

# EXPLANATORY STATEMENT

## *ASIC Superannuation (Amendment) Instrument 2018/1080*

Prepared by the Australian Securities and Investments Commission

*Superannuation Industry (Supervision) Act 1993*

The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Superannuation (Amendment) Instrument 2018/1080* (the **amending instrument**) under section 335 of the *Superannuation Industry (Supervision) Act 1993* (the **SIS Act**).

Subsection 328(1) of the SIS Act provides that ASIC may, in writing, exempt from compliance with any or all of the modifiable provisions a class of persons or a class of groups of individual trustees.

The modifiable provisions include a provision of Part 2B of the SIS Act. Part 2B of the SIS Act deals with Registrable Superannuation Entities (**RSEs**). Subsection 29QC(1) of the SIS Act is a provision within that Part and is a modifiable provision.

Section 335 of the SIS Act provides that ASIC may, in writing, vary an exemption.

### **1. Background**

- 1.1 To promote systemic transparency, subsection 29QC(1) of the SIS Act requires an RSE licensee to ensure that, where it is required to give information to the Australian Regulation Prudential Authority (**APRA**) under a reporting standard that requires the information to be calculated in a particular way, and where the same or equivalent information is given to other persons, the information given to the other person is calculated in the same way as the information given to APRA.
- 1.2 The requirement under subsection 29QC(1) for RSE licensees to provide consistent information commenced on 1 July 2013. ASIC Class Order [CO 14/541] exempted RSE licensees from compliance with the requirement in subsection 29QC(1) until 1 July 2015. An RSE licensee is the trustee of a superannuation fund regulated by APRA.
- 1.3 The exemption in [CO 14/541] was granted as ASIC considered that further time was required to consult with industry on the application of subsection 29QC(1) to ensure that disclosure requirements appropriately aligned with APRA's reporting standards.
- 1.4 In December 2014, ASIC released Consultation Paper 227 *Disclosure and reporting requirements for superannuation trustees: s29QC* seeking feedback on options for dealing with the uncertainty about how to achieve consistency between the disclosure requirements under subsection 29QC(1) and the data that is required to be reported under APRA's reporting standards.

- 1.5 The ASIC Consultation Paper raised issues around the treatment of investment objectives, return targets and the treatment of asset allocation information. Industry were generally supportive of applying section 29QC to performance information, although there was some debate about how performance should be measured in terms of net returns and net investment returns.
- 1.6 In April 2015, APRA released revised superannuation reporting standards for industry consultation. ASIC extended the exemption from the requirements of subsection 29QC(1) until 1 January 2016 to provide industry further time to consider APRA's revised reporting standards.
- 1.7 In conjunction with this work in November 2015 ASIC extended to 1 February 2017 the transition period for trustees of superannuation funds and responsible entities of managed funds and other managed investment schemes to comply with updated requirements for fee and cost disclosure in product disclosure statements. In December 2015 ASIC also extended the exemption from the requirements of subsection 29QC(1) until 1 February 2017.
- 1.8 Following public consultation between December 2015 to January 2016, new requirements for Choice product dashboards were set out in the Superannuation Legislation Amendment (Transparency Measures) Bill 2016, and which would also influence that data required to be reported under APRA's reporting standards. This Bill lapsed when Parliament was prorogued in April 2016. In December 2016 ASIC extended the exemption from the requirements of subsection 29QC(1) until 1 January 2019 to provide further time for the Government's proposed dashboard new requirements to be passed and be implemented.
- 1.9 The resolution of the policy position in relation to superannuation product dashboards would now be capable of being influenced by Government consideration of recommendations made in the final report on the Productivity Commission's review of the efficiency and competitiveness of the superannuation system. The Productivity Commission's review may also make other recommendations that can influence the data that may be required under APRA's reporting standards. This Productivity Commission's report is expected in late December 2018.
- 1.10 In 2018 the fee and cost disclosure requirements for the trustees of superannuation funds and the responsible entities of managed investment schemes superannuation and other managed funds were subject to review by an external expert appointed by ASIC, in response to feedback from across industry around challenges with the implementation of those requirements. ASIC expects to publish a consultation paper in relation to changes to those requirements recommended in the expert's review in January 2019.

## **2. Purpose of the Instrument**

- 2.1 The purpose of the Instrument is to extend for a period of 5 years the exemption for RSE licensees from the requirement in subsection 29QC(1) of the SIS Act until 1 January 2024.
- 2.2 This will defer the commencement of the subsection 29QC(1) requirement to a time ASIC expects will allow for the requirements for the Choice product dashboards and in relation to fee and cost disclosure requirements to be settled. ASIC considers that it is beneficial to allow these aspects, and any related impacts in relation to APRA reporting standards, to be finalised before settling the policy position for the application of the subsection 29QC(1) requirement.
- 2.3 The 5-year deferral does not represent a policy view by ASIC in relation to section 29QC or a view as to the time likely to be taken in settling related policy positions or finalising any impacts on APRA reporting standards. The 5-year deferral is subject to change pending and according to the progress of those matters.

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

- 3.1 The amending instrument amends [CO 14/541] so that the exemption for RSE licensees from the requirement in subsection 29QC(1) of the SIS Act continues until 1 January 2024.

### **4. Consultation**

- 4.1 Before making the amending instrument to extend the existing exemption, ASIC consulted with APRA and with the Department of the Treasury. Neither indicated any objection in relation to the extension.
- 4.2 ASIC also liaised with peak bodies in the superannuation industry about the extension - the Association of Superannuation Funds of Australia, the Financial Services Council and the Australian Institute of Superannuation Trustees.

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

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

### ***ASIC Superannuation (Amendment) Instrument 2018/1080***

The 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**

Subsection 29QC(1) of the *Superannuation Industry (Supervision) Act 1993* (the *SIS Act*) obliges a Registrable Superannuation Entity (*RSE*) licensee to ensure that, where it is required to give information to APRA under a reporting standard that requires the information to be calculated in a particular way, and where the same or equivalent information is given to other persons, the information given to the other person is calculated in the same way as the information given to APRA.

ASIC Class Order [CO 14/541] exempts those licensees from that obligation. The exemption was due to expire on 1 January 2019.

This amending instrument amends Class Order [CO 14/541] so that the exemption continues until 1 January 2024.

#### **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.