

EXPLANATORY STATEMENT for
ASIC Corporations (Generic Calculators) Instrument 2016/207

And

ASIC Corporations (Repeal) Instrument 2016/230

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes:

- a) ASIC Corporations (Generic Calculators) Instrument 2016/207 (Instrument); and
- b) ASIC Corporations (Repeal) Instrument 2016/230 (Repeal Instrument).

The Instrument and Repeal Instrument are made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* (Corporations Act).

Section 926A(2)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Corporations Act, other than Divisions 4 and 8 of Part 7.6.

Section 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Corporations Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

1. Background

Under the *Legislation Act 2003* legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. ASIC Class Order [CO 05/1122] *Relief for providers of generic financial calculators* is due to sunset on 1 April 2016. The

Instrument has been issued to preserve the effect of the relief given by ASIC Class Order [CO 05/1122] *Relief for providers of generic financial calculators*.

A generic financial calculator is a facility, device, table or other thing that:

- a) is used to make a general numerical calculation or find out the result of a numerical calculation about a financial product; and
- b) does not advertise or promote one or more specific financial products.

Generic financial calculators can be a useful and cost-effective educational tool through which consumers can better understand their financial circumstances and goals. Calculators can help consumers engage with their superannuation, insurance and investment strategies.

A generic financial calculator involves financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the user in making a decision about a financial product or class of financial product: see s766B of the Corporations Act.

Personal advice is financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

- a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or
- b) a reasonable person might expect the provider of the advice to have considered one or more of those matters (see s766B(3) of the Corporations Act).

Whether a particular calculator involves financial product advice and whether the financial product advice is likely to be personal advice will depend on the facts of the particular case.

2. Purpose of the instruments

The purpose of the Instrument is to facilitate the cost-effective provision of useful and accurate information about financial products and services to consumers through generic financial calculators.

Without the relief in the Instrument the provider of a generic financial calculator that provides financial product advice:

- a) will be subject to the Australian financial services (AFS) licensing, conduct and disclosure obligations in Ch 7 of the Corporations Act; and
- b) must comply with the requirements in Div 3 of Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act if the generic financial calculator provides personal advice to retail clients.

The imposition of these regulatory requirements and/or the uncertainty about their application may inhibit the provision of generic financial calculators, particularly because these calculators are often provided free of charge.

The relief in the Instrument is granted for the removal of doubt and to provide legal certainty.

The purpose of the Repeal Instrument is to repeal [CO 05/1122] before it sunsets on 1 April 2016.

3. Operation of the instruments

The Instrument gives providers of generic financial calculators relief from the requirement to hold an AFS licence with an advice authorisation or (where they currently hold a licence) relief from the conduct and disclosure requirements in Divs 2,3 and 4 of Pt 7.7 of the Corporations Act in relation to that advice.

Note: The best interests duty and related obligations under Div 2 of Pt 7.7A of the Corporations Act do not have effect in relation to a person to whom ASIC Corporations (Generic Calculators) Instrument 2016/207 applies: see reg 9.12.04 of the Corporations Regulations 2001 (first appearing). This regulation will apply to ASIC Corporations (Generic Calculators) Instrument 2016/207 because ASIC Class Order [CO 05/1122] has been repealed and re-enacted by ASIC Corporations (Generic Calculators) Instrument 2016/207: see s10 of the *Acts Interpretation Act 1901* and s13(1) of the *Legislation Act 2003*.

The relief only applies where the provider of a generic financial calculator takes reasonable steps to meet the following requirements:

- a) if the financial calculator is an electronic facility or device, the user must be able to change all of the default assumptions (except statutory assumptions, such as taxation rates, which can either be fixed or able to be altered by the user) and perform a calculation using the changed assumptions;
- b) the default assumptions must be reasonable;
- c) the financial calculator must not advertise or promote a specific financial product;
- d) the financial calculator must include clear and prominent statements about:
 - a. the purpose and limitations of the calculator;
 - b. the impact of any significant limitation of the financial calculator;
 - c. the assumptions;
 - d. where the calculator provides an estimate of an amount payable or receivable at a future time of 2 years or more- the present value of the estimate;
 - e. the fact that the financial calculator is not intended to be relied on for the purpose of making a decision about a particular financial product and that the user should consider obtaining advice from a AFS licensee before making any decisions;
- e) the financial calculator must display to the user (including by request through a link to the information) an explanation of why the default assumptions are reasonable for working out the estimate;
- f) if the financial calculator is an electronic facility or device – the calculator must not prevent the user from readily printing or electronically storing the result of the calculation;

- g) the provider must keep a copy of the financial calculator for 7 years from when it is first made available; and
- h) if the provider becomes aware, or should reasonably have become aware, of matters that give the provider reason to believe that they have failed, other than in an immaterial respect, to comply with a condition, the provider must notify ASIC in writing of details of the breach as soon as practicable, and in any case within 10 business days of becoming aware of the breach.

The Repeal Instrument repeals Class Order [CO 05/1122] *Relief for providers of generic calculators*. Providers of generic financial calculators can now rely on the Instrument.

4. Consultation

The relief given in the Instrument was the subject of consultation in Consultation Paper 249: *Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (CP 249). CP 249 was published in December 2015. ASIC received 8 submissions in response to CP 249.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required in order to make the Instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Generic Calculators) Instrument 2016/207

ASIC Corporations (Repeal) Instrument 2016/230

ASIC Corporations (Generic Calculators) Instrument 2016/207 and ASIC Corporations (Repeal) Instrument 2016/230 are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

ASIC Corporations (Generic Calculators) Instrument 2016/207 gives relief from the Australian financial services licensing and certain conduct and disclosure requirements in the *Corporations Act 2001* for providers of generic financial calculators that meet certain conditions. The purpose of the relief is to facilitate the cost-effective provision of useful and accurate information about financial products and services to consumers through generic financial calculators.

ASIC Corporations (Repeal) Instrument 2016/230 repeals ASIC Class Order [05/1122] that has been remade to preserve its effect beyond its sunseting date.

Human rights implications

These legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

These legislative instruments are compatible with human rights as they do not raise any human rights issues.