



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603*

This is the Explanatory Statement for ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603.

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

#### Summary

1. ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603 (*Instrument*) provides conditional relief from the Australian financial service (*AFS*) licensing requirements of the *Corporations Act 2001 (Act)* for superannuation fund trustees who prepare retirement estimates for their members, and for providers of superannuation calculators. Where a trustee or other provider already holds an AFS licence, the Instrument provides relief from the requirements relating to advice in Divisions 2, 3 and 4 of Part 7.7 of the Act.
2. In this Explanatory Statement, retirement estimates (including interactive retirement estimates) and superannuation calculators are referred to collectively as *superannuation forecasts*.
3. The Instrument facilitates, but does not compel, the provision of superannuation forecasts. Trustees and other providers can provide superannuation forecasts under the relief if they comply with the conditions of the Instrument. Alternatively, trustees and other providers can provide superannuation forecasts to consumers by complying with the licensing, conduct and disclosure obligations relating to personal financial product advice in the Act.
4. The Instrument commences on the day after it is registered on the Federal Register of Legislation.
5. For a period of approximately six (6) months following commencement of this Instrument, trustees and other providers can provide superannuation forecasts under previous relief arrangements, while they transition to the new framework. Relief for superannuation forecasts was previously offered through two separate legislative instruments: *ASIC Class Order [CO 11/1227] Relief for providers of retirement estimates (Retirement Estimates Class Order)* which was due to

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sunset in April 2022, and *ASIC Corporations (Generic Calculators) Instrument 2016/207 (Calculators Instrument)*.

6. In March 2022, ASIC made a legislative instrument in *ASIC Corporations (Repeal and Transitional – Relief for Providers of Retirement Estimates) Instrument 2022/204* to extend the effect of the Retirement Estimates Class Order until it ceases on (the end of day of) 31 December 2022.
7. Relief for superannuation and retirement calculators in the Calculators Instrument will cease from 1 January 2023. The Calculators Instrument will continue to provide relief for the provision of calculators relating to other financial products (other than superannuation and retirement savings account products).

### **Purpose of the instrument**

8. The purpose of the instrument is to provide conditional relief from the AFS licensing requirements in the Act for superannuation fund trustees who prepare retirement estimates for their members, and for providers of superannuation calculators. Where a trustee or other provider already holds an AFS licence, the Instrument provides relief from the requirements relating to advice, in Divisions 2, 3 and 4 of Part 7.7 of the Act.
9. Previous relief provided by the Retirement Estimates Class Order was due to sunset on 1 April 2022. Relief for Superannuation Calculators was provided by the Calculators Instrument which also covered other financial products. The Instrument continues relief in a new single, legislative instrument covering superannuation forecasts.
10. Superannuation is a compulsory financial product for most Australians who are employed however, most Australians do not engage fully with their superannuation. Superannuation forecasts can help some members to think about how superannuation can be part of their retirement income. Retirement estimates can also provide an accessible starting point for members to consider whether their superannuation is likely to provide them adequate income in retirement.
11. A single legislative instrument for superannuation forecasts promotes a consistent approach to setting default economic and financial assumptions, as well as other requirements of the relief, including disclosure and reporting of non-compliance for superannuation forecasts.
12. Under previous relief arrangements, some trustees may have been applying significantly different default assumptions to their superannuation calculators to those that they were required to use in working out retirement estimates. This could have resulted in materially different forecasts, which may have been potentially confusing for members.

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## Consultation

13. In November 2021, ASIC publicly sought submissions from interested parties on ASIC's proposals in Consultation Paper 351 *Superannuation forecasts: Update to relief and guidance (CP 351)*. Consultation closed on 28 January 2022.
14. ASIC received numerous written submissions from a range of stakeholders including superannuation trustees, a consumer advocate group, industry associations, actuaries, and individuals. The submissions were supportive of ASIC's proposals overall, including proposals to adopt a single framework for setting economic and financial assumptions for superannuation forecasts and to afford trustees with greater flexibility in setting assumptions for retirement estimates.
15. ASIC Report 731 *Response to submissions on CP 351 Superannuation forecasts: Update to relief and guidance* sets out the key issues that arose out of the submissions received on CP 351 and details of our responses to those issues.
16. In making this instrument, ASIC has also consulted with the Treasury, and sought advice from the Australian Government Actuary.

## Operation of the instrument

### Part 1 – Preliminary

17. Section 1 provides the name of the Instrument.
18. Section 2 provides the Instrument commences on the day after it is registered on the Federal Register of Legislation.
19. Section 3 provides that the Instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the Act.
20. Section 4 provides the definitions for the purposes of the Instrument.
21. *Superannuation calculator*, *retirement estimate*, and *interactive retirement estimate* are defined terms. A *Superannuation calculator* is a facility, device, table, or other thing provided by a person (the provider) that works out a numerical calculation or finds out the result of a numerical calculation relating to a superannuation product but does not use information the provider knows about a user unless the information has been inputted by the user.
22. A *retirement estimate* is a forecast generated by a trustee and provided to a member in the in the form of a statement, or an interactive statement that allows members to input or change assumptions (an *interactive retirement estimate*).
23. In relation to a superannuation calculator and interactive retirement estimate, the term *inputted* is defined to mean, *in relation to a person, inputted by or with the consent of the person*. Providers can use assumptions that have been inputted or changed by the user on a previous occasion as the starting point when the

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member next accesses the superannuation calculator or interactive retirement estimate (however, such information must not be used to tailor a retirement estimate that is not in an interactive form). A provider can also assist users to input their own data into a superannuation calculator or interactive retirement estimate with their consent. For example, a trustee could provide a function that helps users to copy across member account data into a superannuation calculator or interactive retirement estimate.

## Part 2 - Exemptions

24. Sections 5 and 6 of the Instrument respectively give providers of superannuation calculators and retirement estimates (including interactive retirement estimates) relief from the requirement to hold an AFS licence with an advice authorisation or (where they currently hold an AFS licence) relief from the requirements relating to advice in Divisions 2, 3 and 4 of Pt. 7.7 of the Act.
25. ASIC does not have any exemption or modification powers in relation to Division 2 of Part 7.7A of the Corporations Act. Regulation 9.12.04 of the *Corporations Regulations 2001* provides relief from the operation of Division 2 of Part 7.7A for persons who rely on exemptions provided through ASIC class orders. ASIC will administer the law on the basis that the exemption in regulation 9.12.04 applies in relation to persons who rely on the Instrument.
26. The relief in section 6 of the Instrument (the *exemption for providers of retirement estimates*) only applies in prescribed circumstances, where:
  - a. *the member has been a member of the superannuation entity for the year ending on the date of the estimate; and*
  - b. *the member is not receiving a transition to retirement income stream in relation to the superannuation entity at the date of the estimate; and*
  - c. *in the case of a retirement estimate that is not an interactive retirement estimate—the superannuation product held by the member is not in the retirement phase at the date of the estimate; and*
  - d. *where the superannuation product held by the member is not in the retirement phase at the date of the estimate, a contribution has been made into the member’s account with the superannuation entity in the 16 months before the date of the estimate; and*
  - e. *the member has an account balance with the superannuation entity equal to or greater than \$6000 at the date of the estimate; and*
  - f. *the member does not hold a superannuation product that is a defined benefit interest in the superannuation entity.*
27. A trustee cannot provide a retirement estimate to a member under the relief framework where the prescribed circumstances do not apply. ASIC has taken this approach because a retirement estimate provided to certain members or cohorts of members, under the relief framework, is likely to be misleading.

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28. A trustee or other person can provide a retirement estimate to a member outside the terms of the Instrument, but they must comply with the licensing, disclosure and conduct requirements of the Act if the provision of the retirement estimate involves providing financial product advice.
  29. Trustees have discretion about whether or not to include age pension amounts in retirement estimates.
  30. The Instrument does not provide relief for superannuation calculators relating to *Retirement Savings Account (RSA)* products. The Instrument also does not provide relief for retirement estimates for members of RSA products.
  31. The relief is subject to exclusions and conditions.

#### Exclusions

32. The relief provided by subsections 5(1) and 6(1) of the Instrument, does not apply if a trustee or other provider materially breaches a condition of the instrument, and the breach is not reported to ASIC within 30 days after the person knows or is reckless with respect to whether there are reasonable grounds to believe that they have breached a condition of the instrument.

#### Conditions

33. Providers who rely on the relief provided by subsections 5(1) or 6(1) of the Instrument must take reasonable steps to ensure that they comply with the conditions in section 7 of the Instrument.

#### *Assumptions for superannuation calculators*

34. Paragraph 7(1)(a) applies only to superannuation calculators. It provides that a superannuation calculator must use the following assumptions:
  - a. *if the calculator uses a retirement age for the user—the assumed retirement age; and*
  - b. *if the calculator uses a period over which a superannuation account of the user is drawn down—the assumed drawdown period or a drawdown period inputted by the user.*
35. *Assumed retirement age* and *assumed drawdown period* are defined terms.

#### *Advertising or promoting a financial product*

36. Paragraph 7(1)(b) applies only to superannuation calculators. It provides that a superannuation calculator must not advertise or promote a specific financial product.
37. Paragraph 7(1)(c) applies only to retirement estimates and provides that a retirement estimate must not advertise or promote a specific financial product, other than to the extent necessary to provide a retirement estimate.

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38. For retirement estimates, it may not be possible for a trustee to omit the name of the superannuation product(s) or investment option(s) a member is currently invested in. Omitting this information may also be confusing for the member.

*Inputting or changing assumptions*

39. Paragraph 7(1)(d) applies to superannuation calculators and interactive retirement estimates. It provides that for superannuation calculators and interactive retirement estimates, the user must be able to input or change any and all of the assumptions that are applied in working out the calculation or estimate relating to the financial product other than those specified in sub-subparagraphs (A) and (B). The superannuation calculator and retirement estimate must be able to work out or enable the user to work out a calculation or estimate on the basis of the changed assumptions.
40. The notes to the condition clarify that:
- a. if the calculator applies any assumptions about the retirement age of the user or the length of the drawdown period, the calculator must enable the user to input or change those assumptions; and
  - b. The calculator or interactive retirement estimate may allow the user to change the assumptions referred to in sub-subparagraphs (A) and (B) but is not required to.

*Reasonable assumptions*

41. Paragraph 7(1)(e) applies for both superannuation calculators and retirement estimates. The assumptions applied by the superannuation calculator or retirement estimate, unless inputted or changed by the user, must be reasonable for the purposes of working out the calculation or estimate.
42. Trustees that provide both superannuation calculators and retirement estimates are expected to apply assumptions consistently across their calculators and estimates; and have a reasonable basis for any differences.

*Disclosure*

43. Paragraph 7(1)(f) applies for both superannuation calculators and retirement estimates. It provides that a superannuation calculator or retirement estimate must display to the user, in the ordinary course of its use, or have printed on it all of the following:
- a. *a clear and prominent statement about the purpose and limitations of the calculator or estimate;*
  - b. *a clear and prominent explanation of the impact of any significant limitation of the calculator or estimate;*
  - c. *a clear and prominent statement of the assumptions;*

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- d. *a clear and prominent statement setting out the present value of the calculation or estimate and identifying that the amount is the present value of the calculation or estimate; and*
  - e. *a clear and prominent statement to the effect that the superannuation calculator or retirement estimate is not intended to be relied on for the purposes of making a decision in relation to a financial product and that users should consider obtaining advice from a financial services licensee before making any financial decisions.*
44. *Present value* is a defined term. The present value of a calculation or estimate of an amount payable or accruing to a person at a future time is the amount worked out using the relevant, defined formula.
45. Subsection 7(2) relates to paragraph 7(1)(f) and requires providers' disclosures to contain a reasonable level of information having regard to the nature of the calculator or estimate.

*Disclosure of why assumptions are reasonable*

46. Paragraph 7(1)(g) applies for both superannuation calculators and retirement estimates. It provides that a superannuation calculator or retirement estimate must display to the user (including because of a step taken by the user) or have printed on it an explanation of why the assumptions (unless inputted or changed by the user) are reasonable for the purpose of working out the calculation or estimate.
47. To the extent that one or more of the default assumptions are prescribed by ASIC in this Instrument, a provider may satisfy the condition (in relation to those assumptions) to give a clear and prominent explanatory of why the default assumptions are reasonable by explaining that they comply with default assumptions for superannuation calculators or retirement estimates set by ASIC.
48. Subsection 7(2) relates to paragraph 7(1)(g) and requires providers' disclosures to contain a reasonable level of information having regard to the nature of the calculator or estimate.

*Printing and electronic storage*

49. Paragraph 7(1)(h) applies to superannuation calculators and interactive retirement estimates. The user should not be prevented from being able to print or electronically store the calculation or estimate provided to them.

*Retention of calculators and estimates*

50. Paragraph 7(1)(i) applies to superannuation calculators and retirement estimates. The provider should keep a functioning copy of their superannuation calculator or facility, device, table, or other thing that is used to calculate the retirement estimate for 7 years from when it was last made available.

*Delivery of retirement estimates*

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51. Paragraph 7(1)(j) applies only to retirement estimates. It provides that a retirement estimate must only be included in, or with, the member's periodic statement or made available electronically through the member's online portal.
  52. If a trustee chooses to give a member their retirement estimate via the member's online portal, it is not required to also provide a retirement estimate with their periodic statement, and vice versa. However, a trustee may choose to deliver retirement estimates to a member through both the member's online portal and the periodic statement.
  53. Other than a numerical confidence level or interval relating to an interactive retirement estimate, the retirement estimate must not specify other amounts or figures representing or purporting to represent the member's expected retirement benefit (however described).

### **Part 3 – Repeal**

54. Part 3 provides for the repeal of the Instrument on 1 July 2027.

### **Incorporation by reference**

55. The Government's 2021 Intergenerational Report, while mentioned in the instrument, is not incorporated by reference within s14 of the Legislation Act 2003.

### **Legislative instrument and primary legislation**

56. Relief for the provision of superannuation forecasts provides certainty for superannuation trustees and other providers about their ability to provide members and consumers with access to superannuation forecasts. Superannuation calculators are often used by trustees to promote member engagement with their superannuation and retirement.
57. 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 and provides for continued access to superannuation forecasts. The matters contained in this Instrument facilitate continued access to superannuation forecasts subject to conditions.
58. Subsections 926A(2) and 951B(1) of the Act provide the legislative authority for the Instrument.
59. ASIC has consulted with the Treasury in making this instrument. It will be a matter for the Government and for Parliament as to whether the Act or the Regulations may be amended in future to include relief in the Instrument.



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### **Appropriate duration of the Instrument**

60. The Instrument will expire five years after registration on the Federal Register of Legislation. ASIC has consulted with the Treasury in determining the appropriate duration of the Instrument.
61. ASIC considers that a five-year duration for the Instrument is appropriate to provide superannuation trustees and providers of superannuation forecasts with sufficient certainty about the regulatory settings to make use of the relief. ASIC will review whether it remains appropriate to continue to provide relief for superannuation forecasts prior to that date.
62. ASIC considered a shorter duration for the Instrument but determined that this would impose unnecessary uncertainty on those who rely on the relief and may discourage providers from making use of the relief.
63. Providing relief for a period of five years also gives the Government an opportunity to determine whether to amend the primary legislation or regulations to include the relief. If the Act or Regulations are amended to include the relief, ASIC will repeal the Instrument.

### **Statement of Compatibility with Human Rights**

64. 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 (Superannuation Calculators and Retirement Estimates) Instrument 2022/603***

#### Overview

1. ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603 (***Instrument***) provides conditional relief from the Australian financial service (***AFS***) licensing requirements of the *Corporations Act 2001 (Act)* for superannuation fund trustees who prepare retirement estimates for their members, and for providers of superannuation calculators. Where a trustee or other provider already holds an AFS licence, the Instrument provides relief from the requirements relating to advice in Divisions 2, 3 and 4 of Part 7.7 of the Act.
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Assessment of human rights implications

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

Conclusion

3. 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*.