



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2019/240

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2019/240 (the amending instrument)*.

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

Summary

1. ASIC makes the amending instrument to continue its deferral of the requirements for superannuation trustees to:
 - publish a dashboard for a choice superannuation product; and
 - include product dashboards with periodic statements sent to superannuation fund members.
2. The continued deferral will facilitate the government considering and settling its policy positions on these aspects, including making regulations to prescribe the content of a dashboard for a choice superannuation product.

Background

3. The *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* amended the *Corporations Act 2001 (Act)*, including by requiring trustees of certain superannuation funds to publish on the trustee's website a product dashboard which provides summary information for consumers about the fund's MySuper and choice products.
4. The product dashboard provides key information about a MySuper product or a choice product. The product dashboard requirements are set out in section 1017BA of the Act.
5. The product dashboard was intended to assist members and other users to more easily compare products and make informed choices. The product dashboard requirements took effect for MySuper products on 31 December 2013 and the requirements for choice products were originally intended to take effect on 1 July 2014. In June 2013, the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* specified the detailed requirements regarding the presentation and content of the information in a product dashboard for a MySuper product. However, corresponding regulations have yet to be made for the product dashboard requirements in relation to choice products.

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6. The government consulted on draft regulations for choice dashboards and the *Superannuation Legislation Amendment (Transparency Measures) Bill 2016*, introduced into parliament on 17 March 2016, and included changes to the start date for the choice dashboard requirements. This Bill lapsed in 2016 and has not been re-introduced.
 7. ASIC Class Order [CO 14/443] originally deferred the start date for the compliance with the product dashboard provisions in relation to choice products to 1 July 2015. ASIC has made a series of subsequent deferrals, by amending that class order, with the most recent deferral resulting in the date for compliance being 1 July 2019.
 8. Paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001* (the **Regulations**) requires that superannuation product dashboards must be included as part of a periodic statement if the trustee is required to make publicly available a product dashboard for an investment option under section 1017BA of the Act.
 9. ASIC Class Order [CO 13/1534] provides interim relief from paragraph 7.9.20(1)(o) of the Regulations in relation to periodic statements for a reporting period that ends before 1 July 2019. The interim relief has the effect that the provision will apply to a reporting period that ends on or after 1 July 2019. A condition of the interim relief is that the trustee must include a website address for the latest product dashboard either in, or in a document accompanying, the periodic statement. This also applies to periodic statements for members who are exiting the fund.
 10. Product dashboards are required to be made publicly available on the trustee's website under section 1017BA of the Act. Providing a member with a website address for the product dashboard on the trustee's website in the periodic statement is consistent with the policy objectives of providing disclosure for members.
 11. ASIC Class Order [CO 13/1534] originally deferred the first reporting period to which paragraph 7.9.20(1)(o) of the Regulations applies to a reporting period ending on or after 1 January 2015. ASIC has made a series of subsequent deferrals, by amending that class order, with the most recent deferral resulting in the first reporting period to which regulation 7.9.20(1)(o) applying being deferred to a reporting period ending on or after 1 July 2019.

Purpose of the amending instrument

12. The purpose of the amending instrument is to continue ASIC's deferral of the requirement to publish a choice product dashboard and the requirement to include product dashboards with periodic statements sent to superannuation fund members.
13. Without regulations to prescribe the content of a choice product dashboard the obligations in the Act relating to choice product dashboards cannot operate effectively. ASIC has facilitated the several deferrals and provided industry with the necessary legal certainty by making ASIC Class Order [CO 14/443] and the subsequent amendments. The amending instrument will continue to

provide this certainty and facilitate the government considering and settling its policy position on the content of a choice product dashboard.

14. The deferral of the reporting period to which paragraph 7.9.20(1)(o) of the Regulations would apply provided by ASIC Class Order [CO 13/1534] gives relief from compliance and administrative costs related to trustees including hard copies of product dashboards in periodic statements. The amending instrument will continue this deferral to facilitate further consideration and consultation on that requirement.
15. The deferrals do not represent a policy view by ASIC in relation to the application of the choice product dashboard provisions nor a view as to the time likely to be taken by Government in settling a policy view

Consultation

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

Operation of the instrument

17. The amending instrument amends the exemption in paragraph 4 of ASIC Class Order [CO 14/443] so that a trustee of a regulated superannuation fund is not required to make a product dashboard for a choice product publicly available until 1 July 2023.
18. The amending instrument also amends paragraph 7 of ASIC Class Order [CO 13/1534] so that a trustee of a regulated superannuation fund is not required to comply with the requirement to include a product dashboard for an investment option in a periodic statement given for a reporting period ending before 1 July 2023.
19. The amending instrument commences on the day after it is registered on the Federal Register of Legislation

Incorporation by reference

20. The amending instrument does not incorporate any matter by reference for the purposes of section 14 of the *Legislation Act 2003*.

Retrospective application

21. The amending instrument does not have retrospective application.

Legislative authority

22. ASIC makes the amending instrument under subsection 1020F(1) of the Act. Subsection 1020F(1) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

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23. 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.
 24. Under regulation 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015* an instrument (other than a regulation) relating to superannuation is not subject to disallowance. Both principal instruments relate to superannuation, as does the amending instrument. Accordingly, the amending instrument is not subject to disallowance.

Statement of Compatibility with Human Rights

25. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Although the amending instrument is not a disallowable legislative instrument, ASIC has voluntarily chosen to include such a Statement.
26. A Statement of Compatibility with Human Rights 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 2019/240

Overview

1. By making the *ASIC Corporations (Amendment) Instrument 2019/240* (the **amending instrument**) ASIC continues its deferral of requirements under the *Corporations Act 2001* for superannuation trustees to:
 - publish a dashboard for a choice superannuation product; and
 - include product dashboards with periodic statements sent to superannuation fund members.
2. The continued deferral will facilitate the government considering and settling its policy positions on these aspects, including making regulations to prescribe the content of a dashboard for a choice superannuation product.

Assessment of human rights implications

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

Conclusion

4. The amending 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*.