



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment and Repeal) Instrument 2020/921

This is the Explanatory Statement for *ASIC Corporations (Amendment and Repeal) Instrument 2020/921* (the **amending instrument**).

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

Summary

1. ASIC makes the amending instrument to extend the relief in ASIC Class Order [CO 14/443] *Deferral of choice product dashboard and portfolio holdings disclosure regimes* from portfolio holdings disclosure (**PHD**) requirements.
2. The continued deferral of the obligation imposed on superannuation trustees to provide PHD will facilitate the Government considering and settling its policy position on the requirements, including making regulations to prescribe the content and format of disclosure.
3. The amending instrument omits paragraphs and definitions in [CO 14/443] that are spent as they relate to sections of the *Corporations Act 2001* (the **Act**) that have been repealed.
4. The amending instrument also repeals ASIC Class Order [CO 12/416] because the class order is spent. This repeal is not in relation to the PHD requirements.

Purpose of the instrument

5. The PHD requirements were introduced into the Act by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. The provisions require most superannuation trustees to publish investment holdings information on their websites within 90 days of each 'reporting day' (being 30 June or 31 December each year).
6. Under section 1540 of the Act, as initially made, the first reporting day for PHD was 31 December 2013. However, the requirements never commenced. This is because, after a legislative deferral to 30 June 2014, the then Minister for Finance announced on 5 May 2014 that the first reporting day would be deferred to 1 July 2015. To facilitate this deferral, ASIC made [CO 14/443], which has been subsequently amended by ASIC to implement a series of further deferrals.

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7. Effective 5 April 2019, the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* amended the PHD requirements. These amendments simplified the PHD requirements and introduced exemptions for specific entities and types of holdings. The amendments also revised the first reporting day in section 1540 of the Act to 31 December 2019. However, by August 2019, the regulations had not been made and ASIC amended [CO 14/443] to further defer the first reporting day to 31 December 2020.
 8. On 14 April 2020, ASIC [notified](#) industry of its intention to defer the first reporting day.
 9. The amending instrument allows time for the Government to consider and settle its policy position on the regulations to support PHD by extending the first reporting day for the requirement by 1 year to 31 December 2021.
 10. The deferral neither represents a policy view by ASIC in relation to the PHD requirements nor a view as to the time likely to be taken by Government in settling a policy view. If it is no longer appropriate for ASIC to continue to provide the relief, for instance if regulations to support PHD are made in time for industry to implement an earlier reporting date, then ASIC may shorten the period of the relief by a further instrument.

Consultation

11. Before making the amending instrument, ASIC consulted with the Department of the Treasury, APRA and superannuation industry bodies about the deferral length of the PHD requirements, but did not undertake a formal public consultation process. This is because the deferral does not affect the position of any entity relying on relief from the requirements and is a transitional measure of a minor or machinery nature.

Operation of the instrument

12. The PHD requirements are imposed by subsection 1017BB(1) of the Act. The requirements are imposed on trustees of registrable superannuation entities except trustees of a pooled superannuation trusts, single member funds or small APRA funds.
13. The amending instrument defers the first reporting day for PHD requirements so that a trustee of a registrable superannuation entity to whom the requirements apply does not have to comply with subsection 1017BB(1) of the Act in relation to a reporting day occurring before 31 December 2021.
14. The amending instrument also omits paragraphs 6, 7, and 8 and some definitions in paragraph 9 of [CO 14/443]. These paragraphs and definitions refer to sections 1017BC, 1017BD and 1017BE of the Act that were repealed by the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019*.

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15. The instrument also repeals ASIC Class Order [CO 12/416] because the effect of that class order is spent. ASIC Class Order [CO 12/416] retrospectively reinstated the effect of ASIC Class Order [CO 04/1030] from the date it became unenforceable (1 October 2006) until the commencement of ASIC Class Order [CO 12/415] on 2 May 2012. ASIC Class Order [CO 12/415], which remains in force, provides flexibility in how in-use notice information is provided to ASIC for employer-sponsored superannuation products.
 16. The amending instrument commences on the day after registration on the Federal Register of Legislation.

Incorporation by reference

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

Retrospective application

18. The amending instrument does not have retrospective application.

Legislative authority

19. ASIC makes the amending instrument under subsection 1020F(1) of the Act. Subsection 1020F(1) provides that ASIC may:
 - (a) exempt a person or financial product, or a class of persons or financial products, from all or specified provisions of Part 7.9 of the Act; or
 - (b) declare that Part 7.9 of the Act applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
20. Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 repeal or amend any such instrument.

Statement of Compatibility with Human Rights

21. 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.
22. Instruments (not being regulations) relating to superannuation are not disallowable legislative instruments: see regulation 9 of the Legislation (Exemptions and Other Matters) Regulation 2015.
23. ASIC considers there is a reasonable basis for the view that the amending instrument to which this Explanatory Statement relates is properly described as

an instrument relating to superannuation. Nonetheless, ASIC has decided to prepare a Statement of Compatibility with Human Rights.

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*.

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Overview

1. Section 1017BB of the *Corporations Act 2001* imposes disclosure obligations on most superannuation trustees to make information relating to portfolio holdings disclosure publicly available. The instrument amends ASIC Class Order [CO 14/443] to continue to defer the disclosure obligations.
2. The continuation of the deferral is necessary to allow Government additional time to implement regulations to support the disclosure requirements.
3. The instrument omits paragraphs in [CO 14/443] which are spent.
4. The instrument also repeals [CO 12/416] which is spent.

Assessment of human rights implications

5. The amending legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

6. 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*.