

## **EXPLANATORY STATEMENT for ASIC Corporations (Amendment) Instrument 2018/40**

Prepared by the Australian Securities and Investments Commission

### *Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Amendment) Instrument 2018/40 (**Instrument**).

The Instrument is 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**

The Instrument amends ASIC Corporations (Generic Calculators) Instrument 2016/207 (**Principal Instrument**).

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

- a) is used to make a 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 generic financial 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.

The Principal 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.

The relief only applies where the provider of a generic financial calculator takes reasonable steps to meet certain requirements. One of these requirements is that if the calculator provides an estimate of an amount payable or receivable at a future time of 2 years or more, it must display to the user a clear and prominent statement setting out the present value of the estimate using an assumed rate of inflation of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle).

## **2. Purpose of the instrument**

The purpose of the Instrument is to defer the commencement of the requirement for a generic financial calculator relating to superannuation and retirement (**Superannuation and Retirement Calculator**) to include the present value of future receipts and payments using an assumed rate of inflation of 2.5% until 1 July 2019.

ASIC has deferred the commencement of this requirement for Superannuation and Retirement Calculators because there are current superannuation reforms that may impact on how superannuation calculators should present and calculate estimates in the future.

ASIC will monitor the impact of these reforms to assess the ongoing appropriateness of the requirement under the Principal Instrument for Superannuation and Retirement Calculators to adjust future returns for inflation using a rate of 2.5%.

## **3. Operation of the instrument**

The Instrument repeals the existing section 7 and substitutes a new section 7.

Under the Principal Instrument, a generic financial calculator that provides an estimate of an amount payable or receivable at a future time of 2 years or more must include a clear and prominent statement setting out the present value of the estimate calculated using a discount rate of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle).

The new section 7 defers the commencement date of this requirement for a Superannuation or Retirement Calculator until 1 July 2019.

Until 1 July 2019, a Superannuation or Retirement Calculator must display to the user in the ordinary course of its use or have printed on it a clear and prominent statement specifying whether or not the estimate takes into account an assumed change in the cost of living between the time of the preparation of the estimate and the future time.

#### **4. Consultation**

ASIC did not undertake consultation with respect to the Instrument because it is minor and machinery in nature and provides relief only for a short period pending superannuation reforms that may impact on how a Superannuation or Retirement Calculator should present and calculate estimates in the future.

## **Statement of Compatibility with Human Rights**

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

### **ASIC Corporations (Amendment) Instrument 2018/40**

ASIC Corporations (Amendment) Instrument 2018/40 is 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 (Amendment) Instrument 2018/40 extends until 1 July 2019 the relief for superannuation and retirement calculators from the requirement that if a generic financial calculator makes an estimate of a future return or payment it must calculate the present value of the estimate using an assumed rate of inflation of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle).

The objective of ASIC Corporations (Amendment) Instrument 2018/40 is to allow time for ASIC to assess the ongoing appropriateness of this requirement for superannuation and retirement calculators in light of current superannuation reforms that may impact on how superannuation calculators should present and calculate estimates in the future.

#### **Human rights implications**

The legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The legislative instrument is compatible with human rights as they do not raise any human rights issues.