Law Council
OF AUSTRALIA

Business Law Section

30 October 2025

Ms Kate Metz
Senior Executive Leader
Regulatory Reform and Implementation
Regulation and Supervision
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

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

Dear Ms Metz

Consultation Statement 28 *Proposed remake of hardship withdrawals relief* (CS 28)

1. This submission concerning CS 28 is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**). The Committee thanks ASIC for the opportunity to provide feedback

Background

2. ASIC released CS 28 on 27 August 2025 following its decision to extend the relief in *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778* (the **Legislative Instrument**)—which was due to expire on 28 August 2025—for a further 18 months, until 28 February 2027.

3. The Legislative Instrument was made to facilitate withdrawals from registered managed investment schemes where the responsible entity has suspended withdrawals and ceased to allow the issue of new interests in the scheme for members facing financial hardship during the COVID-19 pandemic. The relevant kinds of financial hardship are urgent financial hardship, unemployment, compassionate grounds and permanent incapacity. To be eligible to rely on the Legislative Instrument, responsible entities must meet certain obligations, including to inform ASIC and scheme members that it is relying on the Legislative Instrument.

4. The purpose of the extension is to allow responsible entities of registered schemes to continue to rely on the Legislative Instrument and allow ASIC time to consult further on the matter, following some targeted consultation with key stakeholders in which a variety of views about the Legislative Instrument were expressed.

Submissions

Preliminary observations

5. The Committee observes that CS 28:

   (a) was not accompanied by a media release announcement;

   (b) does not explain what specific provisions of the *Corporations Act 2001* (Cth) the Legislative Instrument gives relief from (these have been noted by the Committee below);

   (c) does not explain whether or not any responsible entities have relied on the Legislative Instrument to date (which is information ASIC would have, given the requirements of the Legislative Instrument); and

   (d) does not contain any proposals or options for respondents to comment on.

6. The Committee therefore does not consider the consultation process to be particularly meaningful and queries whether, due to these limitations, it will elucidate sufficient useful feedback.

7. The Committee has nonetheless been able to draw on the experience of those of its members with specialist expertise in funds management who are familiar with the Legislative Instrument and the Corporations Act provisions from which it grants relief.

Need for relief

8. The Committee considers that it is in the public interest for ASIC to grant relief to allow a responsible entity to facilitate withdrawals by members experiencing genuine circumstances of hardship, where doing so would otherwise be a potential breach of provisions of the Corporations Act, including:

   (a) the obligation to treat members who hold interests of the same class equally (s601FC(1)(d));

   (b) requirements with respect to the content of the scheme constitution and the responsible entity's ability to change it unilaterally (Part 5C.3); and

   (c) the provisions governing withdrawals from illiquid schemes (Part 5C.6).

9. The Committee understands, anecdotally, that there have been a number of individual relief instruments made by ASIC to facilitate hardship withdrawals while the Legislative Instrument has been in operation. The Committee believes it would be in the public interest for ASIC to publicly share how many of those instruments there are, and why each respective responsible entity did not seek to, or was unable to, rely on the Legislative Instrument.

10. The Committee considers that it is more efficient for ASIC to facilitate hardship withdrawals via a legislative instrument that is available to all responsible entities than through individual relief. This is because members experiencing hardship may require funds in the short term to meet basic daily living and/or medical

expenses. If a responsible entity needs to apply to ASIC for individual relief, this will involve considerable costs (including thousands of dollars payable in relief application fees), may take weeks if not months, and the delay can prolong or exacerbate the affected member's hardship (which is not in the public interest nor, presumably, in keeping with ASIC's enduring priority of protecting vulnerable consumers).

Refining existing conditions of Legislative Instrument

11. The Committee further notes that ASIC is currently focusing on regulatory simplification initiatives. The Committee submits that refining the Legislative Instrument to make it more likely to be relied on so that responsible entities can assist scheme members experiencing hardship in a more timely and efficient fashion would be a worthy pursuit of this regulatory simplification objective.

12. The Committee submits that ASIC should revisit the following aspects of the Legislative Instrument:

    (a) the requirement that the responsible entity has ceased to issue interests in the scheme (definition of "frozen scheme" in notional subsection 601KEA(1) of the Corporations Act);

    (b) the responsible entity's obligation to report to ASIC quarterly—irrespective of whether the responsible entity has anything relevant to report (notional subsection 601KEC(3) of the Corporations Act);

    (c) the responsible entity's obligation to give each member of the scheme written notice by post or mail in addition to publishing notice on a website (notional paragraphs 601KEB(2)(b) and (c) of the Corporations Act); and

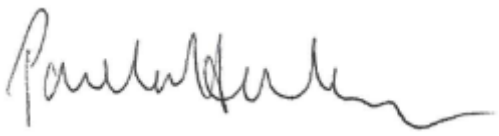
    (d) the annual cap of $100,000 per scheme member—which was set in 2020 and has not been indexed to movements in the CPI (notional subparagraph 601KEB(4)(b)(ii) of the Corporations Act).

Conclusion and further contact

13. The Committee would be pleased to discuss any aspect of this submission with ASIC and contribute further to the consultation process.

14. Please contact the Co-Chair of the Committee Pip Bell [redacted] if you would like to do so.

Yours sincerely



Professor Pamela Hanrahan
Chair
Business Law Section