ASIC Class Order [CO 14/1252]

About this compilation

Compilation No. 8

This is a compilation of ASIC Class Order [CO 14/1252] as in force on 1 July 2019. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the ***endnotes***) include information about amending instruments and the amendment history of each amended provision.

Australian Securities and Investments Commission
Corporations Act 2001—Subsection 1020F(1)—Declaration

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsection 1020F(1) of the *Corporations Act 2001* (the ***Act***).

Title

2. This instrument is ASIC Class Order [CO 14/1252].

Declaration

4. Part 7.9 of the Act applies in relation to managed investment products, foreign passport fund products and superannuation products as if provisions of that Part were modified or varied as set out in paragraphs 5 to 7.

   Note: The provisions of Part 7.9 include the regulations made for the purposes of that Part: see section 761H.

5. In section 1011B of the Act, insert in the following definition in the appropriate alphabetical order:

   "***investment option***, in relation to a managed investment scheme or superannuation entity, includes the managed investment scheme or superannuation entity where there is no choice of investment options within the managed investment scheme or superannuation entity.".

5A. In subsection 1013C(2) of the Act, omit "The", substitute "Unless otherwise provided in the regulations, the".

5B. In subsection 1017B(5) of the Act, after "charges" (wherever occurring), insert "other than an increase in a fee for a superannuation product that results from an increase in costs relating to that superannuation product".

5C. In subsection 1017B(6) of the Act, after "charges,", insert "other than an increase in a fee for a superannuation product that results from an increase in costs relating to that superannuation product,".

5CA. In paragraph 1017B(6)(a) of the Act, after "the" (second occurring), insert "change or".

5CB. After subsection 1017D(3) of the Act insert:

"(3AA) For a managed investment product or a foreign passport fund product, the periodic statement in relation to the reporting period mentioned in paragraph 1017D(2)(d) must be given as soon as practicable after the issuer becomes aware that the holder has ceased to hold the product, and, in any event must be given:

(a) within six months after the end of the reporting period; or

(b) if the issuer has published a notice on its website that, in respect of the scheme or fund to which the product relates, it will provide the relevant periodic statement within a specified period ending at least one month and less than six months after the end of the reporting period—within that specified period.

(3AB) A notice referred to in paragraph (3AA)(b):

(a) may be published before the commencement date; and

(b) after the commencement date, may not be revoked and may not be amended to increase the period specified; and

(c) if published on or before the date that is one month after the commencement date, is taken to have effect in relation to reporting periods ending on or after:

(i) 1 July 2017; or

(ii) if the notice specifies a later date, that later date.".

5D. After subparagraph 7.9.16J(a)(iv) of the *Corporations Regulations 2001* (the ***Regulations***) insert:

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"(v) pensions provided under the rules of a superannuation fund that meet the standards of subregulations 1.06(2), 1.06(6) or 1.06(7) of the SIS Regulations; and".

5E. Omit paragraph 7.9.75(1)(b) of the Regulations.

6. In Schedule 10 to the Regulations:

(a) in clause 101:

(ia) omit the definition of ***administration fee***, substitute:

"***administration fee*** has the meaning given by clause 209A.";

(iaa) after the definition of ***balanced investment option,*** insert

"***borrowing costs*** means costs, including costs in an interposed vehicle, relating to a credit facility within the meaning of regulation 7.1.06 relating to the provision of credit within the meaning of subregulation 7.1.06(3) to:

(a) a trustee of a superannuation entity; or

(b) an interposed vehicle, or a trustee of an interposed vehicle, in or through which the property of a superannuation fund is invested.";

(ib) after the definition of ***exit fee***, insert:

"***financial year*** means:

(a) in relation to a collective investment product—a financial year of the registered scheme or notified foreign passport fund to which the product relates; and

(b) in relation to a superannuation product—a period of 12 months ending at the end of a fund reporting period determined under regulation 7.9.32 for holders of the superannuation product.";

(i) omit the definition of ***indirect cost***, substitute:

"***indirect cost*** has the meaning given by clause 101A.";

(ii) after the definition of ***insurance fee*** insert:

"***interposed vehicle*** has the meaning given by clause 101B.";

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(iia) omit the definition of ***investment fee***, substitute:

"***investment fee*** has the meaning given by clause 209A.";

(iib) after the definition of ***performance fee***, insert:

*"**property operating costs*** means amounts that are paid or payable in relation to the holding of real property or an interest in real property, but do not include any of the following:

(a) borrowing costs;

(b) amounts that are paid or payable relating to the acquisition or disposal of real property or an interest in real property;

(c) an amount that is otherwise charged as any of the following:

(i) an administration fee;

(ii) a buy-sell spread;

(iii) a switching fee;

(iv) an exit fee;

(v) an activity fee;

(vi) an advice fee;

(vii) an insurance fee.";

(iii) omit the definition of ***switching fee***, substitute:

"***switching fee***:

(a) for a MySuper product—has the meaning given by subsection 29V(5) of the SIS Act; or

(b) for a superannuation product other than a MySuper product—means a fee to recover the costs of switching all or part of a member's interest in the superannuation entity from one investment option or product in the entity to another; or

(c) for a collective investment product—means an amount paid or payable when a product holder transfers all or part of the

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product holder's interest in the collective investment productfrom one investment option to another.";

(iv) after the definition of ***withdrawal fee***, insert:

"**101A Indirect costs**

(1) Despite subsection 1013C(2) of the Act, the indirect cost of a MySuper product, an investment option offered within a superannuation product other than a MySuper product, collective investment product or investment option offered by a managed investment scheme means any amount that:

(a) either:

(i) a responsible person knows, or reasonably ought to know or, where this is not the case, may reasonably estimate has reduced or will reduce (as applicable) whether directly or indirectly the return on the product or option that is paid from or reduces the amount or value of:

(A) the income of or the property attributable to the product or option; or

(B) the income of or the property attributable to an interposed vehicle in or through which the property attributable to the product or option is invested; or

(ii) satisfies both the following:

(A) the amount is paid or payable by or on behalf of a person who may make payments that form part of the return on, or the value of, the product or option whether directly or through an interposed vehicle;

(B) payment of the amount is a benefit that increases the returns or value of the product or option or provides a benefit to the issuer in relation to the product or option that is retained by the issuer; and

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(b) for a MySuper product or an investment option offered within a superannuation product other than a MySuper product is not charged to a member as a fee; and

(c) is not a fee as defined in clause 209A or an insurance fee; and

(d) subject to subsection (3), would, if the amount had been paid as a cost out of a superannuation entity, be an investment fee or administration fee for the superannuation product or, if the amount had been paid out of the scheme property of a registered scheme or the assets of a notified foreign passport fund, be a management cost of the collective investment product.";

(2) For the purposes of subclause (1):

(a) property is invested in or through an interposed vehicle even if:

(i) the property is in turn invested in or through one or more other interposed vehicles; or

(ii) the property was invested in the first mentioned interposed vehicle through or by another interposed vehicle; and

(b) property is not invested in or through an interposed vehicle if the property is invested in the vehicle by a body, trust or partnership that:

(i) is not an interposed vehicle; and

(ii) is not the trustee or responsible entity.

(3) Without limiting subclause (1), the indirect costs of a product or investment option referred to in subclause (1) include:

(a) the following amounts where the responsible person knows, or reasonably ought to know or, where this is not the case, may reasonably estimate those amounts:

(i) in relation to a derivative financial product that is not an option to acquire or dispose of a financial

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product—the amount that is the difference between the underlying return and the actual return for the derivative financial product, where the actual return on the product or option is less than the underlying return on the derivative financial product over the relevant financial year; or

(ii) in relation to a derivative financial product that is an option to acquire or dispose of a financial product—any amount by which the cost incurred to acquire the derivative financial product exceeds the amount that would be obtained on its disposal at that time; or

(b) where the responsible person does not know, does not believe they reasonably ought to know, and is not able to reasonably estimate without taking steps that the responsible person considers unreasonable, the amount in paragraph (a) (as applicable) in relation to a derivative financial product—the following amounts in relation to the derivative financial product:

(i) in relation to a derivative financial product that is not an option to acquire or dispose of a financial product—the greater of:

(A) the amount calculated using the following formula:

relevant percentage x *value* x *(n/365)*

where:

n means the number of days that the derivative financial product was held by the responsible person or interposed vehicle during the relevant financial year.

relevant percentage means 0.1%.

value, in relation to a derivative financial product, means the value of the ultimate reference assets, in each case taking into account any leverage, offsets or similar

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adjustments applied to or between the ultimate reference assets under the terms of the derivative financial product; and

(B) the minimum amount that the responsible person believes or has reasonable grounds to believe would apply under paragraph (a);

(ii) in relation to a derivative financial product that is an option to acquire or dispose of a financial product—the lesser of:

(A) the amount that would apply under subparagraph (i) if the exclusion from that subparagraph (i) of options did not apply; and

(B) the premium paid by the responsible person or interposed vehicle for the option,

where the amount referred to in paragraph (a) or (b) is attributable to:

(c) the product or investment option; or

(d) an interposed vehicle through which the property attributable to the product or investment option is invested.

(3A) In subclause (3):

actual return means the return that has been or would be received (as applicable), or loss that would be payable, by the responsible entity, trustee or interposed vehicle in relation to the derivative financial product over the relevant financial year if the derivative financial product was:

(a) acquired at the time the derivative financial product was acquired, or, if the derivative financial product was not acquired during the relevant financial year, acquired at the commencement of the relevant financial year for the same price at which it would have been disposed at the end of the preceding financial year; and

(b) disposed of at the time the derivative financial product was disposed of, or, if the derivative financial product

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was not disposed of during the relevant financial year, disposed of at the end of the relevant financial year for the price at which it would have been disposed of at that time.

derivative financial product means a financial product that:

(a) is:

(i) a derivative; or

(ii) either:

(A) a security other than a share in a body or a debenture of a body; or

(B) a collective investment product or financial product referred to in paragraph 764A(1)(ba) of the Act other than an interest in a managed investment scheme,

under which:

(C) financial products (***delivery products***) will be delivered or an amount paid at a specified time (***maturity***) in the future; and

(D) the value of the delivery products to be delivered at maturity or the amount to be paid is ultimately determined, derived from or varies by reference to the value or amount of one or more of the following (each, a ***reference asset***):

(I) financial products other than the delivery products;

(II) an asset other than a financial product;

(III) a rate (including an interest rate or exchange rate);

(IV) an index;

provided that the reference asset is not related to the value of:

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(V) a share in a body or debenture of a body to which the delivery products relate; or

(VI) the assets of the managed investment scheme to which the delivery products relate; or

(VII) the assets attributable to a class of interests in the managed investment scheme to which the delivery products relate; and

(b) is not able to be traded on a financial market at the time it is acquired.

reference asset:

(a) in relation to a derivative financial product that is a derivative—means the something else that the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from, or varies by reference to and, if the something else is a rate of interest or inflation, the amount on which that rate is applied under the derivative financial product in determining the amount to be paid or received;

(b) in relation to a derivative financial product that is a security, collective investment product or financial product referred to in paragraph 764A(1)(ba) of the Act other than an interest in a managed investment scheme—has the meaning given by clause 101A(3A)(a)(ii)(D).

relevant financial year means the financial year for which responsible person is calculating indirect costs.

ultimate reference asset, in relation to a derivative financial product and each reference asset for the derivative financial product, means:

(a) to the extent that the reference asset is:

(i) a derivative financial product; or

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(ii) rights in an entity that would be an interposed vehicle if it were held by the superannuation entity or scheme; or

(iii) an index that includes a derivative financial product referred to in sub-paragraph (i) or rights in an entity referred to in sub-paragraph (ii),

the asset or assets from which the returns from the derivative financial product or rights in the entity are determined, or any asset or assets that are held in or through any other derivative financial products or entities that would be an interposed vehicle if they were held as part of the superannuation entity or scheme;

(b) to the extent that the reference asset is not covered by any of the subparagraphs in paragraph (a)—the reference asset.

underlying return, in relation to a derivative financial product, means the return that has been or would be received (as applicable), or loss that would be payable, because of the change in the value of the ultimate reference assets taking into account any leverage, offsets or similar adjustments applied to or between the ultimate reference assets under the terms of each relevant derivative financial product or interest in an interposed vehicle over the relevant financial year for which the derivative financial product was held.

(4) Despite subclause (1) and (3), indirect costs of a collective investment product or an investment option of a managed investment scheme do not include amounts referred to in subclause (3):

(a) where the derivative financial product referred to in subclause (3) is acquired or disposed of for the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the managed investment scheme whether or not the receipts or costs arise in or through an interposed vehicle; and

(b) where the indirect costs were calculated under paragraph (3)(a), to the extent that the difference would result from the incurring of transactional or

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operational costs in relation to the ultimate reference assets.

Note: Costs excluded under subparagraph (4) are likely to be transaction costs under clause 102. Indirect costs for superannuation products generally include transaction costs.";

(v) by inserting after the notional clause 101A (as inserted by this instrument):

"**101B Interposed vehicle**

(1) A body, partnership or trust (each an ***entity***) is an ***interposed vehicle*** in relation to a product or investment option if both of the following are satisfied:

(a) property attributable to the product or investment option to which the Product Disclosure Statement relates is invested in or through the entity;

(b) the responsible person for the Product Disclosure Statement believes or has reasonable grounds to believe that the entity has more than 70% of its assets by value invested in securities or other financial products.

(2) For the purposes of subclause (1) and subject to subclause (3), in determining whether an entity (the ***first entity***) has more than 70% of its assets by value invested in securities or other financial products, disregard for the numerator, securities or other financial products that:

(a) are reasonably regarded as a means by which the first entity makes an investment in real property or an infrastructure entity; or

(b) confer on the first entity control of another entity (the ***second entity***), unless the responsible person for the Product Disclosure Statement has reasonable grounds to believe that the second entity has more than 70% of its assets by value invested in securities or other financial products.

(3) For the purposes of paragraph (2)(b), in determining whether the second entity has more than 70% of its assets by value invested in securities or other financial products, apply subclause (2) to the

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second entity as if the second entity was the first entity referred to in that subclause.

(4) An entity is also an ***interposed vehicle*** in relation to a product or investment option if, having regard to the Product Disclosure Statement for the product or investment option and any other information issued by the responsible person, a security or interest in the entity could be reasonably regarded, by retail clients who may be expected to be given the Product Disclosure Statement or other information, as the means by which the benefit of investments by or through the entity is obtained, rather than the investment of the superannuation entity, registered scheme or notified foreign passport fund to which the product or investment option relates.

(4A) Subject to subclause (4B), an entity is also an ***interposed vehicle*** in relation to a product or investment option if:

(a) the Product Disclosure Statement for the product or investment option or any other information issued by the responsible person relating to the product or investment option issued by the responsible person that has been given or may be reasonably be expected to be given to retail clients refers to "property", "real estate" or "land" or similar terms in the description of the product or investment option or as one of the assets (***relevant asset***) in which investment may be made under the product or investment option; and

(b) real property or an interest in land to which the reference relates is directly or indirectly held by or through the entity;

(4B) An entity is not an ***interposed vehicle*** because of subclause (4A) if both the following are satisfied:

(a) the reference in the Product Disclosure Statement or other information is merely part of a reference to an entity (whether specified or not) that directly or indirectly invests in real property or interests in land or to physical infrastructure referred to in paragraphs (a) to (j) of the definition of ***infrastructure entity*** in subclause (6);

(b) a retail client who has read the Statement or other information could not reasonably believe that the product or investment option or the relevant asset may be intended for persons predominantly intending to benefit from increases in

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the value of, or returns from holding, real property or an interest in land other than physical infrastructure referred to in paragraphs (a) to (j) of the definition of ***infrastructure entity*** in subclause (6).

(4C) Subject to subclause (4D), an entity is also an ***interposed vehicle*** in relation to a product or investment option if:

(a) the Product Disclosure Statement for the product or investment option or any other information issued by the responsible person relating to the product or investment option that has been given or may be reasonably expected to be given to retail clients refers to the product or option as being directly or indirectly invested in or through an entity (whether specified or not) other than an infrastructure entity which the responsible person believes has a majority of its assets invested in physical infrastructure referred to in paragraphs (a) to (j) of the definition of ***infrastructure entity*** in subclause (6); and

(b) the reference relates to the entity.

(4D) An entity is not an ***interposed vehicle*** because of subclause (4C) if:

(a) either of the following is satisfied:

(i) the entity is admitted to the official list of a prescribed financial market or a financial market operated outside of this jurisdiction that is regulated by a foreign government or an agency of a foreign government;

(ii) the issuer of the securities or financial products of the entity has applied, or stated in a regulated disclosure that they will apply, for such admission; and

(b) the securities or financial products of the entity are, or are to be, held under an investment strategy for the product or investment option that:

(i) relates to, or is publicly measured by the responsible person by reference to, a widely used index (***reference index***) of securities or financial products of entities that satisfy subparagraph (a)(i); and

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(ii) is a strategy of holding directly or indirectly securities or financial products:

(A) of entities that satisfy paragraph (a); and

(B) that represent at least 80% by value of the net assets attributable to the investment strategy; and

(c) the value of all the securities or financial products of the entity that are in the same class as the securities or financial products held under the investment strategy does not exceed 30% of the value of the reference index.

Note: If paragraphs (a) to (c) are satisfied in relation to an entity, the entity may still be an ***interposed vehicle*** because of provisions of clause 101B other than subclause (4C).

(5) Despite anything in subclauses (1) to (4D), an entity will not be an ***interposed vehicle*** in relation to a product or investment option if all of the following apply:

(a) the Product Disclosure Statement for the product or an investment option states that a holder of the product may give instructions, directions or requests for financial products to be acquired;

(b) the responsible person for the Product Disclosure Statement has published a list of financial products in relation to which the instructions, directions or requests may be given that includes a security or interest in the entity;

(c) the arrangement under which the instructions would be acted on is a custodial arrangement as defined in subsection 1012IA(1) of the Act.

(6) In this clause:

infrastructure entity means an entity that provides a return to its shareholders or members mainly from owning or operating any of the following:

(a) airports;

(b) electricity generation, transmission or distribution facilities;

(c) gas transmission or distribution facilities;

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(d) hospitals;

(e) ports;

(f) railways;

(g) roads;

(h) sewerage facilities;

(i) telecommunication facilities;

(j) water supply facilities; or

(k) other physical infrastructure;

(b) in clause 102:

(i) in paragraph (1)(h) omit "arrangements.", substitute:

"arrangements;

(i) indirect costs.";

(ii) omit paragraph (2)(b), substitute:

"(b) transactional costs and operational costs other than those costs under subclause 101A(3);";

(iii) omit paragraph (2)(h), substitute:

"(h) costs (related to a specific asset (other than a security or interest in an interposed vehicle or derivative financial product within the meaning of subclause 101A(3A)) or activity to produce income) that an investor would incur if he or she invested directly in the asset;";

(baa) in clause 103:

(i) before "***Transactional and operational costs*** include", insert "(1)"; and

(ii) omit ".", substitute:

";

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(ea) where an asset is acquired other than through a financial market, any part of the acquisition price of the asset that exceeds the price at which the asset could have been disposed of;

(eb) where an asset is acquired through a financial market, any part of the acquisition price of the asset that exceeds the bid price in the financial market that would apply without the acquisition having occurred either:

(i) immediately following the acquisition; or

(ii) if the acquisition was a part of multiple acquisitions reflecting a single and non-recurring instruction to acquire, after the last acquisition made in accordance with the instruction;

(ec) property operating costs;

(f) costs incurred in or by an interposed vehicle that would be transactional and operational costs if they had been incurred by the superannuation entity to which the superannuation product or investment option relates or for the registered scheme or a notified foreign passport fund to which the collective investment products relate;

and for a superannuation product does not include borrowing costs or costs that are indirect costs because of subclause 101A(3).

(1A) Before 30 September 2020 transactional and operational costs do not include property operating costs for a MySuper product or investment option if details of the property operating costs are disclosed in accordance with paragraph 209(ma).";

(ba) omit the note under subclause 104(1), substitute:

"Note: A fee deducted from a member's account or paid out of the superannuation entity is not an indirect cost.";

(bb) omit subclause 104(2), substitute:

"(2) Despite clause 214, the ICR for a Product Disclosure Statement that is available during a particular financial year is to be determined for the previous financial year except that if the product or investment option was not offered from at least 11 months before the end of the previous financial year, the ICR for the Statement is to be determined based on

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the responsible person's reasonable estimate at the time the Statement is prepared of the ICR that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.";

(bc) after subclause 104(2) insert:

"(2A) Despite clause 214, the part of a fee for a MySuper product or an investment option offered by a superannuation entity disclosed in a Product Disclosure Statement that is available during a particular financial year that relates to the costs incurred by the trustee of the superannuation entity or in an interposed vehicle or derivative financial product, is to be determined for the previous financial year except that if the product or investment option was not offered from at least 11 months before the end of the previous financial year, the costs are to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.";

(bd) after clause 104 insert:

"**104A Costs in management costs**

Despite clause 214, the part of the management costs for an investment option offered by a managed investment scheme disclosed in a Product Disclosure Statement that is available during a particular financial year that is not a fee payable to the responsible entity or the operator of a notified foreign passport fund, other than a performance fee, is to be determined for the previous financial year except that if the investment option was not offered from at least 11 months before the end of the previous financial year, that part of the management costs is to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.";

(c) in clause 202 omit "and insurance costs";

(d) in clause 202A omit "and insurance costs";

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(da) in paragraph 204(7)(a), omit "collective investment product:", substitute "collective investment product or superannuation product:

(e) omit paragraph 209(m), substitute:

"(m) for a superannuation product—details of borrowing costs including:

(i) a description of the cost; and

(ii) the amount, or an estimate if the amount is not known; and

(iii) how and when the costs are recovered; and

(iv) a statement that the cost is an additional cost to the investor;

(ma) before 30 September 2020, details of property operating costs to the extent those costs are not included in the investment fee or indirect costs for the relevant MySuper product or investment option offered by a superannuation entity, including:

(i) a description of the cost; and

(ii) the amount, or an estimate if the amount is not known; and

(iii) how and when the costs are recovered; and

(iv) a statement that the cost is an additional cost to the investor.";

(ea) after clause 209 insert:

"**209AA Calculating transactional and operational costs**

For paragraphs 209(j) and (m), information about transactional and operational costs and, for a superannuation product or investment option in a superannuation product, borrowing costs and property operating costs for a product or investment option disclosed in a Product Disclosure Statement that is available during a particular financial year is to be determined for the previous financial year except that if product or investment option was not offered from at least 11 months before the end of the previous financial year, the transactional and operational costs and, for a superannuation product or investment option in a superannuation product, borrowing costs and property operating costs are to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that

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will apply for the current financial year, and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.";

(f) in clause 209A:

(i) omit "fees":", substitute,

"fees", or incorporated by reference:";

(ia) omit the definition of ***administration fee***, substitute:

"An ***administration fee*** is a fee that relates to the administration or operation of the superannuation entity and includes costs that relate to that administration or operation, other than:

(a) borrowing costs; and

(b) indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as indirect costs and not fees, incurred by the trustee [*OR the trustees*] of the entity or in an interposed vehicle or derivative financial product; and

(c) costs that are otherwise charged as an investment fee, a buy-sell spread, a switching fee, an activity fee, an advice fee or an insurance fee.";

(iaa) omit the note under the definition of ***indirect cost ratio*** in clause 209A, substitute:

"Note: A fee deducted from a member's account or paid out of the superannuation entity is not an indirect cost.".

(ib) omit the definition of ***investment fee***, substitute:

"An ***investment fee*** is a fee that relates to the investment of the assets of a superannuation entity and includes:

(a) fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees); and

(b) costs that relate to the investment of assets of the entity, other than:

(i) borrowing costs; and

(ii) indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as

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indirect costs and not fees, incurred by the trustee [*OR the trustees*] of the entity or in an interposed vehicle or derivative financial product; and

(iii) costs that are otherwise charged as an administration fee, a buy-sell spread, a switching fee, an activity fee, an advice fee or an insurance fee.

Note: The costs referred to in paragraph (b) do not include transactional and operational costs referred to in paragraphs (b), (ea) and (eb) of the definition of ***transactional and operational costs***.";

Note: Transitional provisions apply in relation to the notional definition of investment fee until 30 September 2020: see paragraph 11.

(ii) omit the definition of ***switching fees***, substitute:

"[In the case of a MySuper product:]

A ***switching fee*** for a MySuper product is a fee to recover the costs of switching all or part of a member's interest in a superannuation entity from one class of beneficial interest in the entity to another.

[In the case of a superannuation product that is not a MySuper product:]

A ***switching fee*** for a superannuation products other than a MySuper product, is a fee to recover the costs of switching all or part of a member's interest in the superannuation entity from one investment option or product in the entity to another.";

Note: If a Product Disclosure Statement covers both a MySuper product and another superannuation product, both definitions of ***switching fee*** must be included.".

(fa) in subclause 211:

(i) in the heading omit "**for a MySuper product**";

(ii) omit "generic MySuper product", substitute "*[insert name of generic MySuper product or other investment option as required by subclause 220(1)]*";

(iii) in the heading to the table omit "—MySuper product", substitute "*[insert name of generic MySuper product or other investment option as required by subclause 220(1)]*";

(iv) omit "MySuper" (wherever else occurring), substitute "superannuation";

(v) omit the note below the table, substitute:

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"Note: * Additional fees may apply.";

(fb) in subclause 212:

(i) in both the heading and the sub-heading omit "**balanced investment option**", substitute "**balanced investment option or other investment option**";

(ii) in the heading to the table omit "—the Balanced Investment Option", substitute "*[insert name of balanced investment option or other investment option required by subclause 220(2)]*.";

(iii) omit "balanced investment option" (wherever else occurring), substitute "*[insert name of balanced investment option or other investment option required by subclause 220(2)]*.";

(g) omit clause 221, substitute:

"**221 Consumer advisory warning**

(1) *Superannuation products*

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from $100 000 to $80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You or your employer, as applicable, may be able to negotiate to pay lower fees. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission** (**ASIC**) website (www.moneysmart.gov.au) has a superannuation calculator to help you check out different fee options.

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(2) *Collective investment products*

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DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from $100 000 to $80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower contribution fees and management costs where applicable. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission** (**ASIC**) website (www.moneysmart.gov.au) has a managed funds fee calculator to help you check out different fee options.

(3) In the Consumer Advisory Warning in subclause (2) 'account' may be replaced with 'investment'.";

(h) omit clause 222, substitute:

"The Consumer Advisory Warning referred to in subclause 221(1) must be located at the beginning of the fees section of the Product Disclosure Statement for superannuation products and the Consumer Advisory Warning referred to in subclause 221(2) must be located at the beginning of the fees section of the Product Disclosure Statement for collective investment products where fees or costs may be deducted from amounts to be held for members of the managed investment scheme.";

(i) omit subclause 301(1), substitute:

"(1) For a MySuper product or an investment option offered by a superannuation entity, the following text and the appropriate amounts, in dollars, must be inserted after the part of the periodic statement that itemises transactions during the period.

Indirect costs of your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment but are not charged as a fee.

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Other fees of your investment

This approximate amount or amounts have been deducted from your investment and covers fees that are not reflected as transactions on this statement.

Note: Other fees may be reported by the type of fees charged.

(1A) For an offer of a collective investment product, the following text and the appropriate amount, in dollars, must be inserted after the part of the periodic statement that itemises transactions during the period.

Indirect costs of your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment but are not charged to you directly as a fee.

(1B) For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending on or before 29 June 2020, the amount disclosed for other fees under subclause (1) may be calculated excluding the buy-sell spread if it is stated in accordance with subclause (1E) that, "The total fees you paid do not include the buy-sell spread fee, because it is not reasonably practicable for us to include the buy-sell spread fee that you incurred during the period.

(1C) For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending on or before 29 June 2020, the amount disclosed for other fees under subclause (1) may be calculated excluding property operating costs if it is stated in accordance with subclause (1E) that, "The total fees you paid do not include the property operating costs that you incurred during the period.

(1D) For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending after 29 June 2020, and on or before 29 September 2020, the amount disclosed for other fees under subclause (1) may be calculated excluding property operating costs if it is stated in accordance with subclause (1E) that, "The total fees you paid do not include the property operating costs that you incurred during the period. An estimate of the amount of property operating costs incurred by the holder during the period is provided in the periodic statement.

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(1E) For the purposes of subclauses (1B) to (1D), a statement is stated in accordance with this subclause if the statement and each other statement made for the purposes of subclauses (1B) to (1D) is included:

(a) immediately under the amount of total fees you paid in the periodic statement; or

(b) if it is not reasonably practicable to include the statements in that position in the periodic statement—a separate document that accompanies the periodic statement and that includes those statements as consecutive statements. ";

(j) after subclause 301(4), insert:

"(5) For a superannuation product that is subject to tax, for any reporting period ending after 29 June 2020, if a reduced fee or cost is disclosed in the statement because of the benefit of any income tax deduction, the indirect costs, or other fees as appropriate, for the product must include the part of the cost that reduced the disclosed fee or costs.

(6) For a collective investment product that is subject to tax, for any reporting period ending after 29 June 2020, if a reduced fee or cost is disclosed in the statement because of the benefit of any income tax deduction, the indirect costs for the product must include the part of the cost that reduced the disclosed fee or cost.";

(k) at the end of paragraph 303(1)(c), omit ".", insert:

"; and

(d) for any reporting period ending on or before 29 June 2020:

(i) the approximate total amount of borrowing costs that affected the investment of the member during the period or that amount combined with the amount required to be disclosed in accordance with subclause 302(1); or

(ii) details, including the relevant website address, about how to obtain information about borrowing costs for each MySuper product and investment option on the fund's website; and

(e) for any reporting period ending after 29 June 2020, the approximate total amount of borrowing costs that affected the investment of the member during the period or that amount combined with the amount required to be disclosed in accordance with subclause 302(1).";

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(l) at the end of paragraph 303(2)(c), omit ".", insert:

"; and

(d) for any reporting period ending after 29 June 2020, the approximate total amount of transactional and operational costs for the collective investment product that affected the investment of the holder during the period or that amount combined with the amount required to be disclosed in accordance with paragraph 302(1)(b) excluding costs that are both:

(i) referred to in paragraph (b), (ea) or (eb) of the definition of ***transactional or operational costs*** and that are a necessary part of the acquisition price of an asset;

(ii) recovered by a buy-sell spread for the collective investment product where the estimated amount of the buy-sell spread that the holder has paid in the period in dollars is disclosed in the periodic statement).".

6A. In Schedule 10D to the Regulations, omit paragraph 8(6A)(a), substitute:

(a) apply, adopt or incorporate the definitions in relation to fees mentioned in subsection 99BA(2) of the SIS Act or clause 209A of Schedule 10 and, for an insurance fee, as mentioned in subsection 29V(9) of the SIS Act; and

7. In subclause 8(3) of Schedule 10E to the Regulations omit "Termination fee", substitute "Exit fee".

Transitional

8. Subject to paragraph 8A, 8C and 8D, paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) apply in relation to a Product Disclosure Statement (regardless of when it was first given) from the earliest of the following:

(a) from 1 February 2017 if the responsible person for the Statement has not given ASIC a notice in writing before 1 February 2017:

(i) identifying themselves and the Statement; and

(ii) stating that the person intends to provide to ASIC written information relating any relevant superannuation products or relevant investment products to which the Statement relates before 1 March 2017; and

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(iii) if all financial products to which the Statement relates will not be offered for issue after 30 September 2017, identifying those products;

(b) from 1 March 2017 if ASIC is notified in accordance with sub-subparagraph (a)(i) and (ii) but not sub-subparagraph 8(a)(iii) and the following statements have not been provided to ASIC in writing before 1 March 2017:

(i) a statement which contains or purports to contain the information specified in paragraph 8AB in the form and in accordance with the instructions available on ASIC's website on 19 December 2016; and

(ii) a statement of the person authorising the provision of the information that the person is authorised to provide it on behalf of the responsible person for the Statement and that they believe that the:

(A) amount stated for the purposes of sub-subparagraph 8AB(a)(i) or sub-subparagraph 8AB(b)(i) as applicable is a reasonable estimate; and

(B) amount stated for the purposes of sub-subparagraph 8AB(a)(ii) or sub-subparagraph 8AB(b)(ii) as applicable is correct;

(c) from the date that is 6 business days after ASIC has requested in writing the responsible person to provide the statements referred to in paragraph 8AC in relation to a superannuation product, investment option or managed investment product to which the Statement relates, unless by that date the statements have been provided in writing to ASIC;

(d) when the responsible person for the Statement has included in the Statement or a Statement that relates to a MySuper product, investment option or managed investment product to which the Statement relates or published on a website of the responsible person from which the Statement can be accessed, a notice to the effect that this instrument (as amended by the *ASIC Corporations (Amendment) Instrument 2016/1224* and the *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*) applies to the Statement;

(e) from commencement of the *ASIC Corporations (Amendment) Instrument 2016/1224* if the responsible person for the Statement has before that commencement included in the Statement or a Statement that relates to a MySuper product, investment option or managed investment product to which the Statement relates or published on a website of the responsible person from which the Statement can be accessed, a notice to the effect that this instrument (as amended by the *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*) applies to the Statement;

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(f) if the Statement is first given after the commencement of this provision and relates to a MySuper product, investment option or managed investment product that was not covered by a Product Disclosure Statement that was first given before the commencement of this provision, from the time the Statement is first given;

(g) 30 September 2017.

Note: Paragraphs 5 and 5D commenced on the commencement of *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*. Paragraph 5CA commenced on the commencement of *ASIC Corporations (Amendment) Instrument 2016/1224*.

8AA. Paragraphs 8(a) to (c) do not apply in relation to a Product Disclosure Statement for an interest in a time-sharing scheme.

8AB. The information for the purposes of paragraph 8(a) is:

(a) for each relevant superannuation product or relevant investment option within a superannuation product of the responsible person for the Product Disclosure Statement, the amounts that would be required under clause 201 of Schedule 10 to the Regulations or subclause 8(3) of Schedule 10D to the Regulations, the total cost of the product required under clause 211 of Schedule 10 or paragraph 8(2)(b) of Schedule 10D and the amount required under paragraph 209(j) of Schedule 10:

(i) in a Product Disclosure Statement prepared in accordance with Schedule 10 on the date the information is provided to ASIC as if paragraphs 4 to 7 applied to the Statement; and

(ii) as stated or incorporated by reference in the Statement or if applicable any updating information provided in accordance with an exemption given by ASIC from section 1012J of the Act; and

(b) for each relevant managed investment product of the responsible person for the Product Disclosure Statement, the amounts that would be required under clause 202 or clause 202A of Schedule 10 to the Regulations or subclause 8(3) of Schedule 10E to the Regulations as applicable, the total cost of the product required under clause 211 of Schedule 10 or paragraph 8(2)(b) of Schedule 10E and the amount required under clause 209(j) of Schedule 10:

(i) in a Product Disclosure Statement prepared in accordance with Schedule 10 on the date the information is provided to ASIC as if Clause 4 to 7 applied to the Product Disclosure Statement; and

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(ii) as stated or incorporated by reference in the Statement or if applicable any updating information provided in accordance with an exemption given by ASIC from section 1012J of the Act.

For the purposes of this paragraph apply the following disregarding any superannuation product, investment option or managed investment product in respect of which there is no Product Disclosure Statement in use during February 2017, notified under sub-subparagraph 8(a)(iii) or in relation to which paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) apply:

(c) a superannuation product is a ***relevant superannuation product*** of a responsible person if the product is a generic MySuper product issued by the person;

(d) an investment option is a ***relevant investment option*** of a responsible person if:

(i) the investment option is not a generic MySuper product and relates to assets that are no less than all other investment options of the responsible person other than a generic MySuper product (at the end of the last financial year); or

(ii) the investment option relates to assets of more than $100 million (at the end of the last financial year);

(e) a managed investment product is a ***relevant managed investment product*** if:

(i) the value of the scheme property relating to managed investment products of the same class is no less than the value of the scheme property of each other class of managed investment products of the responsible person (at the end of the last financial year); or

(ii) the scheme property to which the product relates has a value of more than $100 million (at the end of the last financial year).

8AC. The statements required by subparagraph 8(c) are the statements that would be required by paragraph 8(b) if:

(a) the reference to a relevant investment option in subparagraph 8AB(d) were a reference to a superannuation product or investment option of the person specified in the request under subparagraph 8(c);

(b) the reference to a relevant managed investment product in subparagraph 8AB(e) were a reference to a managed investment product specified in the request under subparagraph 8(c);

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(c) the time as of which the information in the statements had to be current was a time determined by the responsible person in writing that is no earlier than 1 February 2017 and no later than 28 February 2017.

8A. Subparagraphs 6(bb), (c), (d), (f)(i), (fa), (fb), (g) and (h) and paragraph 7 apply in relation to a Product Disclosure Statement from the time the Statement first complies with those subparagraphs if this is before the time the provision would apply because of paragraph 8.

8B. Despite paragraph 1 of Schedule 2 to *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*, ASIC Class Order [CO 14/1252] as in force immediately before the commencement of *ASIC Corporations (Amendment and Repeal) Instrument 2015/876* applies in relation to a Product Disclosure Statement that relates only to financial products to which a Statement relates that included a statement that ASIC Class Order [CO 14/1252] applies to the Statement until the earlier of:

(a) the date that paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) applies in relation to the Statement under paragraph 8; and

(b) the date from which the Statement complies with paragraphs 4 to 7 as in force immediately after the commencement of this instrument.

8C. If paragraphs 6(e), (ea) and (f) other than (f)(i) as in force immediately before the commencement of the *ASIC Corporations (Amendment) Instrument 2016/1224* applied in relation to a Product Disclosure Statement at that time, those provisions continue to apply in relation to the Statement and any other Product Disclosure Statement (first given after that commencement) that relates only to financial products to which the first mentioned Statement relates until the earlier of:

(a) 30 September 2017; and

(b) when the Statement first complies with those paragraphs as in force immediately after that commencement.

8D. If a Product Disclosure Statement:

(a) is first given after the commencement of this provision; and

(b) relates to a MySuper product, investment option or managed investment product that was covered by a notice given to ASIC for the purposes of subparagraph 8(a) and each statement referred to in paragraph 8(b) in relation to the responsible person for the Statement has been given to ASIC for the purposes of paragraph 8(b); and

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(c) does not relate to any other MySuper product, investment option or managed investment scheme;

paragraphs 4 to 7 (except 5, 5CA and 5D) apply to the Statement from 30 September 2017 other than to the extent those provisions apply earlier because of subparagraphs 8(c) or (d) or paragraphs 8A or 8C.".

9. Paragraphs 4 to 7 apply in relation to a periodic statement that is required to be given in accordance with section 1017D of the Act:

(a) if the outer limit for giving the statement is on or after 1 January 2018; or

(b) if the periodic statement states that this instrument applies to it.

Note: The timing for the giving of certain periodic statements for superannuation products is affected by Subdivision 5.12 of Part 7.9 of, and Part 12 of Schedule 10A to the Regulations.

10. Despite paragraph 9, paragraph 5CB applies from the commencement of *ASIC Corporations (Amendment) Instrument 2017/664*.

11. Before 30 September 2020, if a Product Disclosure Statement for a MySuper product or investment option includes separate details of the property operating costs (within the meaning of the notional definition of ***property operating costs*** inserted by sub-subparagraph 6(a)(iib)) under Additional Explanation of Fees and Costs for the MySuper product or investment option, sub-subparagraph 6(f)(ib) applies as if the notional definition of ***investment fee*** were amended by, at the end of subparagraph (iii) of the definition, omitting "fee." and substituting:

"fee;

but does not include property operating costs.".

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Notes to ASIC Class Order [CO 14/1252]

Note 1

ASIC Class Order [CO 14/1252] (in force under s1020F(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
[CO 14/1252]	12/12/2014 (*see* F2014L01692)	13/12/2014	
2015/876	24/11/2015 (*see* F2015L01835)	25/11/2015	-
2016/1224	21/12/2016 (*see* F2016L02013)	22/12/2016	-
2017/65	23/3/2017 (*see* F2017L00284)	24/3/3017	-
2017/664	13/9/2017 (*see* F2017L01174)	14/9/2017	-
2017/1138	22/12/2017 (*see* F2017L01714)	23/12/2017	-
2018/697	13/9/2018 (*see* F2018L01281)	18/9/2018	-
2018/1088	10/12/2018 (*see* F2018L01714)	11/12/2018	-
2019/599	21/6/2019 (*see* F2019L00854)	1/7/2019	-

Table of Amendments

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 3	rep. s48D LA
Para 4	am. 2018/697
Para 5	am. 2015/876
Para 5A	ad. 2015/876
Para 5B	ad. 2015/876
Para 5C	ad. 2015/876
Para 5CA.....	ad. 2016/1224
Para 5CB.....	ad. 2017/664 am. 2018/697
Para 5D	ad. 2015/876
Para 5E.....	ad. 2017/664
Para 6	am. 2015/876 and 2016/1224

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Provision affected	How affected
Sub-subpara 6(a)(iaa) .	am. 2017/664
Sub-subpara 6(a)(ib) ..	am. 2018/697
Sub-subpara 6(a)(iib) .	ad. 2017/664
Sub-subpara 6(a)(iii) ..	am. 2018/697
Sub-subpara 6(a)(iv) ...	am. 2018/697
Sub-subpara 6(a)(iv) (notional subclause 101B(4)).....	am. 2017/664
Sub-subpara 6(a)(iv) (notional subclause 101B(4A)).....	ad. 2017/664
Sub-subpara 6(a)(iv) (notional subclause 101B(4B)).....	ad. 2017/664
Sub-subpara 6(a)(iv) (notional subclause 101B(4C)).....	ad. 2017/664
Sub-subpara 6(a)(iv) (notional subclause 101B(4D)).....	ad. 2017/664
Sub-subpara 6(a)(iv) (notional subclause 101B(5)).....	am. 2017/664
Sub-subpara 6(a)(v) ...	am. 2018/697
Subpara 6(baa)	rs. 2017/664
Subpara 6(baa) (notional clause 103)...	am. 2018/697
Subpara 6(baa) (notional subclause 103 (1A))	am. 2017/1138 and 2018/1088
Subpara 6(bd)	am. 2018/697
Subpara 6(da)	ad. 2018/697
Sub-subpara 6(e) (notional paragraph 209(m))	am. 2017/664
Subpara 6(e) (notional paragraph 209(ma)) …	ad. 2017/664 am. 2017/1138 and 2018/1088
Subpara 6(ea)	am. 2017/664
Sub-subpara 6(f)(ia) (definition of *administration fee*)	am. 2019/599
Sub-subparagraph 6(f)(ib) (definition of *investment fee*)	am. 2019/599
Sub-subpara 6(f)(ib) ...	am. 2017/65
Sub-subpara 6(f)(ib) Notes	ad. 2017/664
Sub-subpara 6(f)(ib) (note)	am. 2017/1138 and 2018/1088
Sub-subparagraph	

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Provision affected	How affected
6(fa)(v)	rs. 2019/599
Subpara 6(g)	am. 2018/697
Subpara 6(h).....	am. 2018/697
Subpara 6(i)	am. 2017/664
Sunpara 6(i) (notional subclause 301(1A))	am. 2018/697
Subpara 6(i) (notional subclauses 301(1B) to (1D))	am. 2017/1138 and 2018/1088
Subpara 6(j)	ad. 2017/664
Subpara 6(j) (notional subclauses 301(5) and (6))	am. 2017/1138 and 2018/1088
Subpara 6(j) (notional subclause 301(6))	am. 2018/697
Subpara 6(k)	ad. 2017/664 am. 2019/599
Subpara 6(k) (notional paragraphs 303(1)(c) and (d))	am. 2017/1138 and 2018/1088
Subpara 6(l)	ad. 2017/664
Subpara 6(l) (notional paragraph 303(2)(d)) ..	am. 2017/1138; 2018/697 and 2018/1088
Para 6A	ad. 2015/876 rs. 2019/599
Para 8	am. 2015/876 rs. 2016/1224
Sub-subpara 8(b)(ii) ...	am. 2017/65
Para 8 Note	ad. 2017/65
Para 8A	ad. 2015/876 rep. 2016/1224
Para 8B	ad. 2015/876
Para 8B (the paragraph 8B inserted by item 21 of Schedule 1 to 2015/876)	rep. 2017/65
Subpara 8D(b)	am. 2017/65
Subpara 8D(c)	am. 2017/65
Para 9	am. 2015/876
Para 10	ad. 2017/664
Para 11	ad. 2017/664 am. 2017/1138 and 2018/1088

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