

EXPLANATORY STATEMENT for ASIC Corporations (Amendment) Instrument 2019/514

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Amendment) Instrument 2019/514 (**Instrument**).

The Instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* (**Corporations Act**).

Section 926A(2)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Corporations Act, other than Divisions 4 and 8 of Part 7.6.

Section 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

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 Corporations Act), 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

The Instrument amends ASIC Corporations (Generic Calculators) Instrument 2016/207 (**Principal Instrument**).

A generic financial calculator is a facility, device, table or other thing that:

- a) is used to make a numerical calculation or find out the result of a numerical calculation about a financial product; and
- b) does not advertise or promote one or more specific financial products.

Generic financial calculators can be a useful and cost-effective educational tool through which consumers can better understand their financial circumstances and goals. Calculators can help consumers engage with their superannuation, insurance and investment strategies.

A generic financial calculator involves financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being)

intended to influence the user in making a decision about a financial product or class of financial product: see s766B of the Corporations Act.

Personal advice is financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

- a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or
- b) a reasonable person might expect the provider of the advice to have considered one or more of those matters (see s766B(3) of the Corporations Act).

Whether a particular generic financial calculator involves financial product advice and whether the financial product advice is likely to be personal advice will depend on the facts of the particular case.

The Principal Instrument gives providers of generic financial calculators relief from the requirement to hold an Australian Financial Services licence with an advice authorisation or (where they currently hold a licence) relief from the conduct and disclosure requirements in Divs 2, 3 and 4 of Pt 7.7 of the Corporations Act in relation to that advice.

The relief only applies where the provider of a generic financial calculator takes reasonable steps to meet certain requirements. One of these requirements is that if the calculator provides an estimate of an amount payable or receivable at a future time of 2 years or more, it must display to the user a clear and prominent statement setting out the present value of the estimate that is calculated using an assumed rate of inflation of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle). Superannuation and retirement calculators, a subset of generic financial calculators, were exempt from this requirement until 1 July 2019.

2. Purpose of the instrument

The purpose of the Instrument is to set out the assumed inflation rate superannuation and retirement calculators must use to calculate the present value of estimates in order to be eligible for relief under the Principal Instrument.

The amendments provide superannuation and retirement calculator providers with the option of using an assumed inflation rate of 3.2% or an alternative assumed inflation rate, as long as certain disclosure requirements are satisfied.

3.2% is equivalent to the assumed inflation rate used by ASIC's MoneySmart superannuation and retirement calculators. It reflects CPI of 2% and real wage growth of 1.2%, the latter of which reflects the cost of meeting increases in community living standards. Superannuation and retirement estimates which take into account the cost of meeting increases in community living standards may assist users in deciding if future retirement assets or income will be adequate compared to their current standard of living. ASIC intends to periodically update the

Principal Instrument to reflect any changes in the default inflation rate used by ASIC's MoneySmart superannuation and retirement calculators.

If a superannuation and retirement calculator uses an alternative assumed inflation rate to calculate the present value of estimates and that alternative rate does not include a component that reflects the cost of meeting increases in community living standards, the amendments require the calculator to display a clear and prominent statement:

- (i) specifying that the present value of the estimate does not take into account the costs of meeting increases in community living standards; and
- (ii) explaining the implications of the present value not taking into account such costs.

The Instrument defers commencement of the above requirements to 5 December 2019.

3. Operation of the instrument

Section 1 of the Instrument repeals the existing definition of *present value* in section 4 of the Principal Instrument and substitutes a new definition of *present value*.

The new definition of *present value* sets out formulas for working out the present value of an estimate of an amount payable at a future time, which:

- (a) in the case of superannuation and retirement calculators—assumes an inflation rate of 3.2% or such other inflation rate as is used by the calculator; and
- (b) in the case of other generic financial calculators—assumes an inflation rate of 2.5%.

Section 2 of the Instrument repeals the existing subparagraph 6(1)(d)(iv) of the Principal Instrument and substitutes a new subparagraph 6(1)(d)(iv).

The new subparagraph 6(1)(d)(iv) requires generic financial calculators to disclose:

- (a) the present value of an estimate if it is of an amount payable at a future time of 2 or more years; and
- (b) if the calculator is a superannuation and retirement calculator and the assumed inflation rate used in calculating the present value of the estimate does not include a component that reflects the cost of meeting increases in community living standards—a clear and prominent statement:
 - (i) specifying that the present value of the estimate does not take into account the cost of meeting increases in community living standards; and
 - (ii) explaining the implications of the present value not taking into account the cost of meeting those increases.

Section 3 of the Instrument defers commencement of the requirement in subparagraph 6(1)(d)(iv) to 5 December 2019.

4. Consultation

ASIC undertook targeted consultation with relevant industry associations in relation to the amendments to the Principal Instrument and whether it would pose any practical issues for superannuation and retirement calculator providers. Those consulted were broadly supportive of the amendments.

Statement of Compatibility with Human Rights

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

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ASIC Corporations (Amendment) Instrument 2019/514 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 (Amendment) Instrument 2019/514 amends the conditions in ASIC Corporations (Generic Calculators) Instrument 2016/207 to require superannuation and retirement calculators to calculate the present value of estimates using an assumed inflation rate of 3.2% or an alternative assumed inflation rate, as long as certain disclosure requirements are satisfied.

The objective of ASIC Corporations (Amendment) Instrument 2019/514 is to ensure that estimates produced by superannuation and retirement calculators are adjusted to take into account the cost of meeting increases in community living standards or, if the estimate is not adjusted to take into account this cost, the calculator discloses the non-adjustment and the implications of the non-adjustment.

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 they do not raise any human rights issues.