



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Amendment and Repeal) Instrument 2020/579

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 21 July 2020

Grant Moodie

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
2 Commencement	3
3 Authority	3
4 Schedules	3
Schedule 1—Amendments	4
ASIC Class Order [CO 12/415]	4
ASIC Class Order [CO 13/763]	4
ASIC Class Order [CO 14/1252]	5
<i>ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070</i>	6
Schedule 2—Repeals	11
ASIC Class Order [CO 13/1420]	11
<i>ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530</i>	11

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment and Repeal) Instrument 2020/579*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsections 951B(1) and 1020F(1) of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1—Amendments

ASIC Class Order [CO 12/415]

1 Subparagraph 4(c) (notional subsection 1015DA(9)—definition of *variable choice part*)

Omit “regulation 4.02”, substitute “regulation 4.02A or 4.02AA (as applicable)”

ASIC Class Order [CO 13/763]

2 Paragraph 6 (notional paragraph 912AD(5)(e))

Omit “except that the costs incurred for accessible investments are not required to be included as management costs.”, substitute on a new line:

“except that the costs incurred for accessible investments:

- (iii) for an IDPS Guide given on or after 30 September 2022, or for an IDPS Guide given before 30 September 2022 in relation to which an election under subsection (5B) is made—are not required to be included as management fees and costs, performance fees or transaction costs;
- (iv) for an IDPS Guide given before 30 September 2022 in relation to which an election under subsection (5B) is not made—are not required to be included as management costs.”

3 Paragraph 6 (notional section 912AD)

After notional subsection 912AD(5) insert:

- (5A) An IDPS operator of an IDPS may, for the purposes of paragraph (5)(e) and under subsection (5B), elect to treat an IDPS Guide given before 30 September 2022 as if:
 - (a) an interest in the IDPS were a managed investment product; and
 - (b) the IDPS Guide were a Product Disclosure Statement given on or after 30 September 2022.
- (5B) The IDPS operator makes an election under this subsection if the IDPS operator makes a written record:
 - (a) that identifies the IDPS Guides to which the election relates; and
 - (b) of the date or dates the election is made.
- (5C) If the IDPS operator makes an election under subsection (5B):

- (a) the election is taken to also cover any subsequent IDPS Guides for the IDPS; and
- (b) paragraph (5)(e) applies as if:
 - (i) an interest in the IDPS were a managed investment product; and
 - (ii) the IDPS Guide and any subsequent IDPS Guides were a Product Disclosure Statement given on or after 30 September 2022.

(5D) An election made under subsection (5B) cannot be withdrawn.

ASIC Class Order [CO 14/1252]

4 Sub-subparagraph 6(a)(iv) (notional clause 101A)

In notional paragraph 101A(4)(b) omit “transactional or operational costs”, substitute “transactional and operational costs”

5 Sub-subparagraph 6(b)(ii) (notional clause 102)

In notional paragraph 102(2)(b) omit “transactional costs and operational costs”, substitute “transactional and operational costs”

6 Paragraph 6

After subparagraph 6(i), insert the following subparagraph:

- (j) at the end of paragraph 303(2)(c), omit “.”, insert:
 - “; and
 - (d) the approximate total amount of transactional and operational costs for the collective investment product that affected the investment of the holder during the period or that amount combined with the amount required to be disclosed in accordance with paragraph 302(1)(b) excluding costs that are both:
 - (i) referred to in paragraph (b), (ea) or (eb) of the definition of *transactional and operational costs* and that are a necessary part of the acquisition price of an asset;
 - (ii) recovered by a buy-sell spread for the collective investment product where the estimated amount of the buy-sell spread that the holder has paid in the period in dollars is disclosed in the periodic statement.”.

7 Paragraph 12 (including the heading and note)

Omit, substitute:

Product Disclosure Statements

12. This instrument does not apply to Product Disclosure Statements given on or after 30 September 2022.

Note: *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070* applies to Product Disclosure Statements given on or after 30 September 2022.

- 12A. This instrument also does not apply to a Product Disclosure Statement which is covered by an election made under section 7 of *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070*.

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

8 Section 5 (notional subclause 101A(4) of Schedule 10)

Omit notional subparagraph 101A(4)(b), substitute:

- (b) where the indirect costs were calculated under subparagraph (3)(a)(ii), to the extent that the difference would result from the incurring of transaction costs in relation to the ultimate reference assets.

9 Section 5 (notional subclause 103(1) of Schedule 10)

After notional subparagraph 103(1)(h), insert:

- (ha) performance fees; and

10 Section 5 (notional subclause 103(2) of Schedule 10)

Omit notional paragraph 103(2)(c), substitute:

- (c) unless the costs are indirect costs covered by sub-subparagraph 101A(3)(a)(ii)—implicit transaction costs or market impact costs.

11 Section 5 (notional subparagraph 209(b)(v) of Schedule 10)

Omit the notional subparagraph, substitute:

- (v) the calculated average performance fees for each product or option or part under paragraph 101C(3)(a);

Note: The performance fee disclosed must include the performance fees that accrue for each interposed vehicle referable to a product or option, or part of a product or option, mentioned in subclause 101C(1). However, you do not need to separately disclose the performance fees accruing to each individual interposed vehicle.

12 Section 5 (the table in notional clause 211 of Schedule 10)

Omit the table, substitute:

EXAMPLE — <i>[insert name of generic MySuper product or other investment option as required by subclause 220(1)]</i>		BALANCE OF \$50,000
Administration fees and costs	[]	For every \$50,000 you have in the superannuation product, you will be charged or have deducted from your investment \$[] in administration fees and costs
PLUS Investment fees and costs	[]	And , you will be charged or have deducted from your investment \$[] in investment fees and costs
PLUS Transaction costs	[]	And , you will be charged or have deducted from your investment \$[] in transaction costs
EQUALS Cost of product		If your balance was \$50,000 at the beginning of the year, then for that year you will be charged fees and costs of \$[] for the superannuation product.

13 Section 5 (the table in notional clause 212 of Schedule 10)

Omit the table, substitute:

EXAMPLE — <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i>		BALANCE OF \$50,000 WITH A CONTRIBUTION OF \$5,000 DURING YEAR
Contribution Fees	[]	For every additional \$5,000 you put in, you will be charged between \$0 and \$[]
PLUS Management fees and costs	[]	And , for every \$50,000 you have in the <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i> you will be charged or have deducted from your investment \$[] each year
PLUS Performance fees	[]	And , you will be charged or have deducted from your investment \$[] in performance fees each year
PLUS Transaction costs	[]	And , you will be charged or have deducted from your investment \$[] in transaction costs
EQUALS Cost of <i>[insert name of balanced investment option or other investment option]</i>		If you had an investment of \$50,000 at the beginning of the year and you put in an additional \$5,000 during that year, you would be charged fees and costs in

EXAMPLE — <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i>	BALANCE OF \$50,000 WITH A CONTRIBUTION OF \$5,000 DURING YEAR
<i>required by subclause 220(2)]</i>	the range of: \$[] to \$[]* What it costs you will depend on the investment option you choose and the fees you negotiate.

14 Section 5 (notional subclause 221(1) of Schedule 10)

Omit “website”, substitute “Moneysmart website”

15 Section 5 (notional subclause 221(2) of Schedule 10)

Omit “website”, substitute “Moneysmart website”

16 Part 3 (heading)

Omit “Part 3—Consequential amendments”, substitute:

Part 3—Consequential declarations

17 Section 6 (heading)

Omit “Consequential amendments”, substitute “Consequential declarations”

18 Section 6 (notional paragraph 8(6A)(a) of Schedule 10D)

In notional paragraph 8(6A)(a), omit “clause 101”, substitute “clause 209A”.

19 Part 4

Omit the Part, substitute:

Part 4—Transitional

7 Application to Product Disclosure Statements

- (1) The declarations in this instrument apply to Product Disclosure Statements given on or after 30 September 2022.

Election by the responsible person

- (2) A responsible person for a Product Disclosure Statement for a financial product may, in accordance with subsection (3), elect to apply the declarations in this instrument to a Product Disclosure Statement dated on or after 30 September 2020.

- (3) The responsible person elects to apply the declarations in this instrument to a Product Disclosure Statement if the person makes a written record:
 - (a) that identifies the Product Disclosure Statements to which the election relates; and
 - (b) of the date or dates the election is made.
- (4) If the responsible person elects to apply the declarations in this instrument to a Product Disclosure Statement for a financial product:
 - (a) the election is taken to also cover any subsequent Product Disclosure Statements for the financial product; and
 - (b) the declarations in this instrument apply to the Product Disclosure Statement and any subsequent Product Disclosure Statements for the financial product.

Note: The other effect of making an election in relation to a Product Disclosure Statement in accordance with subsection (3) is that ASIC Class Order [CO 14/1252] does not apply to the Product Disclosure Statement: see paragraph 12A of that class order.

- (5) An election made under this section cannot be withdrawn.
- (6) In this section:

responsible person for a Product Disclosure Statement has the meaning given by subsection 1013A(3) of the Act.

8 Application to periodic statements

- (1) The declarations in this instrument apply to periodic statements for reporting periods commencing on or after 1 July 2021.

Election by the product issuer

- (2) An issuer may, in accordance with subsection (3), elect to apply the declarations in this instrument to a periodic statement for a reporting period (an *earlier reporting period*) that:
 - (a) commences on or after 1 July 2020; or
 - (b) ends on a day (the *exit date*) that is on or after 1 July 2020 if the reporting period ends on the exit date because the holder of the product ceased to hold the product on the exit date.
- (3) The issuer elects to apply the declarations in this instrument to a periodic statement for an earlier reporting period if the issuer makes a written record of:

- (a) the financial products to which the election relates;
 - (b) the reporting periods to which the election relates; and
 - (c) the date or dates the election is made.
- (4) If the issuer elects to apply the declarations in this instrument to a periodic statement for an earlier reporting period:
- (a) the election is taken to also cover any periodic statements for any subsequent reporting periods; and
 - (b) the declarations in this instrument applies to the periodic statement and any periodic statements for any subsequent reporting periods.

Note: The other effect of making an election in relation to a periodic statement in accordance with subsection (3) is that ASIC Class Order [CO 14/1252] does not apply to the periodic statement: see paragraph 14 of that class order.

- (5) An election made under this section cannot be withdrawn.
- (6) In this section:

issuer means the issuer of the financial product to which the periodic statement relates.

20 After Part 4

Insert the following Part:

Part 5—Exemption

10 Ongoing disclosure of material changes and significant events

- (1) An issuer of a collective investment product or a superannuation product does not have to comply with subsection 1017B(1) of the Act to the extent this instrument directly results in a change or event that, but for this section, would be required to be notified under that subsection of the Act.
- (2) The exemption in this section only applies in relation to the first time the issuer makes changes to a Product Disclosure Statement as a direct result of this instrument.

Schedule 2—Repeals

ASIC Class Order [CO 13/1420]

1 The whole of the instrument

Repeal the instrument.

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530

2 The whole of the instrument

Repeal the instrument.