that was previously captured in a separate document has been relocated. It would also be helpful for ASIC to maintain the webpages for superseded/withdrawn guidance for a period of time, with those webpages redirecting visitors to those pages to the updated RG 168 landing page and the index.

24. Such measures will help minimise the disruption and inconvenience for retail product issuers and their advisers who have historically used the various separate documents as important reference materials in developing PDS compliance measures.

Conclusion and further contact

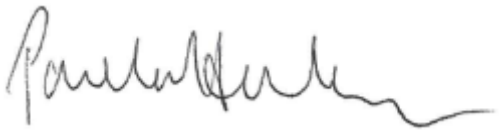
25. The proposed changes represent a significant improvement in the clarity of regulatory guidance, and the Committee commends ASIC for undertaking this comprehensive consolidation of its PDS guidance. The Committee believes that the proposed changes could materially assist industry participants in understanding and complying with their disclosure obligations.

26. The Committee emphasises that the success of this initiative depends on careful attention to the technical concerns raised in this submission, particularly regarding the preservation of key technical guidance and the inter-relationship with other relevant regulatory obligations.

27. The Committee would be pleased to discuss any aspect of this submission and looks forward to the publication of the final updated RG 168. The Committee also welcomes the opportunity to participate in any further consultation on technical aspects of the consolidated guidance.

28. Please contact the Committee Co-Chair, Pip Bell [redacted] if you would like to discuss this submission or the broader PDS regulatory framework with representatives of the Committee.

Yours sincerely



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Chair
Business Law Section