PROPERTY FUNDS ASSOCIATION

4 March 2026

Consultation Paper: Enhancing oversight and governance of managed investment schemes

Submission from Property Funds Association

About the Property Funds Association

The Property Funds Association (PFA) is the peak body representing responsible entities (REs) and fund managers operating unlisted property and real asset managed investment schemes (MISs) across retail and wholesale markets in Australia. PFA members collectively manage more than $32 billion in assets on behalf of approximately 50,000 investors.

Schemes operated by PFA members provide Australians with access to diversified property investment across residential, commercial, industrial and agricultural asset classes. These schemes support housing delivery, commercial development, and long-term retirement savings. They play an important role in channelling private capital into productive real-economy assets that underpin broader economic growth.

The PFA welcomes the opportunity to engage with Treasury on this consultation, as outlined in the Consultation Paper entitled *Enhancing oversight and governance of managed investment schemes* (Consultation Paper). The property funds sector has a strong record of governance and regulatory compliance. We are committed to constructive participation in reforms that are evidence-based, proportionate, and targeted.

Executive Summary

The PFA appreciates Treasury's focus on strengthening investor protections in the MIS sector. The failures of the recent retail funds, Shield Master Fund (Shield) and the First Guardian Master Fund (First Guardian), caused serious harm to investors and the PFA acknowledges that it warrants consideration into whether the existing regulatory regime is appropriate given the size and complexity of the industry, whether there are any governance gaps and whether ASIC's supervisory capacity should be enhanced.

However, the PFA is deeply concerned that several of the proposals in the Consultation Paper go beyond targeted intervention and instead prescribe structural changes that would apply uniformly across the entire, highly diverse MIS sector, including the well-governed unlisted property funds sector, which was not implicated in the failures that prompted this review.

The existing MIS regulatory framework is robust. The Corporations Act 2001 already imposes some of the most stringent fiduciary and statutory duties worldwide. ASIC's regulatory guidance provides further prescriptions on how these obligations should be met.

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Where scheme failures have occurred, they reflect breaches of existing obligations and governance failures, not structural deficiencies in the legislative framework. The PFA notes that the enforcement actions arising from the recent failures are still ongoing, and it would be prudent for these processes to play out before making significant structural regulatory changes. The failures do not appear to be indicative of systemic issues across the broader MIS industry. The appropriate response is targeted enforcement, enhanced supervisory capability for ASIC, and proportionate refinement of existing obligations — not wholesale restructuring of a framework that has operated effectively for more than 25 years across many market cycles.

The recent failures of Sheild and First Guardian have been impactful for those investors and are to be deeply regretted. We believe these matters to be reflective of breaches within the regulatory system not a failure of the system itself.

The PFA is concerned about the effects of these recommendations, if implemented, on smaller fund managers and competition in the fund management industry, and particularly in challenging economic times. Similarly to the Joint Parliamentary Committee on Corporations and Financial Services' conclusion in relation to the wholesale investor test review, we believe that there is insufficient evidence of market failure to justify such significant and fundamental changes to registered MIS regulation, which would significantly increase the compliance burden and costs to fund managers and which will impact on investor returns and economic activity.

The PFA believes that existing regulation is robust and adequate. The focus should be on early detection of issues via monitoring and surveillance, and enforcement where real and material issues are identified.

This submission does not address Proposal 5 as the PFA is not directly involved in superannuation.

Proposal 1: Enhancing the regulatory framework for compliance

Question 1: *What are your views on proposals 1.1 to 1.4 to enhance the compliance framework for MISs?*

The PFA supports measures that would enhance the existing regulatory framework and provide greater investor protection. However, it is not clear that this would be achieved through the implementation of proposals 1.1 to 1.4. Our consideration of proposal 1.1 has been included below under Question 2.

Proposal 1.2 — Liability framework for compliance plans

The current regime of liability for contravention of a compliance plan, combined with breach reporting obligations, has resulted in compliance plans that provide for significant flexibility in order to avoid high-level breaches. Whilst flexibility is important, a more robust compliance plan would enhance investor protection. It is likely that removing liability for immaterial breaches of a compliance plan would encourage the adoption of more robust and detailed compliance plans. The PFA would support this proposal provided that the amendments flowed through the full regulatory ambit, including breach reporting.

In changing the framework reporting low-level and technical breach reports that do not go to material investor harm and governance weakness would be reduced. By directing regulatory attention to genuinely significant issues, this approach would improve the quality and utility of breach reporting. Clear guidance on how materiality is assessed will be important to ensure consistent application across the sector. In developing the framework, Treasury may wish to consider alignment with the concept of "significant" breaches in section 912D(5) of the Corporations Act.

Proposal 1.3 — Mandatory audit and assurance standards

As noted in the Consultation Paper, ASIC has provided guidance on the standards to be followed by auditors when undertaking a compliance plan audit. If there is evidence that these standards are not sufficient to protect investors' interests, or if they are not being followed, then it may be appropriate to consider mandatory standards. The adoption of mandatory standards could add time and costs to compliance plan audits. The PFA understands from speaking with members that compliance plan audits are already thorough and therefore costly and time consuming. It is likely that introducing mandatory standards would increase these costs, which are likely to be paid by the scheme and would ultimately detract from investor returns.

Proposal 1.4 — Notification to ASIC of change of committee members

The PFA supports this proposal as it would enhance regulatory visibility and support more proactive supervision. This support is on the basis that:

- ASIC has the capacity to monitor the information received;
- the process for lodging the report is not overly burdensome; and
- it operates merely as a notification requirement and ASIC has no rights of approval of compliance committee members.

The incremental compliance cost associated with notification is likely to be modest relative to other proposals, particularly if implemented through streamlined reporting channels.

Question 2: *Should the framework for compliance plans be amended to include more specific content requirements?*

Content requirements should be refined only where they improve the substantive effectiveness of compliance plans in identifying and managing material risk.

Compliance plans are operational governance documents. They are not, and should not become, supplementary disclosure documents. Requiring detailed restatement of investment strategy or asset class information risks duplicating Product Disclosure Statements, while adding compliance burden without supervisory benefit. Likewise, the contents of policies already maintained by the RE should not be required to be repeated in the compliance plan, to avoid the operational difficulty of ensuring that the compliance plan and policies remain consistent with one another.

Where an RE operates multiple funds of a similar nature and risk profile, it is common practice (and permitted under the current framework) to use a master compliance plan covering those funds.

This approach promotes consistency, efficiency and clarity of control articulation. Requiring individual compliance plans for each fund, or significantly expanding descriptive content within master plans, would likely require substantial systems uplift and increase audit and assurance costs without delivering commensurate supervisory benefit. Those additional costs would ultimately be passed on to MIS investors.

Question 3: *Who should set and enforce standards for compliance plan audits?*

Audit standards should be set through recognised assurance frameworks and supported by clear regulatory guidance, with ASIC responsible for supervision and enforcement.

Question 4: *Are any other changes required to strengthen the compliance framework?*

N/A

Question 5: *What would the impacts of the proposals be, including compliance costs?*

Expanded compliance plan content requirements and mandatory audit standards will impose material compliance costs across the sector. For property MISs operating across multiple funds with shared compliance infrastructure, costs will include: systems uplift for audit methodology changes; legal and consulting costs for plan redrafting; and increased audit fees.

Investors would be better served by ASIC being resourced to collect and analyse data that would assist it in identifying poor behaviour earlier. ASIC has access to meaningful data that may have shown, for example:

- the rapid increase in the size of funds (both through financial reporting (yearly and potentially half-yearly) and around the anniversary of the registration of the fund via Form 491); and
- whether a fund's annual financial reports were not lodged by their due date or, if they were, whether they were qualified, and whether the compliance plan audit was lodged late or qualified. ASIC also has access to breach reporting information and complaints, and should consider whether an absence of reportable situations in relation to a registered MIS reflects robust compliance or the absence of systems to detect and report non-compliance.

These costs would ultimately be passed on to investors through increased management expense ratios or increased expenses recoverable by the scheme. The PFA requests that Treasury conduct a formal regulatory impact assessment calibrated to the specific characteristics of the unlisted property sector before finalising Proposal 1.

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Proposal 2: Require a majority of external directors on the boards of responsible entities

Question 6: *Should responsible entities be required to have a majority of external board members?*

The PFA does not support this proposal in its current form. The compliance committee model is not a lesser form of oversight. It was deliberately designed to provide focused compliance supervision where an RE board does not consist of a majority of external directors.

The sole role of the compliance committee is to have focused oversight on compliance in respect of registered schemes. A number of companies that are responsible entities operate many different businesses within the one entity, including operation of wholesale funds and potentially holding an Australian Credit Licence. Finding an external director with the qualifications, skills and experience, and sufficient time to be across all these businesses would be difficult, and these other business lines can detract focus from compliance of the registered schemes.

The PFA notes the concern raised by expert members that compliance is a distinct area of expertise. Replacing experienced compliance professionals with generic independent directors in compliance oversight roles risks weakening supervision in practice, irrespective of structural form.

Question 7: *Are there enough external directors available in Australia to meet this proposal?*

The pool of suitably qualified external directors for MIS responsible entities is finite.

As at 30 June 2025, there were approximately 400 responsible entities operating approximately 3,587 registered MISs. A majority-external requirement applying sector-wide would create significant demand for qualified directors that the market cannot readily supply. This could result in responsible entities seeking to qualify existing directors as 'external' to fit within the requirements, which may reduce any substantive governance improvement the proposal is intended to achieve.

The duties and liabilities regime for directors (see ss.180–184 of the Corporations Act) are different to those of compliance committee members (see s.601JD of the Corporations Act), and it should not be assumed that someone willing to serve as an external compliance committee member will also be willing to take on the additional legal exposure of a directorship.

Question 8: *Are any other changes required to address conflicts of interest and ensure independent oversight of MISs?*

The policy objective of strengthening conflicts management and independent oversight can be achieved within the existing governance framework. The PFA considers that more targeted measures could achieve this objective without the costs and disruption of structural mandates. These could include:

- Strengthening ASIC's guidance on the experience, competence and independence of judgement expected of compliance committee members and external directors, building on

the existing principles in ASIC Regulatory Guide 132 (Compliance measures for responsible entities);
- Reinforcing regulatory expectations regarding reporting lines, access to information and escalation pathways for compliance committees;
- Enhancing ASIC's visibility of governance structures and committee composition through notification requirements; and
- Targeted supervisory engagement by ASIC where governance risk indicators emerge.

Such measures would strengthen governance capability while preserving flexibility in organisational structure. They would also more directly address the types of supervisory weaknesses identified in recent enforcement matters, which involved failures of oversight and escalation rather than the absence of majority-external director boards.

The existing regulatory and legislative framework is very clear in respect of how conflicts of interest are to be addressed across the financial services industry. The PFA does not consider it necessary to introduce a more onerous regime for MISs. It is also noted that superannuation trustees regulated by APRA are not required to have a majority of external directors on the board.

Question 9: *What would the impacts of the proposal be, including compliance costs?*

Mandating majority-external boards would require many responsible entities to substantially restructure existing governance arrangements. For unlisted property fund operators, impacts would include:

- Significant director recruitment and remuneration costs;
- Potentially increased director and officer insurance premiums for the RE;
- Transitional governance restructuring expenses, including legal advice, board process redesign, and potential corporate restructuring; and
- For all REs, in particular smaller REs, increased difficulty in appointing suitably qualified directors at a commercially reasonable cost.

Entities that act as RE commonly provide a range of activities, including operating wholesale schemes, advisory services or other business functions. As the board is responsible for all operations of the business, this may cause broader governance issues for the entity and may require structural separation into a distinct RE and other entities for other business operations, or appointment of outsourced responsible entities. This would lead to more complexity and cost for RE businesses.

Removal of the compliance committee would eliminate an extra layer of compliance oversight for the RE and may give rise to a potential loss of focus on compliance-related issues, given the differing liabilities imposed on directors and compliance committee members under the Corporations Act.

Responsible entities often need documents approved or signed by the board at short notice. A requirement for a majority of external directors may increase operational complexity, including longer lead times for the circulation of papers, provision of background materials and execution of agreements or regulatory forms. Additional processes and timeframes required to properly brief and inform external directors may delay decisions on matters affecting investors' interests.

These increased costs would ultimately have to be borne by investors.

Proposal 3: Prohibit responsible entities of registered MISs from conducting related party transactions, with limited exceptions

The PFA's concern is with the calibration of Proposal 3, not the objective it seeks to achieve. Our submission is that a prohibition on related party transactions is a disproportionate response to the problem identified, for following reasons:

- The existing regulatory framework already provides a robust and proportionate regime for managing related party transactions in registered schemes, and in particular retail unlisted property funds. The problem identified in the Consultation Paper is the destruction of investor capital occasioned by alleged serious misconduct, not a structural deficiency in the related party transaction provisions.
- The Shield and First Guardian matters remain before the Federal Court and are part of ongoing investigations by ASIC. Legislating the structural prohibition of related party transactions as contemplated by Proposal 3 before ASIC's investigations are complete or the Federal Court proceedings (and any other proceedings that may eventuate as a result of ASIC's investigations) have resolved, and before the factual record is closed, is the wrong sequencing of reform.
- The conduct alleged in the Shield and First Guardian matters involved alleged breaches of obligations that already exist under the law. The problem is not a gap in the related party transaction rules; it is a failure of detection and enforcement.
- Related party transactions are an integral and economically essential feature of the Australian property funds sector. They support key activities such as liquidity events, capital recycling, capital raisings, fund seeding, and the establishment of co-investment structures across the real estate market.
  Related party arrangements through vertically integrated property fund managers also enable the efficient management of property assets by related parties of responsible entities and investment managers. Because these parties possess deep knowledge of the assets they oversee and maintain aligned interests with investors, they are well positioned to maximise asset performance, value creation, and overall investment outcomes.
- Every comparable international jurisdiction, including Canada, the United States, the United Kingdom, Singapore, New Zealand and the European Union, manages related party transactions through disclosure, governance and independent oversight, not prohibition. Proposal 3 would make Australia a global outlier.

For further consideration of proposal 3, please see Annexure A.

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Proposal 4: Amend the framework for setting financial requirements for responsible entities

Question 14: *Should more specific financial resource requirements be imposed on responsible entities (in addition to the general obligation to have adequate resources under section 912A(1)(d) of the Corporations Act)?*

The PFA acknowledges that adequate financial resources are an important element of the RE's ability to meet its operational obligations. However, the purpose of financial resource requirements for an RE is operationally focused: ensuring the RE can continue to discharge its duties to members during periods of stress and, if necessary, facilitate an orderly wind-down of schemes.

Financial resource requirements serve an operational resilience function, not a consumer protection function. Consumer protection in the event of RE failure is more appropriately served by adequate professional indemnity and other insurance arrangements.
A lack of financial resources has not been shown to be a cause of the recent MIS failures, and there has been no evidence provided that more specific financial resource requirements would have assisted in those instances.

Question 15: *Should the MIS financial requirements continue to be set by ASIC using its exemption and modification powers, or should they be set out in primary legislation or regulations?*

The PFA supports retaining ASIC's existing ability to set detailed financial requirements through exemption and modification powers.

The RE sector is diverse, and the flexibility to calibrate requirements through subordinate instruments — in consultation with industry — is an important feature of the current framework. Moving detailed thresholds into primary legislation would reduce adaptability and create rigidity where flexibility is required to address evolving market structures, varying risk profiles and supervisory experience.

Question 16: *Should the objectives of the MIS financial requirements be specified in primary legislation or regulations to provide more clarity about the purpose of the requirements?*

The PFA supports articulating the objectives of the financial requirements regime at a high level in primary legislation, provided this does not foreclose flexibility in calibrating detailed quantitative thresholds through regulatory instruments.

Question 17: *Are any other changes to the framework for determining MIS financial requirements required?*

Any reform to financial requirements should be subject to detailed consultation and accompanied by clear and certain calibration settings. It should also be designed to address a demonstrated regulatory gap or provide commensurate consumer protection, based on clear evidence.

Question 18: *What would the impacts of the proposal be, including compliance costs?*

Without more details on this proposal, it is difficult to assess the impact of potential changes. However, any material increase in capital requirements would directly affect market structure, as it could create barriers to entry, necessitate consolidation of smaller fund managers, increase reliance on outsourced responsible entities and increase costs to investors.

Proposal 5: Increase ASIC's data collection powers on the retail MIS sector

Question 19: *Should a new legislative framework be introduced for the recurrent collection of data by ASIC on MISs?*

The PFA considers that reporting obligations should be considered and reviewed with the objective of streamlining the process and ensuring harmonisation across regulators.
ASIC also needs to be properly resourced to make better use of data it already holds, as it already has access to substantial data that, if properly analysed, could identify higher-risk operators at an early stage:

- Annual and half-yearly scheme and RE financial reports and auditor reports;
- Form 491 Change to Scheme Details;
- Late or qualified financial reports and compliance plan audit reports;
- Breach reporting data and patterns, including auditor breach notifications and contravention reporting;
- Internal dispute resolution data reports and patterns;
- Updates to directors, responsible managers and key persons;
- Significant dealing notifications under the Design and Distribution Obligations;
- FS88 PDS in-use notice when a PDS is updated for an existing registered scheme;
- FS89 Notice of change to fees and charges in a PDS;
- Changes to the constitution, RE and/or auditor of a registered scheme; and
- Absence of reportable situations.

Currently ASIC's industry-facing data collection portals are unreliable and create operational inefficiencies, including inconsistencies or duplication in reporting of information, without appearing to allow ASIC to interrogate the data efficiently.

Data collection should not operate as a blanket reporting expansion, but as a mechanism to support tiered supervision, early risk identification and targeted engagement. The PFA supports a carefully designed legislative framework for recurrent data collection, provided that:

- The purposes of data collection are clearly specified, with ASIC required to articulate how collected data will be used to support risk-based supervision;
- Data requirements are specified in subordinate instruments at an appropriate level of detail, allowing ongoing calibration through industry consultation;

- The framework is supported by a material investment in ASIC's industry-facing IT infrastructure, with the objective of reducing duplication, minimising the number of reporting channels and reports, and delivering a single, user-friendly interface that enables meaningful analysis and reporting for ASIC at a reasonable frequency; and
- Where consequences are prescribed, there should be a clear distinction between deliberate or systemic failure to provide required data and inadvertent technical or systems errors. Enforcement settings should be calibrated to ensure regulatory action is directed at material non-compliance rather than minor reporting inaccuracies.

Question 20: *What types of recurrent data could help to detect risks, including conduct or fund level risks in the retail MIS sector?*

Recurrent data should focus on objective risk indicators. The PFA endorses a risk-calibrated approach that targets: liquidity and redemption risk indicators; leverage metrics; and compliance and breach reporting patterns (as discussed under Proposal 1).

Part of this information could be collected through the following:

- Significant Event Notices/Continuous Disclosure: enhanced guidance should make clear that this requires notification of suspension or freezing of redemptions and breach of leverage restrictions, and require the notices to be lodged with ASIC as well as published on the RE's website.
- Quarterly aggregate inflow/outflow reports.

Question 21: *What data should be collected about MISs?*

The PFA recommends the data types described in response to Question 20 above, including Significant Event Notices and Continuous Disclosure Notices (to be lodged with ASIC and published on the RE's website) and quarterly aggregate inflow/outflow reports.

Question 22: *What event notifications should be provided to ASIC? For example, should there be a notification when redemptions are frozen or suspended?*

The PFA supports event notifications for material risk developments, including:

- Suspension or freezing of redemptions;
- Introduction of leverage or significant increase in leverage ratios;
- Replacement of RE or key outsourced service providers (investment manager, custodian, administrator); and
- Compliance plan audit qualifications or material findings.

Question 23: *What would the impacts of the proposal be, including compliance costs?*

Expanded data collection obligations will impose material operational and systems costs, including: development of data aggregation and reporting systems; integration with custodians, administrators, and registry providers; ongoing reporting resource allocation; and potential duplication with existing

ASIC, APRA, ATO, and ABS reporting obligations. Any expansion of ASIC's recurrent data collection powers should be carefully designed to align with the Government's stated "tell us once" principle.

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ANNEXURE A- Proposal 3 – Prohibit responsible entities of registered MISs from conducting related party transactions, with limited exceptions

1. Executive summary

The PFA supports Treasury's objective of strengthening the governance and oversight of registered managed investment schemes (MIS). The collapses of the Shield Master Fund (Shield) and the First Guardian Master Fund (First Guardian) caused serious harm to investors, and the PFA acknowledges the Government's responsibility to respond.

The PFA's concern is with the calibration of Proposal 3, not the objective it seeks to achieve. Our submission is that a prohibition on related party transactions is a disproportionate response to the problem identified, for following reasons:

- The existing regulatory framework already provides a robust and proportionate regime for managing related party transactions in registered schemes, and in particular retail unlisted property funds. The problem identified in the Consultation Paper is the destruction of investor capital occasioned by alleged serious misconduct, not a structural deficiency in the related party transaction provisions.
- The Shield and First Guardian matters remain before the Federal Court and are part of ongoing investigations by ASIC. Legislating the structural prohibition of related party transactions as contemplated by Proposal 3 before ASIC's investigations are complete or the Federal Court proceedings (and any other proceedings that may eventuate as a result of ASIC's investigations) have resolved, and before the factual record is closed, is the wrong sequencing of reform.
- The conduct alleged in the Shield and First Guardian matters involved alleged breaches of obligations that already exist under the law. The problem is not a gap in the related party transaction rules; it is a failure of detection and enforcement
- Related party transactions are an integral and economically essential feature of the Australian property funds sector. They support key activities such as liquidity events, capital recycling, capital raisings, fund seeding, and the establishment of co-investment structures across the real estate market.
  Related party arrangements through vertically integrated property fund managers also enable the efficient management of property assets by related parties of responsible entities and investment managers. Because these parties possess deep knowledge of the assets they oversee and maintain aligned interests with investors, they are well positioned to maximise asset performance, value creation, and overall investment outcomes.
- Every comparable international jurisdiction, including Canada, the United States, the United Kingdom, Singapore, New Zealand and the European Union, manages related party transactions through disclosure, governance and independent oversight, not prohibition. Proposal 3 would make Australia a global outlier.

2. The existing regulatory framework for registered unlisted property funds

The current regime governing related party transactions for registered schemes is found in Chapter 2E (as modified by Part 5C.7) of the Corporations Act.

The general prohibition provides that a responsible entity must not cause a registered scheme to provide a financial benefit to a related party of the responsible entity unless either:

- member approval has been obtained;[1] or
- the benefit falls within one of the permitted exceptions in sections 210–216 of the Corporations Act (including the arm's-length exception in section 210 of the Corporations Act).

The arm's-length exception in section 210 of the Corporations Act permits transactions that are conducted on an arm's length basis.

The related party transaction provisions cannot be reviewed or considered in a vacuum. They are subject to a number of other important investor protection mechanisms for retail investors in unlisted registered property funds (UPFs). Those mechanisms are found in both the Corporations Act and ASIC Regulatory Guides, namely:

- **The requirement to act in the best interests of members:** Section 601FC of the Corporations Act separately requires that responsible entities must act in the best interests of members and, where there is a conflict between members' interests and the responsible entity's interests, priority is given to members' interests.
- **The duty to adequately manage conflicts of interest:** As an AFSL holder, section 912A(1)(aa) of the Corporations Act imposes an obligation on a responsible entity to have in place adequate arrangements for managing conflicts of interest.
- **Regulatory Guide 46: *Unlisted property schemes: Improving disclosure for retail investors* (RG 46):** A responsible entity of a UPF has additional compliance requirements that are set out in RG 46. In particular:
  - **Benchmark 5: Related party transactions:** Requires responsible entities of UPFs to maintain and comply with a written policy on related party transactions, which addresses assessment and approval processes and conflict management arrangements[2]. Responsible entities of UPFs are also required to disclose on an "if not, why not" basis that they meet this benchmark. If the benchmark is not met, the responsible entity must explain:
    - why not;
    - the implications of not meeting the benchmark and disclose the arrangements it has in place; and
    - the risks associated with the approach it has adopted.
  - **Disclosure Principle 5: Related party transactions:** Requires the responsible entity of a UPF to disclose detailed information about related party transactions relevant to each UPF that the responsible entity operates in the UPF PDS and in ongoing RG 46 disclosures at least every 6 months (and soon as practicable for material changes).
- **Compliance Plan requirements:** Part 5C.7 of the Corporations Act already requires compliance plans to identify related party transactions and demonstrate that they

comply with Chapter 2E and Part 5C.7. As noted below, that requirement is subject to review and oversight by the registered scheme's compliance plan auditor.
In addition, the compliance plan for a UPF must contain adequate measures to ensure compliance with the related party transaction requirements of RG 46, including the identification, monitoring, and management of all related party transactions.[3]

- **Compliance committee oversight:** Compliance committees are required to be aware of the related party transaction benchmarks and disclosure principles applicable to the UPF and to monitor the responsible entity's application of them. Where a compliance committee identifies non-compliance or a possible breach of the Corporations Act (including a breach relating to related party transactions) it must report the matter to the responsible entity and, if necessary, directly to ASIC.[4]
- **Compliance plan audit:** As part of their annual audit, compliance plan auditors are required to consider whether the compliance plan contains adequate measures to ensure compliance with the related party transactions benchmarks and disclosure requirements in RG 46.[5]

The current multi-layered related party transaction regulatory structure for UPFs in particular, involves:

- the statutory prohibition in section 208 of the Corporations Act, with limited exceptions;
- the additional related party transaction governance and disclosure requirements in RG 46;
- a compliance plan containing:
  - adequate measures to ensure the responsible entity identifies and complies with related party transaction requirements of the Corporations Act; and
  - additional adequate measures to ensure the responsible entity complies with the related party transaction requirements of RG 46;
- where a compliance committee has been appointed, a compliance committee with monitoring and escalation obligations to ASIC; and
- an independent compliance plan auditor.

In the PFA's view, when regard is had to the totality of the investor protection mechanisms noted above, the existing regulatory structure for the regulation and monitoring of related party transactions in UPFs is comprehensive, robust, fit for purpose and adequately protects retail investors.

As discussed in more detail below, the conduct alleged in the Shield and First Guardian matters involves alleged breaches of obligations that already exist under the law. The problem is not a gap in the related party transaction rules; it is a failure of detection and enforcement.

In the PFA's submission, Treasury should therefore prioritise reforms that address how the alleged misconduct in Shield and First Guardian was able to continue undetected. The response should focus on strengthening compliance monitoring (Proposal 1) and improving

early-detection mechanisms (Proposal 5), rather than imposing a structural prohibition on related party transactions.

3. Treasury should defer intervention

"*The Government will consider feedback from consultation and determine areas of the regulatory framework that may need strengthening in light of the Shield and First Guardian collapses and other MIS collapses. The outcomes of regulators' enforcement and litigation will also inform these deliberations*."[6]

The PFA respectfully submits that this statement from the Consultation Paper is an argument for deferring any final decision on Proposal 3 until those outcomes are known.

The Consultation Paper acknowledges that: "*Given that the Shield and First Guardian matters involve alleged breaches of existing obligations, imposing additional obligations on responsible entities of MISs may be unlikely to prevent such failures without other measures to enhance ASIC's ability to detect and respond to poor governance and other scheme risks.*"[7]

The logical conclusion of this acknowledgement is that ASIC's detection and response capability (Proposals 1 and 5) should be prioritised over structural prohibition (Proposal 3).

The Shield and First Guardian matters remain before the Federal Court and are part of ongoing ASIC investigations. To legislate a blanket prohibition on related party transactions based on incomplete factual findings from two ongoing ASIC investigations and Court proceedings is to risk designing a legal framework around a partial and potentially misleading picture, significantly impacting an industry that manages $2 trillion in retail investors' assets.[8]

The PFA respectfully submits that Treasury should defer any final decision on Proposal 3 until the ASIC investigations and Federal Court proceedings into Shield and First Guardian are complete.

4. Legitimate related party transactions in property funds

Vertically integrated fund management structures, where the responsible entity, investment manager, property manager, and development manager are related entities, are a standard and commercially rational feature of the Australian property funds sector. They reflect the commercial logic of property investment, which rewards scale, alignment, and specialised expertise.

Prudent and well-governed property fund managers regularly conduct related party transactions that are on arm's-length terms, independently valued, disclosed to investors and, in many cases, subject to member approval. They can create significant economic value, liquidity for investors, access to institutional-grade assets for new investors, and capital recycling efficiency across fund platforms.

Examples of the types of transactions that are undertaken by Australian property fund managers are set out below and illustrate the potential benefits to investors:

- **Capital recycling:** This allows property funds to rotate out of assets at the peak of a cycle and into new assets or asset classes without requiring each fund to independently source transaction counterparties from the open market, reducing transaction costs and market timing.
- **Inter-fund liquidity:** During periods of market illiquidity, intra-platform asset transfers enabled investors in unlisted funds to access partial liquidity by transferring assets to other vehicles operated by the same responsible entity with aligned capacity and investment strategy.
- **Access to institutional-grade assets for retail investors:** Institutional-grade assets (for example, prime office buildings and logistics facilities) are often of a size that would be unsuitable for a single fund with retail investors. By undertaking co-investment in those assets with another related party property fund, managers can provide retail investors with access to those assets.
  Acquiring those assets as a co-investment with a related party can also manage the concentration risk for the property fund that co-invests in the asset or 'right-size' the investment to maximise the available pool of potential buyers.
- **Capital raising:** Capital raisings for property acquisitions generally occur within the compressed 6–8 week settlement periods typical of commercial property transactions. As a result, related parties are frequently required to take up underwrite-style units in the property funds they operate to enable settlement and avoid penalty for failure, with those units progressively sold down. This allows retail investors to get access to opportunities that would otherwise not be available by utilising the balance sheet of the responsible entity or its related parties.
- **Access to newly developed assets:** Property fund managers can use their balance sheet as a "warehouse" for newly developed or acquired assets, subsequently transferring stabilised assets into related party property funds once income is established, enabling those funds to receive assets at a lower risk point in the development/stabilisation cycle.

The examples listed above are regularly undertaken by prudent and well governed property fund managers. The transactions involve full disclosure, independent valuation, arm's-length pricing and board oversight. This is precisely what was absent in the conduct alleged in the Shield and First Guardian matters.

5. Proposed sector-wide legislation based on a subset of responsible entities is a disproportionate response

The Consultation Paper states that there were 405 responsible entities and 3,587 schemes registered with ASIC as at 30 June 2025. Two responsible entities are the subject of the alleged conduct that motivates Proposal 3. The PFA respectfully submits that legislating a structural prohibition affecting all 405 responsible entities and 3,587 registered schemes on the basis of the alleged conduct of two represents a disproportionate regulatory response.

The Consultation Paper also notes that the alleged poor conduct by the responsible entities of a *subset* of MISs has contributed to consumers suffering losses.[9] The Consultation Paper's own framing acknowledges that this is a *subset* problem. Subset problems require targeted interventions, not market-wide structural prohibitions. To use an analogy, the Government does not prohibit all loans because some lenders engage in predatory lending; it strengthens the licensing, supervision, and conduct standards applicable to lenders, with heightened scrutiny for higher-risk market segments.

Correspondingly, Treasury should focus its regulatory response in a targeted manner and focus on strengthening compliance monitoring (Proposal 1) and improving early detection mechanisms (Proposal 5).

6. International evidence uniformly supports a managed conflict model

International comparison

Every comparable, highly regulated, international jurisdiction manages related party transactions through disclosure, governance and independent oversight, not prohibition. An Australian prohibition would place Australian fund managers at a competitive disadvantage relative to their international peers in global capital markets.

- **United Kingdom**

  In the United Kingdom, the FCA Handbook requires the authorised fund manager to take reasonable care to ensure the fund is not exposed to an unacceptable level of risk from related party transactions.[10] This is a principles-based risk management and disclosure standard monitored by the depositary and auditor, not a prohibition.

  Under the UK AIFMD regime, conflicts of interest management obligations require disclosure and management of conflicts but do not prohibit related party transactions, and the depositary regime provides an additional structural check on asset-level related party transactions.

- **European Union**

  The EU UCITS V Directive[11] and the Alternative Investment Fund Managers Directive (**AIFMD**) impose a comprehensive conflicts of interest framework based on the principle of managing and disclosing conflicts rather than prohibiting them.

  Key elements include:

  - management companies and alternative investment fund managers (AIFMs) must identify, prevent, manage and disclose conflicts of interest, including related-party transactions;

- ESMA's guidelines on conflicts of interest under UCITS and AIFMD prescribe disclosure, internal governance and escalation procedures, but not prohibitions;[13] and
- contain additional investor protection requirements for asset managers that trade with related entities, but these operate through transparency and best execution standards, not prohibitions.[14]

The direction of EU regulatory reform has consistently been toward better disclosure and governance, not prohibition.

- **Singapore**

The Monetary Authority of Singapore's Code on Collective Investment Schemes (**CIS Code**) takes a sophisticated conflicts-management approach. The CIS Code requires that:

- the fund manager must have effective arrangements in place to manage potential conflicts of interest;
- the amount of related-party transactions must be disclosed;
- related-party transactions must generally be at arm's-length or on no less favourable terms than third-party transactions; and
- significant related-party transactions may require trustee approval.

Singapore's SGX Listing Manual (applicable to REITs and listed business trusts) goes further by requiring independent valuations for interested person transactions and disclosure above materiality thresholds but explicitly permits them subject to these safeguards.[15]

Singapore's REIT market, one of the most liquid and sophisticated in Asia, is built on related-party transactions.

- **Canada**

Related party transactions for investment funds are permitted in Canada through an approval-with-oversight model.

Managers of publicly offered investment funds are required to establish an Independent Review Committee (**IRC**) composed entirely of independent members.[16]

Fund managers must refer all conflict of interest matters to the IRC before proceeding, including related party transactions, cross-trades between funds under common management, and purchases of securities of related issuers.

- **United States**

In the United States, inter-fund related party transactions (cross-trades) are permitted

subject to a strict procedural regime involving majority independent boards (with independent director approval of cross-trade policies) and market pricing.[17]

American fund managers including BlackRock, Vanguard, Fidelity and others routinely conduct Rule 17a-7 cross-trades between affiliated funds with billions of dollars in transactions annually.

- **New Zealand**

  New Zealand's Financial Markets Conduct Act 2013 (**FMC Act**) governs managed investment schemes through a licensed manager/licensed supervisor model.

  Under the FMC Act:

  - the manager must have a conflicts of interest policy;[18]
  - related party transactions must be on arm's-length terms or approved by the supervisor (equivalent to a trustee);[19] and
  - the supervisor has an independent oversight role and must not approve a transaction that is not in the interests of investors.[20]

International reform trajectory: moving towards Australia's model, not away from it

In the jurisdictions listed above, major international fund regulatory reform undertaken in recent years has been toward better disclosure and governance, not prohibition.

The UK's Financial Conduct Authority Asset Management Regime Review[21] is specifically aimed at simplifying fund governance requirements, streamlining the depositary oversight function for lower-risk fund types, and moving toward principles-based risk management for conflicts of interest; replacing prescriptive procedural requirements with outcomes-based standards.

The EU's AIFMD II (Directive (EU) 2024/927), in force April 2024 and requiring member state implementation by April 2026[22], refined and clarified the existing principles-based conflicts framework without increasing prescription.

In the United States, current SEC leadership has explicitly addressed simplifying disclosure requirements to reduce costs and enhance readability[23], and has enhanced investor access to private market vehicles through a disclosure-based model rather than structural restriction[24]. This direction is squarely consistent with Australia's existing approach.

Conclusion on the international comparison

First, none of highly regulated international jurisdictions listed in this submission has adopted an outright prohibition on related party transactions (with a limited exceptions regime) in managed investment schemes analogous to Proposal 3. Australia would stand alone in prohibiting related party transactions, subject to a limited exceptions regime.

Secondly, and more fundamentally, Australia's existing framework is already substantively aligned with international best practice across every material dimension. In particular, the default approval requirement, the objective arm's-length pricing standard, the disclosure regime, and ongoing compliance monitoring are all aligned.

The compliance plan, compliance committee, and compliance plan auditor mechanisms embedded in Australia's existing framework, together with the RG 46 Benchmark 5 and Disclosure Principle 5 regime for UPFs, collectively constitute a framework that is functionally equivalent to, and in disclosure terms, more prescriptive than, the frameworks of those international jurisdictions.

Thirdly, the direction of international regulatory reform is emphatically away from prohibition and toward the model Australia already operates. For example:

- The UK is simplifying its depositary requirements.
- The EU's AIFMD II refined rather than expanded the conflicts framework.
- The US is moving toward enhanced disclosure rather than structural restriction.

The international evidence confirms that detection and enforcement enhancement, not structural prohibition, is the globally accepted response to fund governance failures.

Competition for capital and quality investments continues to intensify around the world. Implementing Proposal 3 and prohibiting related party transactions, subject to limited exceptions, would place Australian fund managers at a competitive disadvantage in a global capital market where every one of their international peers operates under a framework that permits those arrangements.

7. Responses to the consultation questions

Question 10: *Should responsible entities of MISs be prohibited from investing or lending money to companies that are controlled by a member of the responsible entity's board or companies that are related bodies corporate of the responsible entity? What exceptions would be required?*

For the reasons set out above, the PFA's response is no.

The exceptions that would inevitably be required would so substantially qualify the prohibition as to render it ineffective, while simultaneously imposing significant compliance costs on well-governed operators.

Question 11: *Are any other changes required to ensure investment decision-making by the responsible entity is in the best interests of scheme members?*

The PFA's preferred reforms are set out in section 2 above. The PFA would also support Treasury and ASIC considering whether ASIC's existing related party transaction enforcement toolkit is adequately resourced, as an immediate and proportionate response to the conduct identified in Shield and First Guardian.

Question 12: *What would the impacts of the proposal be, including compliance costs?*

Proposal 3, if implemented without the broad exceptions that Treasury acknowledges will be necessary, would have severe consequences for the Australian retail property funds sector.

These include:

- the elimination of established liquidity event mechanisms for UPFs;
- disruption to inter-fund capital recycling models used by many major Australian property fund managers;
- disruption to the established investment management, property management, development management, and asset management structures of Australia's largest and most reputable property fund managers, managing in aggregate hundreds of billions of dollars of assets;
- forced restructuring costs across the industry, with significant legal, tax, and operational consequences;
- potential forced termination or restructuring of existing related party service agreements, with attendant legal risks and costs borne by unitholders;
- reduction in the quality and cost-efficiency of property management services, as related party managers with deep platform knowledge and economies of scale are replaced by independent third parties appointed through competitive tender processes;
- loss of access for retail investors to institutional-grade property assets, as the platform connectivity that makes those assets accessible (through co-investment, capital recycling, and related party transfer mechanisms) is severed; and
- structural disadvantage relative to unlisted wholesale funds (which are not registered schemes and would not be subject to the prohibition), potentially driving the market towards less regulated wholesale structures.
- a loss of international competitiveness; and
- materially increased compliance costs for every registered scheme, irrespective of their governance record.

Question 13: *Where a responsible entity has a separate investment manager, should the investment manager be prohibited from being a related party?*

No. The Consultation Paper itself acknowledges that there is limited evidence to indicate that structural separation of the responsible entity and the investment manager results in better consumer outcomes. The integrated responsible entity/investment manager model is standard practice in Australia and globally. Prohibiting this structure would impose substantial disruption with no demonstrated investor protection benefit.

8. Conclusion

The PFA supports Treasury's objective of strengthening governance and oversight of registered MISs in the wake of the Shield and First Guardian collapses. However, Proposal 3,

being a prohibition on related party transactions (subject to limited exceptions), is not an appropriate or proportionate policy response.

[1] s208 of the Corporations Act.
[2] RG 46 at [46.53 – 46.56] and [46.98 – 46.101]
[3] RG 46 at [46.15] and [46.168].
[4] RG 46 at [46.174]- [46.176].
[5] RG 46 at [46.178].
[6] Consultation Paper, page 4.
[7] Consultation Paper, page 4.
[8] Consultation Paper, page 11.
[9] Consultation Paper at page 14.
[10] COLL 6.6.17.
[11] (2014/91/EU).
[12] UCITS Article 25 and AIFMD Article 14.
[13] Commission Delegated Regulation (EU) No 231/2013, Articles 30-36 and Commission Directive 2010/43/EU, Articles 17–23.
[14] EU Markets in Financial Instruments Regulation (MiFIR) and MiFID II.
[15] Chapter 9- Interested Person Transactions
[16] *National Instrument* 81-107- Independent Review Committee for Investment Funds.
[17] SEC Rule 17a-7.
[18] Pursuant to the general licensing requirements under Part 6 of the FMC Act.
[19] Sections 173 and 174 of the FMC Act.
[20] Sections 152 and 153 of the FMC Act.
[21] Announced in 2023 and producing consultation papers through 2024–2025.
[22] Directive (EU) 2024/927, Article 4 (Entry into Force), Official Journal of the EU, 26 March 2024. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L0927.
[23] Paul S. Atkins, "*Revitalizing America's Markets at 250*" (SEC Speech, 2 December 2025), cited in Harvard Law School Corporate Governance Forum posting of February 2026 remarks: https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250. Paul S. Atkins, "*Remarks at the Texas A&M School of Law Corporate Law Symposium*", 17 February 2026 (reproduced at Harvard Law School Forum on Corporate Governance, 18 February 2026). https://corpgov.law.harvard.edu/2026/02/18/remarks-by-chair-atkins-on-revitalizing-u-s-capital-markets-and-state-competition-in-corporate-law/,

[24] SEC Investor Advisory Committee, "Retail Investor Access to Private Market Assets" (Recommendation, 18 September 2025). https://www.sec.gov/files/iac-recommendation-private-market-assets-final-09182025.pdf.