



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070
ASIC Corporations (Amendment) Instrument 2019/1071

This is the Explanatory Statement for the:

- (a) *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070*
(the **principal instrument**); and
- (b) *ASIC Corporations (Amendment) Instrument 2019/1071*
(the **amending instrument**).

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

Summary

1. ASIC makes the principal instrument to modify the requirements that govern the disclosure of fees and costs in Product Disclosure Statements (**PDSs**) and periodic statements for superannuation products and collective investment products covered by Division 4C of Part 7.9 of the *Corporations Regulations 2001* (the **Corporations Regulations**). Collective investment products are managed investment products and notified foreign passport fund products.
2. The principal instrument gives effect to proposals for changes to the fees and costs disclosure requirements for superannuation products and collective investment products that emerged following a review of ASIC Class Order [CO 14/1252] (**CO 14/1252**) and ASIC Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* (**RG 97**).
3. The amending instrument makes changes to CO 14/1252 to specify dates and periods to which the class order no longer applies. Those dates and periods align with the dates and periods to which the principal instrument begins to apply. The alignment ensures there is a clear line between when the existing modified disclosure requirements in CO 14/1252 stop applying and when the new modified disclosure requirements in the principal instrument begin to apply.

Purpose of the instruments

4. In November 2017, in response to strong feedback from across industry around challenges with the implementation of CO 14/1252 and RG 97, ASIC appointed an external expert to conduct a review of the fees and costs disclosure regime to ensure that it is best meeting in practice the objective of greater transparency for consumers. The external expert's report was published in July 2018 as ASIC Report 581 *Review of ASIC Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements* (**Report 581**).
5. ASIC considered the recommendations made in Report 581 and in January 2019 released Consultation Paper 308 *Review of RG 97 Disclosing fees and costs in PDSs and periodic statements* (**CP 308**). This sought feedback on ASIC's proposals to make changes to the fees and costs disclosure regime arising from the recommendations made in Report 581.
6. ASIC has decided to proceed with a number of proposals to enhance comparability and transparency about fees and costs of superannuation products and collective investment products. ASIC considers these changes will improve and promote better decision-making by consumers and their financial advisers, and improve their ability to exert demand-side competitive pressure in the superannuation and managed investment scheme markets.
7. The modifications made by the principal instrument is accompanied by the release of a restructured and updated version of RG 97.

Consultation

8. ASIC conducted formal consultation through seeking submissions in relation to its proposals in CP 308, which was open from 8 January 2019 to 2 April 2019. ASIC also conducted further informal consultation with industry on particular aspects of some proposals following the CP 308 consultation period.
9. Prior to CP 308 the external expert had also conducted consultation with industry participants and peak bodies during the expert's review of CO 14/1252 and RG 97. Over the first half of 2018 the expert met with over 120 industry stakeholders in Sydney, Melbourne and Brisbane and via teleconference and ASIC attended all of these industry stakeholder meetings as an observer.

Operation of the principal instrument

General and Transition

10. The principal instrument modifies the fees and costs disclosure regime that will apply from the end of a transition period. Part 4 of the principal instrument provides that the modified PDS and periodic statement requirements in the principal instrument will apply to:
 - (a) PDSs given on or after 30 September 2020; and

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- (b) periodic statements (including exit statements) for reporting periods commencing on or after 1 July 2021.
11. Part 4 of the principal instrument, and the amending instrument, also operate to permit a product provider to elect in writing to apply the new fees and costs disclosure regime to a periodic statement for a product in relation to a reporting period that:
- (a) commences on or after 1 July 2020; or
- (b) for an exit statement—ends on a day that is on or after 1 July 2020.
12. The amending instrument has the effect that the current fees and costs disclosure regime, as modified by CO 14/1252, will remain applicable in relation to a product up to the end of the transition period for that product.
13. Part 2 of the principal instrument modifies the fees and costs regime that will apply after the transition period by wholly omitting and substituting Schedule 10 to the Corporations Regulations (***Schedule 10***). This approach provides industry with a single and complete source of the fees and costs disclosure requirements in Schedule 10.
14. Although the principal instrument substitutes the whole of Schedule 10, the overall structure and roles for the existing Parts and Divisions of that Schedule remain unchanged. The substantive content of the substituted Schedule 10 reflects changes to give effect to proposals for changes to the fees and costs disclosure requirements that emerged following the external expert’s review of CO 14/1252 and RG 97 in Report 581, CP 308 and the subsequent consultation.
15. Part 3 of the principal instrument also makes modifications to carry over aspects of CO 14/1252 that are not being changed, and modifications to related provisions required following the changes to the provisions and terminology in the substituted Schedule 10.
16. The following paragraphs provide a summary explanation of the key changes given effect to in the Schedule 10 substituted by the principal instrument. The summary explanation does not relate to Schedule 10 as modified by CO 14/1252 as in force *immediately before* the making of the principal instrument. The summary explanation relates to the further changes made to Schedule 10 by the principal instrument. References to clauses are to clauses of Schedule 10 unless otherwise indicated.
17. The updated RG 97 provides greater detail on particular aspects of the key changes. The updated RG 97 has been lodged as supporting material to accompanying this Explanatory Statement and is also publicly available on ASIC’s website.

Changes to Fees and costs table

Fees and costs table for superannuation products

18. The key changes in relation to the disclosure of fees and costs for superannuation products in clause 201 are to:
- (a) name the table as “Fees and Costs Summary”;
 - (b) in the table, identify and group together the line items for “Ongoing annual fees and costs” separately from those line items for “Member activity related fees and costs”;
 - (c) present all administration-related fees and costs in a single line item renamed as “Administration fees and costs”, to include administration fees, intra-fund advice costs and those indirect costs that relate to administration or operation of the superannuation entity;
 - (d) present all investment-related fees and costs in a single line item renamed as “Investment fees and costs”, to include investment fees and indirect costs that relate to investment of the superannuation entity’s assets;
 - (e) include a new line item in relation to “transaction costs” under “Ongoing annual fees and costs”;
 - (f) omit the line item for “Indirect cost ratio”, as indirect costs are included as part of the line items for “Administration fees and costs” or “Investment fees and costs”, as relevant;
 - (g) omit the line item for “Advice fees” (relating to intra-fund advice costs), the content of which is included as part of the line item for “Administration fees and costs”;
 - (h) include an additional footnote to the table in relation to performance fees.

Fees and costs table for collective investment products

19. The key changes in relation to the disclosure of fees and costs for collective investment products in clauses 202 and 202A of are to:
- (a) name the table as “Fees and Costs Summary”;
 - (b) in the table identify and group together the line items for “Ongoing annual fees and costs” separately from those line items for “Member activity related fees and costs”;
 - (c) rename the “Management costs” line item as “Management fees and costs” and make this top line item in the table;
 - (d) include a new line item for “Transaction Costs” under “Ongoing annual fees and costs”;

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- (e) include a new line item for “Performance fees” under “Ongoing annual fees and costs”; and
 - (f) include a new line item for “Buy-sell spread” under “Member activity related fees and costs”.

Changes supporting the Fees and Costs Summaries

20. The following paragraphs set out the key changes made to support the changed content requirements of the Fees and Costs Summaries.

Administration fees and costs

21. The definition of “administration fees” in clause 101 is substituted with a new definition of “administration fees and costs”. This substituted definition continues the purpose of the definition to generally capture fees and costs that relate to the administration or operation of the superannuation entity, and also expressly includes indirect costs, distribution costs, certain amounts of costs met from reserves that relate to the administration or operation and intra-fund advice costs.
22. The substituted definition addresses the risk of double-counting of amounts in relation to costs met by debiting superannuation fund reserves. Where amounts that are already counted towards the disclosure of “administration fees and costs” have been credited to a reserve, only those administration-related costs met by debiting from reserves that are, in a relevant period, in excess of the credited amounts are counted.
23. The substituted definition retains the exclusion in relation to costs that are otherwise charged as other types of fees and costs identified in the Fees and Costs Summary, and ensures amounts that are “excluded transactional and operational costs” are also excluded.

Investment fees and costs

24. The definition of “investment fees” in clause 101 is substituted with a new definition of “investment fees and costs”. This substituted definition continues the purpose of the definition to generally captures fees and costs that relate to the investment of the assets of the superannuation entity, and also expressly includes indirect costs and certain amounts of costs met from reserves that relate to the investment of assets.
25. The substituted definition addresses the risk of double-counting of amounts in relation to costs met by debiting superannuation fund reserves. Where amounts that are already counted towards the disclosure of ‘Investment fees and costs’ have been credited to a reserve, only those investment-related costs met by debiting from reserves that are, in a relevant period, in excess of the credited amounts are counted.
26. The substituted definition retains the exclusion in relation to costs that are otherwise charged as other types of fees and costs identified in the Fees and

Costs Summary, and ensures that amounts that are “excluded transactional and operational costs” are also excluded.

Management fees and costs

27. The definition of “management fees” in clause 102 is substituted with a new definition of “management fees and costs”. This substituted definition includes changes to ensure “management fees and costs” excludes “performance fees” that will now appear as a separate line item in the table in clauses 202 and 202A, and excludes amounts that are “excluded transactional and operational costs”.

Transaction costs

28. The definition of “transaction and operational costs” in clause 103 is substituted with a new definition of “transaction costs”, to provide the basis for the new line items in the Fees and Costs Summary for “transaction costs”. The substituted definition retains most of the features of the former subclause 103(1). However, and importantly, the substituted clause 103 excludes certain types of amounts as “excluded transactional and operational costs” set out in the new subclause 103(2). This exclusion ensures that amounts of borrowing costs, property operating costs, implicit transaction costs or market impact costs are not included as “transaction costs”. The amounts excluded by the new sub-clause 103(2) are also excluded from other fees and costs amounts.
29. The substituted clause addresses the risk of double-counting of amounts in relation to costs met by debiting superannuation fund reserves. Where amounts that are already counted towards the disclosure of “transaction costs” have been credited to a reserve, only those transaction costs met by debiting from reserves that are, in a relevant period, in excess of the credited amounts are counted.
30. The substituted clause retains the exclusion in relation to costs that are otherwise charged as other types of fees and costs identified in the Fees and Costs Summary.

Calculation of costs

31. The subclauses in clause 104 that governed the calculation of the indirect cost ratio are omitted and the existing methodology for the calculation of costs is instead applied to the calculation of costs for the purposes of the “Administration fees and costs” and “Investment fees and costs” line items in the PDS table in clause 201. The changes also simplify the expression of the existing timing rules in clause 104 and ensure the operation of the specific requirements in relation to the calculation of performance fees.
32. In clause 104A the existing methodology formerly applied to the calculation of costs in “management costs” is applied to the calculation of costs for the purposes of the “Management fees and costs” line items in the PDS tables in clauses 202 and 202A. The changes also simplify the expression of the existing timing rules in clause 104A.

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33. New clause 103A relocates to Part 1 of Schedule 10 the methodology for the calculation of costs in the former clause 209AA, and applies that methodology to the calculation of costs for the purposes of the new “Transaction costs” line items in the PDS tables in clauses 201, 202 and 202A. The new clause also reflects the simplified expression of the existing timing rules in the former clause 209AA.
 34. New clause 104B confirms the operation of the former subclause 104(3) to require the fees and costs disclosed in a periodic statement to be determined over the period to which the periodic statement relates.

Intra-fund advice

35. A new definition of “intra-fund advice costs” is included in clause 101 to identify the amounts to be included in the total for “administration fees and costs” and to clearly distinguish these from an “advice fee”.

Buy-sell spread

36. The definition of “buy-sell spread” in clause 101 is expanded to clarify its meaning in the different contexts of its use in Schedule 10, i.e. in a Fee and Cost Summary as a spread charged by a superannuation product or a collective investment product to its members, and, as part of transaction costs, as a spread arising at points in an investment chain that affects those entities as investors.

Performance fees

37. A new clause 101C is included in relation to performance fees. The new clause defines “performance fees” as those arising at both the level of the superannuation product or a collective investment product, and at points along an investment chain. New clause 101C also sets out new requirements in relation to deriving the 5-year averages for performance fees to be used in a product provider’s calculation of the figure for the total performance fee to appear in the Fees and Costs Summary in a PDS, and clarifies how performance fees are to be included in periodic statements.

Taxation treatment

38. Subclause 208(7) includes a new paragraph in relation to the taxation-related aspects of the presentation of a cost or amount in the tables in clauses 201, 202 or 202A to reflect the policy stated in the Explanatory Statement for the *Corporations Amendment Regulations 2005 (No. 1)* and subsequent ASIC guidance. This ensures that amounts of fees and costs are presented without adjustment in relation to any tax deduction available to the product issuer or the extent to which any tax deduction may be passed on to product holders.

Consumer-facing definitions for superannuation products

39. The consumer-facing definitions in clause 209A have been changed to reflect the new titles for the line items in the table in clause 201 for “Administration fees and costs” and “Investment fees and costs” and omit from those definitions features that had been inserted by CO 14/1252 that are no longer relevant. This includes references to borrowing costs, that are now “excluded transactional and operational costs”, and the previous provision for the superannuation trustee to make an election in relation to the disclosure of indirect costs under the former “Indirect cost ratio” line item.
40. The former definition of “indirect cost ratio” is also omitted from clause 209A. This concept is no longer a line item in the table in clause 201.
41. A new definition of “transactions costs” is also included in clause 209A in relation to the new line item of “Transaction costs” in the table in clause 201.

Cross references to terms defined in other legislation

42. A further key change is the expansion of the definitions for several terms in clause 101. The expansion is from cross-references to the definitions in section 29V of the *Superannuation Industry (Supervision) Act 1993* to stand-alone definitions drawn from that section. The expansions relate to the definitions of “activity fee”, “buy-sell spread”, “exit fee”, “insurance fee” and “switching fee”.
43. These expansions allow those definitions to reflect the new terms and features of the disclosure regime such as the expanded concepts of “administration fees and costs”, “investment fees and costs”, and the new line item for “Transaction costs”. The expansions also make the definitions in Schedule 10 self-contained so as to improve readability.

Changes to other disclosures

Additional Explanation of Fees and Costs

44. The changes in relation to the Additional Explanation of Fees and Costs in clause 209 follow and support the changes in relation to clauses 201, 202 and 202A. The following paragraphs set out the key changes.
45. In relation to “performance fees”, paragraph 209(b) includes additional requirements in relation to separately disclosing the performance fees for changed by a collective investment product, how the average for each performance fee is calculated and how the product provider has calculated the performance fee disclosed in the table in clauses 202 and 202A or the footnote to the table in clause 201. This includes disclosures where the performance fees that would otherwise be disclosed in a table would be negative.

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46. In relation to “advice fees”, paragraph 209(f) includes an additional requirement in relation to superannuation products that information in relation to intra-fund advice costs be provided.
 47. In relation to “transaction costs”, paragraph 209(j) includes additional requirements to provide information that the amount of transaction costs is shown net of the amount recovered by the product provider’s buy-sell spread and the total of all transaction costs.

Example of Annual Fees and Costs

48. The changes in relation to the Example of Annual Fees and costs follow and support the changes in relation to clauses 201, 202 and 202A. The following paragraphs set out the key changes.
49. For superannuation products, the table and calculation line items in clause 211 reflect the new “Investment fees and costs”, “Administration fees and costs” and “Transaction costs”. These are the “Ongoing annual fees and costs” line items in the table in clauses 201. The table and calculation in clause 211 also omit the former line item in relation to indirect costs.
50. For collective investment products, the table and calculation line items in clause 212 reflect the new “Management fees and costs”, “Performance fees” and “Transaction costs”. These are the “Ongoing annual fees and costs” line items in the tables in clauses 202 and 202A.

Cost of product information

51. The key change is to require new disclosures in relation to the fees and costs for any other products or investment choices offered by the relevant superannuation entity or collective investment products, i.e. other than the product or investment option that is described in the Fees and Costs Summary in a PDS in accordance with clauses 201, 202 or 202A. The following paragraphs set out the main features of this change.
52. A new Division 6A is included in Part 2 (clauses 220A and 220B) to require disclosure of abbreviated Cost of product information for each such other MySuper product and each investment option offered by the superannuation entity, and for each other investment option offered by the collective investment scheme.
53. The new Cost of product information is required to be calculated in accordance with the methodology required for the Annual Example of Fees and Costs, and be based on a \$50,000 balance. This includes the exception in relation to defined benefit funds.
54. Changes to regulation 7.9.15DA made in Part 3 of the principal instrument have effect that the new Cost of product information is required to be included in a full PDSs and is not permitted to be incorporated by reference.

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55. The Cost of product information is not required to be included in the body of shorter PDSs, and is instead required to be provided as part of the fees and costs information that must be disclosed in accordance with Schedule 10, under existing subclause 8(10) of Schedules 10D and 10E to the Corporations Regulations. Product issuers are permitted under those provisions to incorporate this information by reference.

Changes to periodic statements

56. The changes in relation to the disclosure of fees and costs in a periodic statement follow and support the changes in relation to clauses 201, 202 and 202A in relation to PDSs. The following paragraphs set out the key changes.
57. The disclosure of fees and costs information in relation to superannuation products in subclause 301(1) is simplified to two line items:
- (a) the total amount deducted directly and reflected in the transaction list in the statement, under the heading “Fees deducted directly from your investment”; and
 - (b) the approximate apportioned amount deducted in relation to the investment, under the heading “Fees and costs deducted from your investment”.
58. For superannuation products this single figure for “Fees and costs deducted from your investment” covers the amounts previously required to be reported separately in a statement as “Indirect costs of your investment” and “Other fees of your investment”.
59. The omission from clause 301 of the previous disclosure item “Indirect costs of your investment” follows the omission of the line items for “Indirect cost ratio” from the tables in relation to superannuation products in clauses 201 and 211.
60. The disclosure of fees and costs information in relation to collective investment products in subclause 301(1A) is also simplified to:
- (a) the total amount deducted directly and reflected in the transaction list in the statement; and
 - (b) the approximate apportioned amount deducted in relation to the investment. This figure covers the amount previously required to be reported separately in a statement as “Indirect costs of your investment” and covers any other amounts that have reduced the return on the investment that are not reflected in the transaction list.
61. For both superannuation products and collective investment products, substituted subclause 301(2) also ensures excluded transactional and operational costs are not included in the periodic statement disclosures. Consistent with this change, subclause 303(1) also omits the former requirement for superannuation products for disclosures in relation to borrowing costs.

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62. For collective investment products, changes to subclause 303(2) omit the former requirement for disclosures in relation to “transactional and operational costs”.

Features of Schedule 10 that are unchanged

63. Importantly, the definitions of concepts central to the operation of the fees and cost disclosure regime in Schedule 10 remain unchanged.
64. Even though a line item for “Indirect costs” is no longer included in the “Fees and Costs Summary” table in clause 201, the “Example of Annual Fees and Costs” in clause 211 or in periodic statements, indirect costs remain a central feature of the regime. This includes that indirect costs are components of the amounts to be disclosed as “administration fees and costs”, “investment fees and costs” and “management fees and costs”. The definition of “indirect costs” in clause 101A, as inserted by CO 14/1252 in relation to the identification and calculation of indirect costs, is carried over into the Schedule 10 substituted by the principal instrument, with changes intended only to reflect the differing structure and terminology applied in Schedule 10 as substituted by the principal instrument.
65. The definition of “interposed vehicle” in clause 101B as inserted by CO 14/1252 in relation to the identification of an interposed vehicle for the purposes of the definition of “indirect costs” is unchanged. The role of this clause to determine the entities involved with and length of the investment chain in relation to which fees and costs including indirect costs, are required to be assessed for the purposes of the disclosures required in the PDS.
66. Also unchanged is the effect of clauses 104 and 104A that the “costs” part of the disclosures relates to costs in the previous financial year. For consistency, the principal instrument also adopts this approach in clause 103A for the purposes of the calculation of the new “Transaction costs” line item.

Provisions and changes other than Schedule 10

67. Part 3 of the principal instrument also makes consequential amendments to carry over from CO 14/1252 modifications to the Act and the Regulations that support Schedule 10, and to reflect the changes to Schedule 10 made in Part 2 of the principal instrument. The following paragraphs set out the key changes.
68. Subclause 6(2) of Part 3 includes:
- (a) modifications to reflect the changes to the titles for the tables in clauses 201, 202 and 202A from “template” to “Fees and Costs Summary”, and to include references to the new “Cost of Product Information”; and
 - (b) modifications to require a shorter PDS under Schedules 10D and 10E to the Regulations to include the new “Fees and costs summary” tables in the substituted Schedule 10.
69. The modifications made by CO 14/1252 in relation to section 1017B of the Act, which deals with significant event notices, have not been carried over into the

principal instrument, with the effect of no change to the existing policy position. The modifications made in CO 14/1252 affected the timing of significant event notices to be provided to members of superannuation funds in relation to increases in fees or charges in the context of Schedule 10 where the label “fee” had been broadly applied to amounts that were defined to include fees and costs.

70. The modifications in CO 14/1252 give effect to the policy position that the 30-day advance notice requirement in section 1017B would not arise where the increases in “fees” resulted only from an increase in “costs”, and would arise where there would be an increase in fees, i.e. in the sense of a fee charged directly by the fund trustee to fund members. The changes to the titles and language in the Schedule 10 as substituted by the principal instrument have removed the need to make this distinction and as a result section 1017B continues the existing policy position in relation to the increases in fees and charges to which the 30-day in advance timing requirement will apply.

Operation of the amending instrument

71. As well as making arrangements for transition to the fees and costs requirements under the principal instrument, the amending instrument makes changes to the operation of CO 14/1252 to support the transition. The following paragraphs set out the key changes.

Property operating costs

72. CO 14/1252 currently modifies Schedule 10 to permit the fees and costs disclosure in periodic statements relating to certain reporting periods to be calculated excluding property operating costs, subject to conditions that require alternative disclosure – see subclauses 301(1C) and (1D) of Schedule 10 as modified by CO 14/1252. Property operating costs are part of excluded transactional and operational costs for the purposes of the Schedule 10 that applies after transition, and will not be relevant after transition. The amending instrument makes changes to CO 14/1252 to permit the calculation of fees and costs disclosure in periodic statements to exclude property operating costs, without conditions, in the time leading up to transition.
73. CO 14/1252 currently modifies Schedule 10 to provide relief from including property operating costs in transactional and operating costs (and from including these in investment fees or indirect costs) in the period before 30 September 2020 and to require in that period disclosure of information about property operating costs in the Additional explanation of fees and costs in the PDS and in a periodic statement for a superannuation product - see subclause 103(1A) and paragraph 209(ma) of Schedule 10 as modified by CO 14/1252.
74. Property operating costs are part of excluded transactional and operational costs for the purposes of the Schedule 10 that applies after transition, and will not be relevant after transition. The amending instrument makes changes to CO 14/1252 to extend the relief from including property operating costs, without requiring alternative disclosure in the time leading up to transition.

Borrowing costs

75. CO 14/1252 currently modifies Schedule 10 to require the disclosure of information about borrowing costs in the Additional explanation of fees and costs in a PDS and in the Additional explanation of fees and costs in a periodic statement – see paragraphs 209(m) and 303(1)(c) and (d) as modified by CO 14/1252. Borrowing costs are part of excluded transactional and operational costs for the purposes of the Schedule 10 that applies after transition, and will not be relevant after transition. The amending instrument makes changes to CO 14/1252 to omit the requirements for disclosures in relation to borrowing costs in the time leading up to transition.

Transactional and operational costs

76. CO 14/1252 currently modifies Schedule 10 to require the Additional explanation of fees and costs in the periodic statement for a collective investment product for certain reporting periods to include an approximate total amount of certain transactional and operational costs - see paragraph 303(2)(c) of Schedule 10 as modified by CO 14/1252. The relevant costs include cost that would come within excluded transactional and operational costs for the purposes of Schedule 10. Paragraph 303(2)(c) is not carried over after transition to Schedule 10 as substituted by the principal instrument. The amending instrument makes changes to CO 14/1252 to remove this requirement in the time leading up to transition.

Buy-sell spread

77. CO 14/1252 currently modifies Schedule 10 to permit the fees and costs disclosure in periodic statements relating to certain reporting periods to be calculated excluding the buy-sell spread, subject to conditions that require alternative disclosure – see subclause 301(1B) of Schedule 10 as modified by CO 14/1252. The amending instrument makes changes to CO 14/1252 to extend the ability for fees and costs disclosure in periodic statements to be calculated excluding the buy-sell spread, on the same conditions, in the time leading up to transition. There is no relief in relation to the buy-sell spread in the calculation of fees and costs disclosure in periodic statements after transition to Schedule 10 as substituted by the principal instrument.

Taxation treatment

78. CO 14/1252 currently modifies Schedule 10 to require the fees and costs to be disclosed in periodic statements for superannuation products and collective investment products, for certain reporting periods, to include the amount of any reduction because of the benefit of any income deduction – see subclauses 301(5) and (6) of Schedule 10 as modified by CO 14/1252. The amending instrument makes changes to CO 14/1252 to remove these requirements in the time leading up to transition. These requirements will apply in relation to the fees and costs disclosure in periodic statements after transition to Schedule 10 as substituted by the principal instrument.

General features

Commencement

79. Each respective instrument commences on the day after the instrument is registered on the Federal Register of Legislation. However, the changes made to the respective instruments, as they apply to PDSs and periodic statements, take effect in accordance with the terms of the instruments.

Incorporation by reference

80. Neither instrument incorporates any matters by reference.

Retrospective application

81. Neither instrument applies retrospectively.

Regulation Impact Statement

82. The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not required in relation to the changes to the disclosure regime proposed and consulted on by ASIC and reflected in the instruments.

Legislative authority

83. Under subsection 1020F(1) of the Act, ASIC may declare that Part 7.9 of the Act applies in relation to a class of financial products, as if specified provisions were omitted, modified or varied as specified in the declaration. The provisions of Part 7.9 of the Act include regulations (and Schedules to regulations) made for the purposes of that Part: see subsection 1020F(7). There are no pre-conditions to the exercise of the power.
84. The principal instrument is made under subsection 1020F(1) of the Act. The amending instrument is made under subsection 1020F(1), having regard to subsection 33(3) of the *Acts Interpretation Act 1901* (as in force on 1 January 2005). Where an Act confers a power to make an 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 the instrument.
85. The classes of financial products to which both instruments relate are superannuation products and collective investment products.
86. Both instruments are disallowable legislative instruments.

Unsuitability for primary legislation

87. The existing requirements that govern the disclosure of fees and costs in PDSs and periodic statements for superannuation products and collective investment products are *not found* in primary legislation such as Part 7.9 of the Act. The existing requirements are not found in the primary legislation because

the imposition of complex, detailed requirements is not suitable for primary legislation.

88. The imposition of complex, detailed requirements is more suitable to legislative instruments. The existing unmodified requirements are found in Division 4C of Part 7.9 of the Corporations Regulations, including in Schedules made for the purposes of the regulations. The regulations are legislative instruments. The ASIC instruments, which affect the operation of the regulations and the Schedules, are also legislative instruments.

Statement of Compatibility with Human Rights

89. 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*. 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 (Disclosure of Fees and Costs) Instrument 2019/1070 *ASIC Corporations (Amendment) Instrument 2019/1071*

Overview

1. ASIC makes the:
 - (a) *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070* (the **principal instrument**); and
 - (b) *ASIC Corporations (Amendment) Instrument 2019/1071* (the **amending instrument**);

in relation to the requirements that govern the disclosure of fees and costs in Product Disclosure Statements (**PDSs**) and periodic statements for superannuation products and collective investment products covered by Division 4C of Part 7.9 of the *Corporations Regulations 2001*.
2. The principal instrument gives effect to proposals for changes to content and presentation of fees and costs disclosures that emerged following an external review of ASIC Class Order [CO 14/1252] and ASIC Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*, and in relation to which ASIC released Consultation Paper 308 *Review of RG 97 Disclosing fees and costs in PDSs and periodic statements*.
3. The amending instrument supports the transition to the fees and costs disclosure requirements that will apply under the principal instrument.

Assessment of human rights implications

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

Conclusion

5. This 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*.