



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2022/604*

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2022/604 (*Amending Instrument*).

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

### Summary

1. The Instrument amends *ASIC Corporations (Generic Calculators) Instrument 2016/207 (Principal Instrument)*.
2. A financial calculator is a facility, device, table or other thing that is used to make a numerical calculation or find out the result of a numerical calculation about a product; and does not advertise or promote one or more specific financial products. A superannuation or retirement calculator is a financial calculator relating to a superannuation product or an Retirement Savings Account (*RSA*) product.
3. The Principal Instrument gives providers of generic financial calculators relief from the requirement to hold an Australian financial services (*AFS*) licence with an advice authorisation or, where they hold an *AFS* licence, relief from the requirements relating to advice in Divisions 2, 3 and 4 of Pt 7.7 of the Corporations Act (*Act*).
4. The Amending Instrument removes relief for superannuation or retirement calculators in the Principal Instrument from 1 January 2023.
5. ASIC continues to provide relief for providers of superannuation calculators in *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603 (new instrument)*. The new instrument provides conditional relief for superannuation trustees who prepare retirement estimates for their members and providers of superannuation calculators. The new instrument will not provide relief for calculators relating to *RSA* products.
6. The Amending Instrument also makes other minor and technical changes, specifically to:
  - (a) the definition of present value, to clarify that users are able to change the default inflation assumption;

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- (b) remove the exclusion in subparagraph 5(2)(a) that had allowed ASIC to exclude persons from relying on the relief provided the person was notified by ASIC, in writing, and ASIC had not withdrawn the notice, in writing; and
  - (c) amend the condition to notify ASIC of material non-compliance with the conditions of the instrument, aligning the terms of the condition more closely with the new reporting requirements introduced into the Act in October 2021.

### **Purpose of the instrument**

- 8. The purpose of the instrument is to remove relief for superannuation or retirement calculators from the Principal Instrument and to make other minor and machinery changes.
- 9. A calculator that relates to a superannuation product or RSA product will not be covered by the relief provided by the Principal Instrument, even if it also relates to other kinds of financial products. Specific provisions that applied to superannuation or retirement calculators are also removed.
- 10. ASIC continues to provide relief for the provision of superannuation calculators in the new instrument which provides conditional relief for superannuation trustees who prepare retirement estimates for their members and providers of superannuation calculators. The new instrument promotes a consistent approach to setting default economic and financial assumptions, as well as other requirements of the relief, including disclosure and reporting of non-compliance.
- 11. For a period of approximately six (6) months following commencement of the new instrument, trustees and other providers will be able to provide superannuation calculators under the Principal Instrument while they transition to the new framework. Relief for superannuation and retirement calculators in the Principal Instrument will cease from 1 January 2023.
- 12. The Amending Instrument further makes minor and machinery changes to:
  - (a) the definition of present value, to clarify the original policy intent that users can select their own alternative inflation rate assumption.

The Principal Instrument provides a standardised assumption about the rate of inflation that must be applied to an estimate. ASIC's existing guidance in ASIC Regulatory Guide 167 *AFS Licensing: Discretionary powers* reflects that the standardised assumption about the rate of inflation should not prevent generic calculators from modelling a range of inflation scenarios, and users can select their own alternative inflation rate.

- (b) remove the exclusion in former section 5(2) of Part 2 of the Principal Instrument that had allowed ASIC to exclude persons from relying on the relief if the person was notified by ASIC, in writing, and ASIC had not withdrawn the notice, in writing.

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ASIC does not consider the exclusion necessary for effective regulation of providers of generic calculators under the Principal Instrument. ASIC has other tools that can be used to address misconduct arising from non-compliance with the relief.

- (c) Amend the notification condition that requires providers to notify ASIC of material non-compliance of the conditions of the instrument. The amendments align more closely with new breach reporting requirements introduced into the Act from 1 October 2021.

The previous condition was modelled on the reporting period for AFS licensee breaches that applied under the former s 912D of the Act. From 1 October 2021, AFS licensees have been updating their systems to align with the new breach reporting framework.

Aligning the frameworks will remove regulatory burden for AFS licensees that rely on the Principal Instrument. It would not increase burden for other providers who are not AFS licensees and are not subject to the breach reporting framework in the Act. Providers should be able to maintain their existing arrangements and still comply with the notification condition.

## Consultation

- 13. In November 2021, ASIC publicly sought submissions from interested parties on ASIC's proposals in Consultation Paper 351 *Superannuation forecasts: Update to relief and guidance (CP 351)*. Consultation closed on 28 January 2022.
- 14. In making this instrument, ASIC considered stakeholder submissions received in connection with ASIC proposals. Submissions were broadly supportive of our proposals, and further supported:
  - (a) aligning the framework for superannuation calculators and retirement estimates with the new breach reporting requirements introduced into the Act from 1 October 2021; and
  - (b) providing for a transition period.
- 15. ASIC Report 731 *Response to submissions on CP 351 Superannuation forecasts: Update to relief and guidance (Report 731)* sets out the key issues that arose out of the submissions received on CP 351 and details of our responses to those issues.
- 16. ASIC did not specifically undertake public consultation with respect to the Amending Instrument given public consultation undertaken in response to ASIC's proposals in CP 351. Consultation was not undertaken with regard to changes described in paragraph 12 of this Explanatory Statement because the changes are of a machinery nature only and do not substantially alter existing arrangements under the Principal Instrument. ASIC did not consider that further consultation was practicable or appropriate.

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## Operation of the instrument

17. The Amending Instrument, other than Schedule 2, commences on the day after it is registered on the Federal Register of Legislation. Schedule 2 of the Amending Instrument commences on 1 January 2023.

### Schedule 1 – Amendments

18. Item 1 amends section 4 of the Principal Instrument to omit the definition of present value and substitutes an amended definition of present value that reflects the current drafting practice.
19. The amended definition clarifies that in the case of a financial calculator that is not a superannuation calculator – the default inflation rate ( $r$ ) is *0.025 or such other assumed inflation rate (expressed as a decimal fraction) as is inputted by the user of the calculator*.
20. It does not substantially alter existing arrangements, and does not require providers of generic calculators, including providers of superannuation or retirement calculators, to make any immediate changes to their existing calculators.
21. Item 2 omits subsection 5(2) of the Principal Instrument and substitutes an amended condition to notify ASIC of material non-compliance with the conditions of the instrument. The amended condition amends the period to notify ASIC from 10 business days to 30 days after the person knows or is reckless with respect to whether there are reasonable grounds to believe that they have breached a condition of the instrument, other than in an immaterial respect.
22. Item 3 repeals section 7 of the instrument which included a condition that ceased to operate on 5 December 2019.

### Schedule 2 – Amendments

23. Items 1, 2, 3 and 4 amend section 4 of the Principal Instrument to exclude superannuation calculators from the definitions of financial calculator, present value and statutory assumptions.
24. Item 5 amends section 4 to omit the definition of superannuation or retirement calculator and substitutes a new definition of superannuation calculator in the Principal Instrument that broadly covers *a facility, device, table or other thing that relates to a superannuation product or an RSA product*.
25. Item 6 repeals subparagraph 6(1)(d)(iv) of the Principal Instrument and substitutes a new subparagraph which excludes part of the condition that related specifically to superannuation or retirement estimates.

## Legislative instrument and primary legislation

26. The Instrument primarily operates to carve out relief for superannuation calculators from an existing framework for generic financial calculators in the

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Principal Instrument. The broader framework for generic financial calculators was not subject to review or consultation.

27. These changes are more appropriately addressed by a legislative instrument rather than primary legislation. To have attempted to provide this within the primary act, would insert, into an already complex statutory framework, additional complex provisions.
28. Subsections 926A(2) and 951B(1) of the Act provide the legislative authority for the Instrument.
29. 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.

### **Appropriate duration of the Instrument**

30. The Instrument, other than Schedule 2, commences on the day after it is registered on the Federal Register of Legislation. Schedule 2 of this Instrument commences on 1 January 2023, which provides for a period of approximately 6 months to allow existing providers of superannuation calculators time to transition to the new framework that will be provided by the new instrument.
31. ASIC has consulted with the Treasury about our proposals, including in regard to transitional arrangements. We have further consulted with the Treasury about an appropriate duration for the new instrument.

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

32. A Statement of Compatibility with Human Rights consistent with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* 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 (Amendment) Instrument 2022/604*

#### Overview

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- (c) amend the condition to notify ASIC of material non-compliance with the conditions of the instrument, aligning the terms of the condition more closely with the new reporting requirements introduced into the Act in October 2021.

Assessment of human rights implications

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

Conclusion

3. 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*.