

## EXPLANATORY STATEMENT ASIC Superannuation (Amendment) Instrument 2018/474

Prepared by the Australian Securities and Investments Commission

### *Superannuation Industry (Supervision) Act 1993*

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Superannuation (Amendment) Instrument 2018/474* (**legislative instrument**) under subsection 328(1) of the *Superannuation Industry (Supervision) Act 1993* (**Act**). Subsection 328(1) provides that ASIC may exempt a class of persons from complying with any or all of the modifiable provisions. Under section 327, a modifiable provision includes a provision of Part 2A including section 29QB of the Act (and regulations made for the purposes of Part 2A).

The legislative instrument amends *ASIC Superannuation (RSE Websites) Instrument 2017/570* (**principal instrument**). Under subsection 33(3) of the *Acts Interpretations Act 1901*, 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

Section 29QB of the Act requires the licensee of a registrable superannuation entity (**RSE**) to make specified information and documents publicly available on the RSE's website and keep them up to date at all times.

The specified information and documents are set out in regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994* (the **Regulations**) (regulations 2.37 and 2.38).

#### *Transitional sub-plan relief*

In 2014 ASIC provided temporary relief from section 29QB of the Act to the extent it requires the publication of information about standard employer sub-plans. This was to facilitate Government consideration of industry feedback in relation to the operation of section 29QB to require publication of potentially sensitive information in relation to the commercial terms negotiated with different employer sponsors. ASIC extended this deferral by successive Class Orders to permit Government consideration and action.

The principal class order extended temporary relief from the publication of information about standard employer sub-plans until 30 June 2018.

Until 30 June 2018, subsection 7(1) of the principal instrument exempted an RSE licensee from making publicly available or updating a specified document that only relates to the RSE,

because it relates to a standard employer sponsor sub-plan. If this exemption is relied on, there is no disclosure obligation.

Until 30 June 2018, paragraph 7(2)(a) of the principal instrument exempts an RSE licensee from making publicly available or updating a specified document which *contains* information that only relates to the RSE, because it relates to a standard employer sponsor sub-plan. Under paragraph 8(3)(b) of the principal instrument, in order to rely on this exemption, the RSE licensee must publish or update the document in accordance with subsection 8(1) or (2), as applicable, and may redact from the version of the document published or updated by 30 June 2018, any or all of the information that only relates to the RSE because it relates to a standard employer sponsor sub-plan.

### *Personal information relief*

Paragraph 7(2)(b) and subsection 7(3) of the principal instrument also exempt RSE licensees from complying with section 29QB of the Act to the extent that it requires them to provide or update a specified document, if the document contains personal information in relation to a beneficiary or former beneficiary of the RSE. Unlike the transitional sub-plan relief, the policy position in relation this relief has been settled.

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

The purpose of the legislative instrument is to continue to defer the application of s29QB of the Act in relation to information about employer sub-plans until 30 June 2024. This will extend the deferral, effective since 30 June 2014, for a total period consistent with the 10 year sunset period for legislative instruments under the *Legislation Act 2003*.

This deferral will allow the Government time to consider the practical implications of applying section 29QB of the Act to employer sub-plans, and settle its policy position. The deferral does not represent a policy view by ASIC in relation to the disclosure of information about employer sub-plans nor a view as to the time likely to be taken by the Government in settling a policy view. Accordingly, the deferral until 30 June 2024 is subject to change pending and according to the finalisation of the Government's policy position.

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

The legislative instrument amends subsection 7(1), subsection 7(2) and paragraph 8(3)(b) of the principal instrument to extend the transitional sub-plan relief until 30 June 2024.

The legislative instrument also amends subsection 7(3) of the principal instrument provide ongoing relief in relation to the disclosure of personal information without reference to time periods relevant only to the operation of the transitional sub-plan relief.

## **4. Consultation**

Before making the legislative instrument to extend the existing relief, ASIC consulted with Treasury, but did not undertake a public consultation process. This is because the amendments made by the legislative instrument are transitional measures of a minor or machinery nature, and do not affect the position of any entity relying on the existing relief.

## Statement of Compatibility with Human Rights

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

### ASIC Superannuation (Amendment) Instrument 2018/474

*ASIC Superannuation (Amendment) Instrument 2018/474 (the **legislative 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*.*

#### Overview

The purpose of the legislative instrument is to amend *ASIC Superannuation (RSE Websites) Instrument 2017/570 (the **principal instrument**)*. The principal instrument exempts certain disclosure required under section 29QB of the *Superannuation Industry (Supervision) Act 1993* in relation to standard employer-sponsored sub-plans. This legislative instrument makes amendments to the principal instrument to extend this exemption until 30 June 2024.

#### 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 it does not raise any human rights issues.