



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Superannuation (Disclosure and Reporting Consistency Obligation) Instrument 2023/941*

### *ASIC Superannuation (Repeal) Instrument 2023/942*

This is the Explanatory Statement for *ASIC Superannuation (Disclosure and Reporting Consistency Obligations) Instrument 2023/941* (the **Instrument**) and *ASIC Superannuation (Repeal) Instrument 2023/942* (the **Repeal Instrument**).

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

#### **Summary**

1. ASIC makes the Instrument under subsection 328(1) of the *Superannuation Industry (Supervision) Act 1993* (the **SIS Act**) to continue relief that was previously provided under ASIC Class Order [CO 14/541] (**CO14/541**).
2. ASIC makes the Repeal Instrument under section 335 of the SIS Act.
3. The Instrument provides relief for registrable superannuation entity (RSE) licensees from complying with the requirements in subsection 29QC(1) of the SIS Act until 1 January 2026.

#### **Purpose of the instrument**

4. The purpose of the Instrument is to continue relief from compliance with subsection 29QC(1) of the SIS Act previously provided under CO14/541 until 1 January 2026.
5. Given uncertainty about how to comply with subsection 29QC(1) in its current form and in the absence of regulations, ASIC has assessed that the exemption previously in CO14/541 is operating effectively and efficiently and continues to form a necessary part of the legislative framework.
6. Subsection 29QC(1) of the SIS Act requires that information given to the public (e.g., in disclosure documents) be calculated in the same way that the information is reported to the Australian Prudential Regulation Authority (APRA) under APRA reporting standards. The requirement under subsection

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29QC(1) commenced on 1 July 2013. Since 13 June 2014, ASIC has granted the exemption from compliance with subsection 29QC(1) because of uncertainty about how to achieve consistency between the disclosure requirements in the primary legislation and the data that is required to be reported under APRA's reporting standards.

### **Consultation**

7. On 6 November 2023, ASIC posted a news article on its website, *ASIC proposes to temporarily extend relief from disclosure and reporting consistency obligations for super trustees* (the news article), seeking feedback on a proposal to extend the exemption from the consistency obligations in CO14/541 for two years until 1 January 2026.
8. ASIC invited comments by 12 pm on 4 December 2023 in response to the news article from anyone who would like to provide feedback on ASIC's proposal, including whether the instrument is operating effectively and efficiently and/or whether any amendments are required.
9. ASIC did not receive any submissions in response to the news article.

### **Operation of the instrument**

#### **The Instrument**

##### **Part 1 – Preliminary**

10. Section 1 provides the name of the Instrument.
11. Section 2 provides the Instrument commences on the day after it is registered on the Federal Register of Legislation.
12. Section 3 provides that the Instrument is made under paragraph 328(1) of the SIS Act.
13. Section 4 provides the definitions for the purpose of the Instrument.

##### **Part 2 – Exemption**

14. Section 5 provides the relief previously given in CO14/541. It exempts RSE licensees, until 1 January 2026, from complying with the requirement in subsection 29QC(1) of the SIS Act to provide consistent information.
15. This instrument does not affect the obligation to use APRA's MySuper product dashboard reporting standard as defined in regulation 7.9.07P of the *Corporations Regulations 2001* when an RSE licensee prepares a MySuper product dashboard in accordance with section 1017BA of the *Corporations Act 2001*.

##### **Part 3 – Repeal**

16. Section 6 provides for repeal of the Instrument on 1 January 2026.

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## **The Repeal Instrument**

17. The Repeal Instrument repeals *ASIC Class Order CO14/541*, the relief in which is otherwise scheduled to expire on 1 January 2024.

## **Legislative instrument and primary legislation**

18. The Instrument is made using powers given by Parliament to ASIC that allow ASIC to modify or affect the operation of the SIS Act to provide a tailored and flexible regulatory environment that is fit for purpose for superannuation products. The exemption contained in the Instrument is a specific amendment necessary to address the uncertainty about how to achieve consistency between the disclosure requirements in the primary legislation and the data that is required to be reported under APRA's reporting standards.
19. It is a matter for the Government and for Parliament as to whether the SIS Act or *Superannuation Industry (Supervision) Regulations 1994* may be amended in future to address the uncertainty the Instrument.

## **Duration of the instrument**

20. The duration of the instrument is for 2 years. This means that RSE licensees do not need to comply with subsection 29QC(1) of the SIS Act before 1 January 2026.
21. Providing relief for a period of two years gives the Government an opportunity to determine whether to amend the primary legislation or regulations to resolve the uncertainty that necessitates the existing relief. If Parliament amends the legislation or regulations to address the uncertainty, ASIC will repeal this instrument or allow it to lapse.

## **Legislative authority**

22. The Instrument is made under subsection 328(1) of the SIS Act.
23. Subsection 328(1) provides that ASIC may, in writing, exempt a class of persons or a class of groups of individual trustees, from compliance with any or all of the modifiable provisions, which includes a provision of Part 2B of the SIS Act.
24. The Repeal Instrument is made under section 335 of the SIS Act.
25. Section 335 provides that ASIC may, in writing, vary or revoke an exemption or declaration made under Part 29 of the SIS Act.

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

26. 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](#).

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27. Instruments (not being regulations) relating to Superannuation are not disallowable legislative instruments: see section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
  28. ASIC considers it is likely that the exemption in section 9 applies to the Instrument and the Repeal Instrument. 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*.

***ASIC Superannuation (Disclosure and Reporting Consistency Obligations) Instrument 2023/941*** and ***ASIC Superannuation (Repeal) Instrument 2023/942***.

### Overview

1. *ASIC Superannuation (Disclosure and Reporting Consistency Obligations) Instrument 2023/941* provides relief for registrable superannuation entity (RSE) licensees from complying with the requirements in subsection 29QC(1) of the SIS Act until 1 January 2026.
2. *ASIC Superannuation (Repeal) Instrument 2023/942* repeals *ASIC Class Order CO14/541*, which previously provided relief similar to that now provided by *ASIC Superannuation (Disclosure and Reporting Consistency Obligations) Instrument 2023/941*.

### Assessment of human rights implications

3. The instruments do not engage any of the applicable rights or freedoms.

### Conclusion

4. The instruments are 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*.