



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496

This is the Explanatory Statement for *ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496 (Instrument)*.

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

Summary

1. ASIC makes the Instrument to continue relief that was previously provided under ASIC Class Orders [CO 14/443] *Deferral of choice product dashboard and portfolio holdings disclosure regimes*, [CO 13/1534] *Deferral of Stronger Super amendments in relation to Product Disclosure Statement and periodic statement disclosure* and [CO 12/415] *In-use notices for employer-sponsored superannuation* in a new instrument with limited changes, while omitting relief that has become redundant.
2. The Instrument will provide, until 1 October 2027, relief for superannuation trustees from the requirements to:
 - lodge a single in-use notice for every Product Disclosure Statement (**PDS**) issued in relation to a standard employer-sponsored superannuation product if conditions are met;
 - include product dashboards with periodic statements sent to superannuation fund members if conditions are met; and
 - publish a product dashboard for a choice superannuation product (**choice product dashboard**).

Purpose of the instrument

3. The Instrument has two purposes:
 - a. to continue, with limited changes, relief previously provided under [CO 12/415], [CO 13/1534] and [CO 14/443] in a new legislative instrument with a 1 October 2027 expiry date; and

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- b. to omit relief that has become redundant.
4. ASIC considers this relief remains a useful part of the legislative framework, and is operating efficiently and effectively.

[CO 14/443]

5. Without regulations to prescribe the content of a choice product dashboard, choice product dashboard obligations in the *Corporations Act 2001* (the **Act**) cannot operate effectively. To provide industry with certainty about their obligations, ASIC deferred the choice product dashboard requirement in section 1017BA of the Act by making [CO 14/443] and has subsequently amended [CO 14/443] to further defer the commencement date.

[CO 13/1534]

6. Paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001* (**Regulations**) requires periodic statements of regulated superannuation funds with 5 or more members to include the latest product dashboard (within the meaning of section 1017BA of the Act) for the relevant investment option in which the member is invested.
7. [CO 13/1534] deferred the reporting period to which this requirement applied to 1 July 2023 considering the administrative compliance costs associated with including a hard copy of the latest product dashboard with a periodic statement and the ability to provide the information in an alternate manner. This relief is available on the condition that trustees include a website address for that dashboard in the periodic statement and a statement to the effect that the latest dashboard can be found at the website address.

[CO 12/415]

8. [CO 12/415] provided flexibility in how PDS in-use notice information is provided to ASIC under section 1015D of the Act for employer-sponsored superannuation products in light of the unique nature of those products. As an alternative to the process outlined in section 1015D, [CO 12/415] permitted the lodgement of a single in-use notice (the ‘primary notice’) where a person first gave the common part of a PDS for standard employer-sponsored superannuation products or a supplementary PDS that relates to the common part in a recommendation, issue or sale situation.
9. The primary notice must specify each PDS that includes the common part or is supplemented by a supplementary PDS that relates to the common part. Trustees must lodge a further notice with ASIC (the ‘secondary notice’), as soon as practicable after, and in any event within five business days, of the end of a month that the PDS including the common part or that has a supplementary PDS that relates to the common part remains available to be given to someone in a recommendation, issue or sale situation.
10. The Instrument continues the relief in [CO 12/415] but permits the secondary notice to be lodged with ASIC as soon as practicable after the end of each

financial year and, in any event, within five business days of the end of each financial year.

Consultation

11. On 15 February 2022, ASIC released CP 358 *Remaking ASIC relief on PDSs, superannuation dashboards and FSGs (CP 358)* seeking feedback on proposals to remake legislative instruments relating to specific financial services disclosure requirements. This included proposals to remake in a single legislative instrument, with limited changes, non-redundant relief in [CO 12/415], [CO 13/1534] and [CO 14/443].
12. The consultation period closed on 12 April 2022. We received six submissions in response to CP 358.
13. Two respondents raised concerns about our proposal to defer the commencement date of the choice product dashboard requirement because it causes inconsistency and a lack of transparency. We are not in a position to address these concerns as necessary regulations for choice product dashboards have not been made. If regulations are made, ASIC will revoke the relief that provides the deferral of the requirement.
14. One respondent questioned whether we needed to remake the relief in [CO 12/415] given the application of shorter PDS requirements to employer-sponsored superannuation products. Based on other submissions and additional feedback obtained from industry associations, ASIC considers the relief still has utility.
15. We considered the submissions in finalising the instrument but decided to retain the 1 October 2027 date for commencement of the choice product dashboard requirement. Having regard to lodgements received that relied on the relief formerly in [CO 12/415], we also considered there remained grounds for the relief it provided.
16. The submissions to CP 358 are publicly available on ASIC's website at www.asic.gov.au.

Operation of the instrument

Part 1 – Preliminary

17. Section 1 provides the name of the Instrument.
18. Section 2 provides that the Instrument commences at the same time that the *ASIC Corporations (Repeal) Instrument 2022/499* commences.
19. Section 3 provides that the Instrument is made under subsection 1020F(1) of the Act.
20. Section 4 provides definitions for the purposes of the Instrument.

Part 2 - Exemption

Choice product dashboards

21. Section 5 continues and extends the relief previously provided in paragraph 4 of [CO 14/443]. This means that a trustee of a regulated superannuation fund is not required to make a choice product dashboard publicly available on the fund website in accordance with subsection 1017BA(1) of the Act until 1 October 2027.
22. The Instrument omits the relief previously provided in paragraph 5 of [CO 14/443] as it has become redundant following registration of the *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021*.

Product dashboards in periodic statements

23. Section 6 continues the relief previously provided in the second exemption of [CO 13/1534]. This means a trustee of a regulated superannuation fund is not required to comply with the requirement in paragraph 7.9.20(1)(o) of the Regulations to include a product dashboard in a periodic statement given for a reporting period ending before 1 October 2027.
24. Consistent with [CO 13/1534], section 7 of the instrument provides that this exemption is on condition that the periodic statement, or a document accompanying the periodic statement, includes a website address for the latest product dashboard and a statement to the effect that the latest product dashboard can be found at the website address.
25. The instrument omits the first exemption previously provided in [CO 13/1534] as that exemption is no longer relevant because it applies in relation to PDSs given before 1 July 2014 and periodic statements for reporting periods ending before 1 July 2014.

In-use notices

26. Section 8 inserts notional subsection 1015D(2A) and notional section 1015DA into the Act to provide an alternative to the in-use notice obligations in section 1015D for standard employer-sponsored superannuation products.
27. Notional subsection 1015DA permits the responsible person for the PDS of a standard employer-sponsored superannuation product to lodge a primary notice in circumstances where a number of PDSs share the same common part. This is instead of lodging an in-use notice with ASIC in relation to every PDS of a standard employer-sponsored superannuation product that is in use.
28. Pursuant to notional subsection 1015DA(4), responsible persons that have lodged a primary notice must provide ASIC with a secondary notice specifying each PDS that includes the common part or is supplemented by a supplementary PDS that is given to someone in a recommendation, issue or sale situation. This notice must be lodged as soon as practicable after the end of each financial year and, in any event, within 5 business days of the end of each financial year while the PDS

remains available to be given to someone in a recommendation, issue or sale situation.

29. Section 9 provides for repeal of the Instrument on 1 October 2027.

Legislative instrument and legislative authority

30. The relief in the Instrument provides certainty for superannuation trustees about their choice product dashboard obligations in the absence of regulations to prescribe the content of such dashboards. The Instrument also relieves trustees from administrative costs associated with including a hard copy of product dashboards with a periodic statement and the cost that would be incurred if separate PDS in-use notices were the only option for employer-sponsored superannuation products.
31. The Instrument utilises powers given by Parliament to ASIC that allow ASIC to modify or affect the operation of the Act to provide a tailored and flexible regulatory environment that is fit for purpose for certain financial products. The matters contained in the Instrument are specific amendments designed to ensure that application of the Act remains flexible and applies in a way consistent with the intended policy and the enabling provisions in the Act.
32. The Instrument is made under subsection 1020F(1) of the Act. Subsection 1020F(1) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act. Subsection 1020F(1) also permits ASIC to modify the operation of Part 7.9 in relation to a person or a financial product, or class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration
33. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

Appropriate duration of the Instrument

34. The effect of the Instrument is that, with limited changes, the non-redundant relief in [CO 12/415], [CO 14/443] and [CO 13/1534] will be extended until 1 October 2027.
35. ASIC considers that a five year duration for the Instrument is appropriate due to the business uncertainty and costs that would result if there was a shorter period. In the absence of regulations for choice product dashboards, there would be uncertainty about the obligations of trustees without the relief. If the relief ceased or changed, superannuation trustees offering employer-sponsored superannuation products would need to lodge PDS in-use notices in significantly increased circumstances and trustees would need to change their systems and processes and incur costs to include MySuper product dashboards in hard copy with periodic statements given to members.
36. ASIC considered a shorter duration for the Instrument but determined this would impose unnecessary uncertainty on those affected by the relief. Relevant to this determination was the fact that the relief in [CO 14/443] and [CO 13/1534] were

originally made in order to provide certainty to industry in the implementation of various changes to the Act and the Regulations.

37. If the Act or Regulations are amended to include the relief, ASIC will repeal the Instrument.

Statement of Compatibility with Human Rights

38. A Statement of Compatibility with Human Rights consistent with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* 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 (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496

Overview

1. The *ASIC Corporations (In-use notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496* continues, with limited changes, relief previously provided in ASIC Class Orders [CO 14/443], [CO 13/1534] and [CO 12/415] in a single new legislative instrument until 1 October 2027. This means that relevant superannuation trustees are relieved from the requirements under the *Corporations Act 2001* and *Corporations Regulations 2001* to:
 - lodge a single in-use notice for every PDS issued in relation to standard employer-sponsored superannuation products if conditions are met;
 - include copies of product dashboards with periodic statements sent to superannuation fund members if conditions are met; and
 - publish product dashboards for choice superannuation products.

Assessment of human rights implications

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

Conclusion

4. 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*.