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## MIS - THE ART OF THROWING CONSUMERS AND FINANCIAL ADVISERS UNDER THE BUS.

The Managed Investment Scheme [MIS] regime is on par with the Life Insurance Framework [LIF] legislation as being the most poorly thought through cataclysmic public policy event in living memory.

It is the most audacious example of self-interest where the needs and protection of Government are prioritised over those of Consumers on an industrial scale.

The past ASIC/ASIC customary response to MIS product failures over 25 years has been to immediately blame the Adviser Profession regardless of the mitigating circumstances. This approach has allowed other stakeholders like trustees/auditors/custodians/regulators to continually avoid accountability and therefore not change their flawed conduct.

***It is no mere coincidence that the reasons for the 2009 TRIO Superannuation fraud are mirrored by the Shield/First Guardian fraud some 15 years later.***

The 'low hanging fruit' Financial Advisers [Advisers] have been too easy pickings for ASIC to divert blame away from themselves and all other stakeholders for MIS product failures.

Over this period we are not aware of one person from the Institutions who has been legally dealt with or banned by ASIC with their successful prosecutions - it is always against Advisers.

**A historical perspective** - In January 1998 the Australian Securities Commission [ASC] reached a settlement with stockbroker JB WERE over a failed prospectus but during this process ASC realised they can be held legally responsible for inaccurate prospectus content. This realisation induced Government to introduce 2001 Corporations Law changes where MIS legislation removed ASC/ASIC's liability for the content of the new Product Disclosure Statement [PDS] format.

This simplified PDS regime protected ASC/ASIC from legal recourse but literally threw Consumers under the 'consumer protection bus', the very stakeholder Government are meant to be protecting.

We estimate that around \$50 billion of consumer savings have been either lost, frozen or impaired through the failure of over 200 PDS Financial Products since 2001. We strongly suggest the MIS regime is largely responsible for this ludicrous outcome.

See attached [FAILED FROZEN & IMPAIRED](#) funds - 2006 - 2022

**PDS Disconcertion** - ASIC's PDS duty is to ensure there is a custodian, trustee and other relatively minor requirements are in place but takes NO responsibility for the sustainability of the business model or background of Directors managing the product - **the critical elements of any investment strategy**. This tick the box exercise with a bizarre **Caveat Emptor** warning in place has proven to be manifestly inadequate to protect Consumers but it has been in place for over 25 years, continually failing but with no political will to change it.

As many PDS's fail over the years the typical response from Government is more compliance which has clearly not worked, the products have just kept on failing - a new approach is badly needed.

**Consumer confusion** - The core problem with MIS is consumers think that any PDS registered [and therefore perceived to be released by ASIC onto the market] has been 'approved' by the Government. The grave danger of this in our online world are Consumers investing directly with the product managers thinking it is 'backed by Government'.

One of the most high-profile failures in recent times has been the Stirling First retirement village project in Perth where consumers lost their life savings and accommodation to a flawed PDS which they assumed was government 'approved/sanctioned'.

**Flawed PDS research ratings** - a long term profoundly conflicted process in the financial services industry are Product managers '**shopping around**' for a favourable research rating to attract investor interest and then corruptly paying the Research House directly for the favoured outcome. Investors/Advisers should be the only stakeholder funding research ratings, we suspect at least 95% of the 200 plus failed

PDS's had a positive research rating purchased under conflicted/corrupt circumstances.

**Rotten from the outset** - the fundamental problem with the MIS process is the PDS products can have a flawed business model with less than reputable Directors producing fraudulent documents that can superficially satisfy RG 78/274 compliance checks in the short to medium term until it ultimately 'blows up'.

With ASIC avoiding the responsibility of analysing this critical content, these **'accidents waiting to happen'** PDS's find their way into the open market for Consumer consumption. Someone must take responsibility for this elementary duty to protect consumers.

The 2009 TRIO Fraud was a classic example of incompetence where the Custodian was holding the 'paper assets' but failed to check whether the physical capital was actually in place. The auditors, trustees, research houses and ASIC/APRA were also heavily criticised in the Senate Trio Inquiry Report BUT the Financial Advisers [who were hardly mentioned] were the eventual scape goats.

As already mentioned, it is no mere coincidence that stakeholders who escape accountability do not change their habits.

**Same old, same old....** - the typical Government response to product failure over the past 25 years has been to 'increase compliance' which has clearly not worked and probably never will. All it has done is increase the cost of Advice for Consumers and has NOT decreased the incidence of product failure, in fact it has got worse in recent times with Dixon, Shield and First Guardian.

Next to useless compliance is the only approach the Governments knows, as already stated, we badly need a different approach to protect Consumers and Advisers. Clever criminal minds will always defeat paperwork.

**The current environment** - 'Dodgy Inc' can easily get a flawed PDS 'registered' with ASIC, buy a positive research rating, then market the PDS online to Consumers who think it has been 'approved' by the Government. If it fails, ASIC/APRA are all care and no responsibility, auditors/research houses/auditors/trustees/Institutions all run for legal cover and point the finger at Financial Advisers who must deal with bereaved clients.

Thankfully this sickening 25-year charade has been mitigated in recent times with ASIC attacking the other stakeholders for their inept conduct with the Shield/First Guardian failure and the Minister is now holding all stakeholders to account with CSLR.

Finally, some fairness is entering the market where both the Minister and ASIC should be congratulated for their decisions and action.

**The quintessential problem** - It is clear back in 2001 ASC/ASIC wants no responsibility for the **key** content of a prospectus/PDS and nothing has changed. Unfortunately for

over 100,000 Consumers who have lost savings since 2001, the **key** content of a PDS is crucial to the performance of their invested capital.

ASIC just wants the feeble 'tick the box' duty then run for cover and blame others if the PDS blows up. That is not consumer protection.... its bordering on incompetence and not being fit for purpose. Consumers and Financial Advisers need a professional, competent and conflict free third party to assess a PDS before investing.

Research houses are the logical choice if their funding is derived from clients/Advisers NOT product manufacturers. Apart from Advice practices having inhouse experts to assess product [which will increase the cost of Advice for Consumers], there is currently no other choice in the market than the established research houses.

**Summary and a possible solution** – Recent history has demonstrated we do NOT need more compliance or new laws created to protect Consumers savings. The last 25 years has clearly shown that mountains of compliance paperwork do not work, Government must start thinking outside of the square.

Government needs to also understand that Advisers want the best outcomes for their clients, or they don't have a business. It is time for Government to seek the views of experienced Advisers and stop treating them from an initial perception of mistrust.

What the Profession needs is a non - conflicted research capability for the market generally and at the point of ASIC registering a PDS for Consumer assistance with decision making. If a professional Research panel rates a new PDS on a 1 - 10 score basis, any PDS scoring under 5 will be more than likely ignored and eventually be starved out of the market.

**Surely it must be incumbent on ASIC to provide a third party independent assessment mechanism for Consumers considering they are 'registering' a PDS for essentially market release.**

It does not have to be as comprehensive as the ASX investment products monthly update; it can be totally outsourced to independent parties with ASIC indemnified against any liability. This has got to be better than a 'caveat emptor' warning.

It is time to be proactive with preventing PDS failure from happening rather than being reactive to it with more next to useless compliance that clearly does not work and drives the cost of Advice up for Consumers.

Considering ASIC are receiving over \$340m annually from the Adviser Levy to prosecute those responsible for fraud and product failure, it is time to be more proactive with preventing PDS failure by ASIC funding an independent research panel to assess new PDS products before market release - this is not rocket science, it should be a fundamental duty of Government to protect consumers.

ASIC using Adviser sourced capital to fund the panel will satisfy the conflict free funding test and eventually reduce the cost of advice for Consumers when Advisers no longer need other research sources. Leading Research House candidates for this role would be Mercer, Lonsec, Morningstar.

We believe this approach is a win/win/win for Consumers, Advisers and common sense.