

EXPLANATORY STATEMENT for

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530* under section 951B(1)(a). Section 951B(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Pt 7.7 of the Corporations Act 2001 (the Act).

1. Background

The Government's *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* and related legislation introduce some important changes to the superannuation system with effect from 1 July 2017. Some of these changes have resulted in unusually high demand for financial advice in the period leading up to 1 July 2017. This has placed pressure on providing entities (i.e. financial advisers) delivering Statements of Advice (SOAs) to clients within the statutory timeframes.

Section 946C of the Act provides that SOAs must be given, when or as soon as practicable after, personal advice is given and in any event before the providing entity (i.e. the adviser) provides the client with any further financial service that arises out of or is connected with that advice (e.g. implementing the advice by applying for or acquiring a particular financial product). In time critical cases (where the client expressly instructs the adviser that they want the service immediately or by a specified time), the providing entity is permitted to give the SOA later. However, it must be given within five business days or, if the relevant financial product is subject to a cooling off period under s1019B of the Act, before the cooling off period commences.

2. Purpose of the instrument

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530 (the Instrument) is intended to facilitate the advice-giving process during this unusually busy period by giving entities additional time to provide SOAs.

3. Operation of the instrument

Paragraph 5 of the Instrument exempts providing entities from the obligation to give an SOA within the normal statutory timeframe and allows an SOA to be given within 30 days after providing advice to the client, in the following circumstances:

- a) the advice is about a superannuation products in connection with the changes in laws regulating superannuation as a result of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*;
- b) the client expressly requests the advice be provided before 1 July 2017 and the advice is given before 1 July 2017; and
- c) where the advice relates to a financial product that is subject to a cooling off period – the providing entity gives the client a written statement explaining the nature of the cooling off rights and that the client may not receive the SOA until after the cooling rights have expired. This written warning should be given at the time the advice is provided.

The exemption is subject to the condition (set out in paragraph 6 of the Instrument) that the SOA is given as soon as practicable after the advice is provided.

4. Consultation

ASIC received an urgent application for relief from CPA Australia Limited (CPA) which was supported by Chartered Accountants Australia and New Zealand (ICAAANZ) and the Financial Planning Association of Australia Limited (FPA).

Statement of Compatibility with Human Rights

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

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530 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 (Urgent Superannuation Advice) Instrument 2017/530 provides conditional exemption from s946C of the Act in order to facilitate the advice-giving process in relation to superannuation products in connection with the changes in laws regulating superannuation as a result of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016, by giving entities additional time, on a temporary basis, to provide SOAs.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission