Summary of feedback to CP 388 and ASIC’s response

In Consultation Paper 388 *Net tangible assets requirement for responsible entities* (CP 388), we sought feedback on three options for increasing the net tangible assets (NTA) requirement for responsible entities in *ASIC Corporations (Financial Requirements for Responsible Entities, IDPS Operators and Corporate Directors of Retail CCIVs) Instrument 2023/647*.

We also sought feedback on:

- increasing the NTA requirements that apply to investor directed portfolio service (IDPS) operators and corporate directors of retail corporate collective investment vehicles (CCIVs); and
- the NTA requirements for other categories of Australian financial services (AFS) licensees to inform any future ASIC work.

We received 3 confidential and 15 non-confidential submissions from a mix of industry and professional associations, responsible entities and fund managers. Responses were mixed about the preferred approach to increasing the NTA requirement for responsible entities. Option 1—*Increase in line with the consumer price index* (CPI) received the most support. Option 2—*Increase the $150,000 minimum under the concessional NTA requirement* and Option 3—*Increase the $5 million cap under the concessional NTA requirement* received less support.

We have decided to adopt Option 1 by raising the:

- $150,000 NTA minimum to $200,000;
- $150,000 minimum cash or cash equivalents requirement to $200,000;
- $500,000 NTA minimum to $700,000;
- $5 million cap that applies to the average value of fund assets limb of the concessional NTA requirement to $7 million; and
- $10 million NTA minimum under the non-concessional NTA requirement to $14 million.

We will also introduce an ongoing annual indexation mechanism for increasing the financial thresholds in the NTA requirement.

These changes will apply to responsible entities, IDPS operators and corporate directors of retail CCIVs from 1 July 2027. The thresholds applying from this date will reflect both the initial uplift to the minimum thresholds described above and the first annual indexation adjustment.

This document summarises the feedback we received and ASIC’s response to that feedback. It is not intended to be a comprehensive summary of all feedback or all changes to our regulatory approach.

> Note: Non-confidential submissions are published on the landing page for CP 388.

Section B: Options for increasing the NTA requirement for responsible entities

Feedback	ASIC's response	Reference in CP 388
Option 1—Increase in line with CPI Option 1 received the most support for increasing the NTA requirement for responsible entities. Respondents that supported this option viewed it as a simple and proportionate way to adjust the NTA thresholds over time and considered it to have the least impact on competition (see Option 2—*Increase the $150,000 minimum under the concessional NTA requirement* below for further details). Most of these respondents considered the CPI to be the most appropriate measure for restoring the real value of the financial thresholds. One respondent submitted that 'trimmed mean' inflation should be used to remove large price movements in either direction. Note: Trimmed mean inflation is the average rate of inflation after 'trimming' away the items with the largest price changes (positive or negative). It is the weighted average of the middle 70 per cent of items. Source: Reserve Bank of Australia (RBA). Respondents expressed differing views on how the NTA thresholds should be updated over time. Several respondents supported ASIC reviewing the NTA requirement periodically following consultation. Some respondents raised that automatic indexation could create additional compliance burden, uncertainty and administrative complexity. Other respondents supported the introduction of an ongoing automatic indexation mechanism to retain the real value of the NTA requirement over time.	As noted above, we have adopted Option 1 in CP 388. We consider that applying CPI indexation to the minimum financial thresholds in the NTA requirement is appropriate to restore the real value of those thresholds, which have remained unchanged since 2013. In reaching this position, we have considered the overall feedback on the options set out in CP 388 and the level of support received for Option 1. We have calculated the initial increases using the RBA's quarterly inflation calculator. Given the time that has elapsed since the release of CP 388, our calculation reflects CPI growth from June 2013 (the last quarter before the existing financial thresholds applied) to March 2026 (the latest quarter covered by the calculator) and is rounded to the nearest $100,000 or $1 million for convenience. We have chosen CPI over other price indices and trimmed mean inflation because it is a well-understood measure of inflation that is commonly used for indexation purposes. We also consider it best reflects the cost environment responsible entities are required to operate in. We concluded that the impact of inflation should be reflected in the financial thresholds going forward to ensure they continue to reflect their real value. To implement this, we will introduce a new ongoing annual indexation mechanism for increasing the financial thresholds in the NTA requirement. Indexation will apply each year from 1 July, based on CPI growth over the year to March. We consider this approach will provide sufficient certainty on how increases for inflation will apply and allow time for stakeholders to increase their NTA as appropriate.	B1Q1–B1Q7

Feedback	ASIC's response	Reference in CP 388
Option 2—Increase the $150,000 minimum under the concessional NTA requirement Three respondents supported further increasing the $150,000 minimum threshold under the concessional NTA requirement to a higher amount up to $1 million (Option 2(a)). However, several stakeholders raised concerns that this proposal would impose significant barriers to entry, increase costs for smaller responsible entities and reduce competition. A wide range of figures were proposed as the appropriate minimum threshold, from $250,000 to $2 million. In May 2026, we conducted further consultation with a selection of stakeholders on the potential impact of increasing the minimum threshold to $500,000. Several respondents considered that this proposal is unlikely to have adverse consequences for many existing responsible entities. Others were concerned about the impact on smaller and emerging responsible entities and property funds. There was limited support for imposing the requirement on a per scheme basis (Option 2(b)). Respondents considered that it could disproportionately affect responsible entities operating multiple schemes, increase compliance costs and barriers to entry, and overstate risk given that the existing NTA framework already scales with the size of a responsible entity's business.	We acknowledge this feedback. As noted above, we have adopted Option 1 in CP 388. This means the $150,000 minimum NTA requirement will be increased to $200,000, to reflect CPI growth since 2013. After considering the diverse feedback on the level of increase that was appropriate and submissions on the potential impact on competition and innovation, we have decided not to apply any further increase to the minimum NTA requirement. We consider that further data would be required to assess whether more significant changes to the NTA requirement are appropriate.	B2Q1–B2Q7
Option 3—Increase the $5 million cap under the concessional NTA requirement Seven respondents supported increasing the $5 million cap on the average value of fund assets limb of the concessional NTA requirement to at least reflect CPI increases. Several respondents noted that the average revenue limb of the requirement already scales with the size of schemes and addresses incremental operational risk.	We have considered the feedback provided and have applied a CPI-linked increase to the $5 million cap (see our response regarding Option 1 above). We consider that additional data would be required to assess the impact of more substantive changes to this threshold.	B3Q1–B3Q6

Feedback	ASIC's response	Reference in CP 388
Alternative approaches Several respondents submitted that there should be no change to the NTA requirement, citing concerns about increased costs, competition impacts and the potential for increases to cause a shift away from registered schemes to wholesale client only offerings. Some respondents submitted that ASIC has not provided sufficient evidence to demonstrate deficiencies in the current requirements or that changes are required to support the objectives of the NTA requirement. Some considered that reform should be focused on improving scheme governance instead.	We acknowledge and have considered this feedback in reaching our final position. We maintain the view that an increase in the NTA requirement is appropriate as the financial thresholds have not been updated since 2013. Option 1—*Increase in line with CPI* maintains the existing structure of the NTA framework, while increasing the financial thresholds to reflect inflation.	B6Q1

Feedback	ASIC's response	Reference in CP 388
Objectives Most respondents generally agreed with the underlying policy objectives of the NTA requirement (i.e. to ensure the responsible entity is an entity of substance, can meet its operating costs and that money is available to transition the scheme if the responsible entity fails). However, some respondents submitted that the current framework limits the amount of NTA that can be utilised for operational costs because a responsible entity will be in breach if their NTA dips below the required threshold. Some respondents focused on the impact of the NTA requirement on preventing scheme collapses, with some submitting that our proposed increases would not prevent collapses or improve member outcomes.	We acknowledge this feedback. The NTA requirement has been designed to ensure that responsible entities who hold or manage scheme members' assets can demonstrate financial capacity and commitment (i.e. are an entity of substance). We view this as a key objective of the NTA requirement, which applies in relation to each individual responsible entity. Along with the other financial requirements in ASIC Instrument 2023/647, the NTA requirement is also intended to: • help ensure there are arrangements to meet operating costs through robust cash flow forecasting, adequate levels of capital and liquidity, and capital levels reflecting the operational risk of a responsible entity; and • provide at least some level of assurance that, if the responsible entity does fail, there is money available for the orderly transition to a new responsible entity or to wind up the scheme: see Explanatory Statement to Superseded Class Order [CO 11/1140] *Financial requirements for responsible entities*. We consider it is important that responsible entities are upholding the policy intention of the NTA requirement. It is not intended to be used as an operational reserve that can be depleted for ongoing expenses. ASIC Instrument 2023/647 requires a responsible entity to hold a minimum level of NTA at all times. A responsible entity should have suitable arrangements in place to monitor compliance and to increase the level of NTA held as appropriate. The NTA requirement will not itself prevent scheme collapses or operate to compensate clients in the event of failure. It is intended to satisfy the objectives outlined above.	B6Q2

Feedback	ASIC's response	Reference in CP 388
Liquidity requirements Most respondents considered that the current 'cash or cash equivalents' and 'liquid assets' requirements remain appropriate. One respondent recommended tightening the quality of 'cash or cash equivalents' and 'liquid assets', while another recommended that we provide greater flexibility and clarity on the types of assets that may qualify as liquid. Some suggested that the minimum 'cash or cash equivalents' requirement should be lowered or maintained, while others supported increasing it in line with the CPI. One respondent submitted that stakeholders have experienced difficulty with using bank guarantees to support the cash or cash equivalents test with ASIC being unclear internally on what it considers to be acceptable terms for a guarantee.	We consider that the liquidity requirements remain important to ensure that the responsible entity can call on its NTA if required (e.g. if the responsible entity fails and money is required to support an orderly transition). Currently, a responsible entity must hold at least 50% of their NTA requirement in cash or cash equivalents, with a minimum of $150,000 that aligns with the existing $150,000 minimum NTA requirement. Consistent with adopting Option 1 in CP 388, we consider that it is appropriate to increase the cash or cash equivalents minimum requirement from $150,000 to $200,000 to reflect cumulative CPI growth since 2013. An 'eligible undertaking' may be used to support the cash or cash equivalents requirement. The requirements for the eligible undertaking are set out in ASIC Instrument 2023/647 and Regulatory Guide 166 *AFS licensing: Financial requirements* (RG 166).	B4Q1–B4Q4
Transition period In CP 388, we proposed a transition period of six months to allow responsible entities to comply with any increased requirement. Most respondents considered a longer transition period (e.g.12 to 24 months) would be required to allow responsible entities to restructure or raise additional capital.	The changes to the NTA requirement will apply from 1 July 2027. As noted above, the thresholds applying from this date will reflect both the initial uplift to the minimum thresholds and the first annual indexation adjustment. We consider that the commencement date of 1 July 2027 appropriately balances stakeholder feedback on the time required to comply with the increased requirements and the need for timely implementation of the changes.	B5Q1–B5Q2

Feedback	ASIC's response	Reference in CP 388
Operation of average value of fund assets test Under the concessional NTA requirement, a responsible entity is currently required to hold minimum NTA of the greater of $150,000, 0.5% of the average value of fund assets (up to $5 million) or 10% average revenue: see paragraph 4 of CP 388. One respondent requested that we clarify the operation of the 'average value of fund assets' limb of this test so that schemes no longer operated by the responsible entity, including schemes transferred to another responsible entity or wound up, do not continue to inflate the responsible entity's NTA requirement.	In our view, the 'average value of fund assets' test does not capture schemes that are no longer operated by the responsible entity. This is because the test applies in relation to the registered schemes 'operated by the licensee' (see s 912AA(4)(a)(ii) of the *Corporations Act 2001* as notionally inserted by ASIC Instrument 2023/647). We will update RG 166 to include this clarification.	B2Q7

Section C: Appropriateness of the concessional NTA requirement for responsible entities

Feedback	ASIC's response	Reference in CP 388
Existing concessional NTA requirement The concessional NTA requirement applies if certain requirements relating to custody of the fund assets or an exception based on the type of fund assets applies. Most respondents considered that the concessional NTA requirement remains appropriate. Reasons included that use of a custodian can reduce operational and custody risks, such as fraud or misuse of assets.	While we are not making any further changes to the concessional NTA requirement at this time, we will consider this feedback in connection with any future review of the NTA and compliance requirements that apply to licensed custodial or depository service providers.	C1Q1–C1Q2
'Special custody assets' One respondent submitted that the definition of 'special custody assets' is hard to understand. This respondent submitted that the definition should be reviewed to ensure it remains robust and relevant in light of funds in the marketplace and new asset classes growing in popularity.	We do not propose to make changes to this definition as part of the current review which was focused on increasing the financial thresholds in the NTA requirement. However, we will consider this feedback when we next review ASIC Instrument 2023/647.	C1Q2

Section D: NTA requirements for other AFS licensees

Feedback	ASIC's response	Reference in CP 388
IDPS operators and corporate directors of retail CCIVs Most respondents supported applying consistent NTA requirements across responsible entities, IDPS operators and corporate directors of retail CCIVs. Some respondents submitted that any alignment should remain proportionate and avoid duplication where an entity performs multiple functions. One respondent submitted that IDPS operators provide different services and should be subject to a separate NTA requirement.	We note the broad support for this proposal and will apply the changes to the NTA requirement consistently for responsible entities, IDPS operators and corporate directors of retail CCIVs. We consider this promotes regulatory parity between entities that perform functionally similar roles as operators of retail collective investment products. We also note that where more than one set of financial requirements apply to an entity, the same assets can be used to satisfy the multiple requirements: see paragraph RG 166.26 of RG 166.	D1Q1–D1Q3
NTA requirements for other AFS licensees, including providers of custodial or depository services Some respondents supported a targeted review of licensed custodial or depository service providers, given the alignment between the existing NTA requirements for responsible entities and licensed custodial or depository service providers. Stakeholders generally considered that we should only introduce or change the NTA requirements for other AFS licensees where there is clear evidence of a regulatory gap or consumer risk. There was some support for reviewing wholesale structures.	Our current review has focused on the NTA requirement for responsible entities and other fund managers. As outlined in CP 388, we are not proposing any changes to the NTA requirement for other types of licensees at this time. However, we acknowledge and thank respondents for this feedback, which will inform our future work.	D2Q1, D3Q1