



ASIC

Australian Securities & Investments Commission

ASIC Corporations (AFCA transition) Instrument 2018/447

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 29 May 2018

Stephen Yen

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (AFCA transition) Instrument 2018/447*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsections 951B(1) and 1020F of *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

AFCA scheme has the meaning given by section 761A.

regulated person has the meaning given by section 1011B of the Act.

Regulations means the *Corporations Regulations 2001*.

Short-Form Product Disclosure Statement has the meaning given by section 761A as affected by regulation 7.9.61AA of the Regulations.

Part 2—Declarations and exemption

5 Financial Services Guide

- (1) Part 7.7 applies in relation to a financial services licensee and an authorised representative of such a licensee as if provisions of that Part were modified or varied by, in paragraphs 942B(2)(h) and 942C(2)(i), after “information”, inserting “(that may be up to date or on or after 1 November 2018, reflect the position immediately before that date)”.
- (2) The declaration in subsection (1) applies in relation to the licensee or representative giving a Financial Services Guide before 1 July 2019 where:
 - (a) if the Guide is given on or after 1 November 2018—section 10 applies to the licensee or representative; and

- (b) a Financial Services Guide in the same terms was first given before the commencement of this instrument.

6 Product Disclosure Statements

- (1) Part 7.9 applies in relation to a regulated person as if provisions of that Part were modified or varied as follows:
 - (a) in paragraph 1013D(1)(g), after “information”, insert “(that may be up to date or on or after 1 November 2018, reflect the position immediately before that date)”;
 - (b) in item 9 of Schedule 10C to the Regulations, after subitem (1), insert:

“(1A) The summary for the purposes of paragraph (1)(a) may be up to date or on or after 1 November 2018, reflect the position immediately before that date.”.
 - (c) in item 11 of Schedule 10D and item 10 of Schedule 10E to the Regulations, after subitem (1) insert:

“(1A) The explanation for the purposes of paragraph (1)(a) may be up to date or on or after 1 November 2018, reflect the position immediately before that date.”.
- (2) The declaration in subsection (1) applies in relation to the person giving a Product Disclosure Statement or a Short-Form Product Disclosure Statement before 1 July 2019 where:
 - (a) if the Statement is given on or after 1 November 2018—section 10 applies to the person; and
 - (b) a Product Disclosure Statement or a Short-Form Product Disclosure Statement in the same terms was first given before the commencement of this instrument.

7 Material changes and significant events

- (1) An issuer of a financial product does not have to comply with section 1017B(2) in relation to a change or event that relates to the AFCA scheme starting to cover complaints by holders of the product.
- (2) The exemption in subsection (1) does not apply to an issuer on or after 1 November 2018 unless section 10 applies to the issuer.

8 Periodic statements

- (1) Part 7.9 applies in relation to an issuer of a financial product as if provisions of that Part were modified or varied by in paragraphs 7.9.53(a)

and 7.9.75(1)(c) of the Regulations, after “statement”, inserting “(that may be up to date or on or after 1 November 2018, reflect the position immediately before that date)”.

- (2) The declaration in subsection (1) applies in relation to the issuer giving a periodic statement before 1 July 2019 where:
 - (a) if the statement is given on or after 1 November 2018—section 10 applies to the issuer; and
 - (b) the information about dispute resolution in the statement is the same as that in periodic statements given by the issuer before the commencement of this instrument.

9 Statement about superannuation interest under Family Law Act

- (1) Part 7.9 applies in relation to a trustee of a superannuation entity and an RSA provider as if provisions of that Part were modified or varied by, in paragraphs 7.9.88(1)(g) and 7.9.89(1)(g), after “information”, inserting “(that may be up to date or on or after 1 November 2018, reflect the position immediately before that date)”.
- (2) The declaration in subsection (1) applies in relation to the trustee or provider giving a statement before 1 July 2019 where:
 - (a) if the statement is given after 1 November 2018—section 10 applies to the person; and
 - (b) the information in the statement about dispute resolution is the same as that in a statement of the same kind given before the commencement of this instrument; and

10 Requirement for relying on relief

- (1) This section applies to a person if on and from 1 November 2018:
 - (a) where the person has a website—the person makes available on the website current information (the *AFCA information*) about the AFCA scheme and how that scheme may be accessed; and
 - (b) subject to subsection (2), the AFCA information is included in any document which:
 - (i) purports to describe dispute resolution arrangement applicable in relation to financial services provided by the person (whether or not it also includes other matters); and
 - (ii) is made available by the person to other people who have or may receive financial services from the person as retail clients; and

- (c) where the person is a financial services licensee—the documentation relating to their internal dispute resolution procedure includes the AFCA information.
- (2) Paragraph (1)(b) does not apply to a document required to be given by or under the Act.