

SUBMISSION

ASIC CS 22 – Proposed update to ASIC’s guidance on Product Disclosure Statements

15 August 2025

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

15 August 2025

Dear Dr Brownbill,

ASIC CS 22 – Proposed update to ASIC’s guidance on Product Disclosure Statements

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to this consultation by ASIC on updating *Regulatory Guide 168 Disclosure: Product Disclosure Statements (and other Disclosure Obligations)*(RG 168).¹

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

ASFA’s General Comments on the Proposals

In general ASFA supports the Australian Securities and Investments Commission’s (ASIC’s) proposals to update RG 168 and amend other guidance accordingly.

ASFA notes the proposals incorporate current regulatory approaches, include additional relevant guidance, and update outdated references.

We note that these proposals are in line with the view of the ASIC Chair, Joe Longo, insofar as they will promote regulatory simplification and streamlining, which makes it easier for regulated entities and their customers to understand and comply with their obligations.²

In particular, ASIC proposes to:

- incorporate other guidance on PDS disclosure, lodgement and notification obligations to ensure, as much as possible, relevant guidance on PDSs is in one guide
- remove the guidance relating to Financial Services Guides and Statements of Advice, as this guidance is already covered in *Regulatory Guide 175 AFS licensing: Financial product advisers—Conduct and disclosure* ([RG 175](#))

¹ Proposed update to ASIC’s guidance on Product Disclosure Statements (PDS)([July 2025](#)).

² Joe Logo (ASIC Chair), Keynote Address to the ASIC Annual Forum 2024: Bridging generations – regulating for all Australians’ ([14 November 2024](#)).

- amend and cross-reference information on fees and costs
- clarify the legislative basis for the current Good Disclosure Principles, and
- reframe the existing guidance on misleading and deceptive conduct to highlight examples of general disclosure concerns with PDSs, without changing its substance.

ASFA also notes that the information sheets and regulatory guides containing other PDS disclosure, lodgement and notification guidance that ASIC propose to incorporate will become redundant.

As such, ASIC proposes to withdraw the following guidance when the updated RG 168 is published:

- Information Sheet 94 *Notification requirements for Product Disclosure Statements* ([INFO 94](#))
- Information Sheet 155 *Shorter PDSs—Complying with requirements for superannuation products, simple managed investment schemes and simple sub-fund products* ([INFO 155](#))
- Regulatory Guide 65 *Section 1013DA disclosure guidelines* ([RG 65](#))
- Regulatory Guide 66 *Transaction-specific disclosure for PDSs* ([RG 66](#))
- Regulatory Guide 197 *Warrants: Out-of-use notices* ([RG 197](#)), and
- Regulatory Guide 219 *Non-standard margin lending facilities: Disclosure to investors* ([RG 219](#)).

As a general rule, ASFA welcomes these proposals, which will promote simplification and clarity in the law and as a consequence facilitate compliance with regulatory obligations. ASFA's detailed recommendations are outlined in **Attachment A** of this submission.

We thank you again for the opportunity to contribute to this consultation on ASIC's proposals to update RG 168 and associated guidance.

If you have any questions on our recommendation or would like to discuss them further, please feel free to reach out to ASFA Policy Director, Sebastian Reinehr via 0474 704 992 or sreinehr@superannuation.asn.au.

Yours sincerely

James Koval
Chief Policy and Advocacy Officer

Attachment A – ASFA’s Detailed Recommendations

Recommendation 1 – Timeframe for providing a PDS

- Draft Regulatory Guide 168, at RG168.22, lists the superannuation products for which a PDS may be given up to three months after the product is issued, per modifications to section 1012B of the *Corporations Act 2001* (Cth) by clause 17.1 of Schedule 10A of the *Corporations Regulations 2001* (Cth).
- Draft RG168.22 omits a reference to standard employer-sponsored members of a public offer fund that is not a successor fund.
- ASFA recommends that the term ‘superannuation interests issued to standard employer-sponsored members of a public offer fund that is not a successor fund’, or a similar term, should be included with the other examples given at Draft RG168.22, to avoid confusion over the operation of clause 17.1 of Schedule 10A.

Recommendation 2 - Requirement for application forms

- Section 1016A of the *Corporations Act 2001* (Cth) requires that an application form be attached to, or accompany, a PDS, which is noted in Draft Regulatory Guide 168 at RG168.14.
- ASFA suggests that it would assist product issuers if ASIC were to provide some guidance in the updated RG168 on how it would interpret these provisions. Further guidance is requested on essentially how, in ASIC’s view, an application form can be attached to or accompany a PDS.
- It is clear that this requirement would be satisfied where, for example, a PDS and an application form were present in the same .pdf file, or where both were attached to the same email to be sent to a potential investor.
- Some scenarios ASFA suggests where it may be less clear whether an application form would be considered attached to, or accompanied by, a PDS, are set out below:
 - A PDS and an application form, in .pdf format, in close proximity on the same webpage.
 - A PDS that includes a hyperlink to an application form.
 - An application form that includes a hyperlink to a PDS.
 - **A hyperlink to PDS is presented at the end of the online application process (as part of the declaration page)**
 - It is ASFA’s understanding that in either hardcopy or online application, there is no requirement for the member to open the link to the PDS.
- ASFA recommends that greater clarity on whether options like the above are available to product issuers would potentially afford them greater flexibility in choosing how best to present disclosure to clients.

Recommendation 3 - Secondary in-use notices

- Draft Regulatory Guide 168 at RG168.130 and RG168.31 sets out various ASIC forms in relation to a PDS, and how these should be lodged, including form FS88 – PDS In-use notice.
- *ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496*, provides for an alternative means of providing PDS notice information, to that prescribed by 1015D of the *Corporations Act 2001* (Cth).
- ASFA recommends that for completeness, a brief reference to this alternative means should be added to the updated RG168.

Recommendation 4 – limited relief under the ASIC Corporations (Updated Product Disclosures Statements) Instrument 2016/1005

- ASFA suggests It will assist with clarity and application (and lead to cost savings) if the limited relief currently available to Product Issuers under ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055 (to update a PDS via the website where the change is non-adverse to members), can be incorporated in legislation and moved from a footnote (see footnote to 168.93 on page 28 in the draft RG 168) into the body of the Regulatory Guide, which currently reads:

Note: We have granted limited relief from the requirement to update a PDS where the new information does not include any materially adverse information and where it is available to clients free of charge by some other means (e.g. through a website): see ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055.

Recommendation 5 – cooling off provisions

- While cooling off provisions are mentioned as a content requirement for PDS, it would be beneficial for Product Issuers to understand consumer rights in situations where the cooling off provisions are exercised under section 1019B of the Corporations Act and the circumstances in which this can be done. It would be beneficial to include this in the updated RG 168.