



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Repeal and Transitional—Relief for Providers of Retirement Estimates) Instrument 2022/204

This is the Explanatory Statement for ASIC Corporations (Repeal and Transitional – Relief for Providers of Retirement Estimates) Instrument 2022/204.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. ASIC Corporations (Repeal and Transitional—Relief for Providers of Retirement Estimates) Instrument 2022/204 (*Instrument*) repeals ASIC Class Order [CO 11/1227] *Relief for providers of retirement estimates (Class Order)* while providing transitional relief to extend its effect until 31 December 2022.
2. The Class Order provides conditional relief from the Australian financial services (*AFS*) licensing requirements in the Corporations Act 2001 (*Act*) to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in the Class Order. Where a superannuation fund trustee already holds an AFS licence, the Class Order provides relief from the advice, conduct and disclosure requirements of Pt 7.7 of the Act.
3. The effect of the Instrument is to extend the application of the Class Order until the end of 31 December 2022 to provide conditional relief from the legislative requirements that apply to providers of retirement estimates.

Purpose of the instrument

4. The purpose of the Instrument is to extend relief in the Class Order for a period of approximately nine months (until the end of 31 December 2022).
5. Before the relief expires on 31 December 2022, ASIC intends to remake the relief, as preserved by the Instrument, in a new legislative instrument that will provide conditional relief for superannuation fund trustees who prepare retirement estimates for their members and persons who provide superannuation calculators. ASIC intends to make changes to the existing relief settings in the new legislative instrument, which will include adopting a single framework for how economic and financial assumptions should be made in providing a retirement estimate or superannuation calculator.

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6. The Instrument preserves existing relief settings for superannuation fund trustees who prepare retirement estimates for their members, until 31 December 2022, allowing sufficient time to finalise an appropriate framework for the new legislative instrument, taking into account submissions received from stakeholders and interested parties during public consultation.
 7. The Instrument will allow superannuation fund trustees to rely on the relief in the intervening period to prepare retirement estimates for their members in accordance with the conditions of the Class Order. Stakeholder submissions received during public consultation indicated that superannuation fund trustees intend to rely on the relief in the Class Order to provide retirement estimates with annual statements to be issued for the 2021-22 financial year.
 8. Extending the relief will provide certainty to superannuation trustees about their ability to rely on existing relief settings and facilitate the provision of retirement estimates to members in that period. Without relief, providers of retirement estimates may be discouraged from providing retirement estimates because they may need to hold an AFS licence with a personal advice authorisation and comply with the personal advice requirements of the licensing regime as well as the other conduct and disclosure requirements in Pt 7.7. of the Act. This is because a retirement estimate may be personal advice under s 766B of the Act.

Consultation

9. In November 2021, ASIC sought public submissions from interested parties including superannuation trustees, consumer groups and actuaries on ASIC's proposals in Consultation paper 351 *Superannuation forecasts: Update to relief and guidance (CP 351)*. Consultation closed on 28 January 2022.
10. Our proposals included to continue to provide relief from the licensing conduct and disclosure obligations relating to personal advice for superannuation trustees that provide retirement estimates and for providers of superannuation calculators, in a new single instrument that provides a relief framework for both superannuation calculators and retirement estimates; and to adopt a common framework for setting economic and financial assumptions for superannuation calculators and retirement estimates.
11. ASIC received numerous written submissions from a range of stakeholders including superannuation trustees, consumer advocate groups, industry associations, actuaries, and individuals. The submissions broadly support the continuation of relief to facilitate the provision of retirement estimates to superannuation fund members.
12. In extending the relief for retirement estimates, ASIC has taken into account stakeholder submissions that a transition period would be required for trustees to prepare periodic statements for the 2021-22 financial year and deliver the statements to members, as well as to provide adequate time for trustees to prepare for the transition to a new framework. Submissions indicated that some trustees had already started preparing retirement estimates for the 2021-22 financial year (to be issued between July and December 2022). Extending the

relief will mean that trustees have certainty about their ability to rely on existing ASIC relief for retirement estimates on 2021-22 periodic statements.

13. ASIC did not specifically undertake public consultation with respect to this Instrument given public consultation undertaken in response to ASIC's proposals set out in CP 351. ASIC has considered stakeholder submissions received in connection with ASIC's broader proposals, which identified that an extension of the existing relief for a period would be required to enable trustees to prepare retirement estimates on periodic statements for the 2021-22 financial year and provide adequate time to transition to a new framework. Further consultation was therefore not considered practicable or appropriate.

Operation of the instrument

14. The Instrument operates to repeal the Class Order commencing the day after the Instrument is registered on the Federal Register of Legislation, while providing transitional relief to extend its effect until the end of 31 December 2022.

Schedule 1 – Repeal of sunseting legislative instrument

Schedule 1 provides that the Class Order is repealed in full.

Schedule 2 – Transitional continuation of relief

Subitem (1) of Schedule 2 provides that exemptions specified in the Class Order continue to apply by force of this Instrument, in the circumstances and on the conditions specified in relation to the exemption. The exemption from the requirement to hold an AFS licence is continued under paragraph 926A(2)(a) of the Act in accordance with ASIC's current practices for giving such relief. The exemption from conduct and disclosure requirements in Pt 7.7. of the Act is continued under paragraph 951B(1)(a) of the Act.

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 the Class Order applies: see reg 9.12.04 of the Corporations Regulations 2001 (first appearing). This regulation will apply to the Instrument because the Class Order has been repealed and remade by the Instrument: see s10 of the *Acts Interpretation Act 1901* and s13(1) of the *Legislation Act 2003*.

Subitem (2) provides that subitem (1) has effect from the day after the Instrument is registered on the Federal Register of Legislation until the end of 31 December 2022.

Legislative instrument and primary legislation

15. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation. The matters contained in the instrument are appropriately used to provide certainty to superannuation trustees about their ability to rely on existing relief to provide retirement estimates to members with periodic statements under existing relief frameworks for the intervening period. The instrument operates to preserve effect of the Class Order for a short period of time until the end of 31 December 2022, during which ASIC will finalise the framework for a new legislative

instrument in consultation with stakeholders. To have attempted to provide this within the primary act would insert, into an already complex statutory framework, additional complex provisions which may need further amendment within a short period of time.

Duration

16. ASIC considers that the appropriate duration for the Instrument is approximately 9 months (until the end of 31 December 2022) to facilitate the provision of retirement estimates to members under the conditions of the Class Order as preserved by this Instrument. A shorter period of time will not provide sufficient certainty about the relief and regulatory settings for trustees to make use of the relief.
17. ASIC has consulted with the Treasury about the transitional continuation of relief and duration of the Instrument. When ASIC remakes the relief in a new legislative instrument, we will further liaise with the Treasury about an appropriate duration for the new legislative instrument.

Legislative authority

18. Subsections 926A(2) and 951B(1) of the Act provide the legislative authority for the Instrument.
19. 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 Act), where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
20. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

21. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the [Attachment](#).

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Repeal and Transitional—Relief for Providers of Retirement Estimates) Instrument 2022/204

Overview

1. The *ASIC Corporations (Repeal and Transitional—Relief for Providers of Retirement Estimates) Instrument 2022/204* (**Instrument**) repeals ASIC Class Order [CO 11/1227] *Relief for providers of retirement estimates* (**Class Order**) while providing transitional relief to extend its effect until 31 December 2022.
2. The Class Order provides conditional relief from the Australian financial services (**AFS**) licensing requirements in the Corporations Act 2001 (**Act**) to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in the Class Order. Where a superannuation fund trustee already holds an AFS licence, the Class Order provides relief from the advice, conduct and disclosure requirements of Pt 7.7 of the Act.
3. The effect of the Instrument is to extend the application of the Class Order until the end of 31 December 2022 to provide conditional relief from the legislative requirements that apply to providers of retirement estimates.

Assessment of human rights implications

4. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. This instrument 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*.