



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/733

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/733* (the **Amendment Instrument**).

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

Summary

1. ASIC makes the Amendment Instrument under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* to amend the relief provided by the *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603 (Relief Instrument)*, which applies to persons who provide financial product advice through, or through making available, a superannuation calculator or retirement estimate.
2. The Amendment Instrument revises the default inflation rate used to calculate the present value (applying to the accumulation phase) of a superannuation calculation or retirement estimate to which the Relief Instrument applies from 4.0% per year to 3.7% per year.
3. During the period between the commencement of the Amendment Instrument and 31 December 2024, providers of superannuation calculators and retirement estimates may use a default inflation rate of either 3.7% per year, or 4.0% per year. From 1 January 2025, providers must use the default inflation rate of 3.7% per year.

Purpose of the instrument

4. The purpose of the Amendment Instrument is to ensure the default rate of inflation used to calculate present values under the Relief Instrument reflects the current long-term forecast of nominal wage inflation.
5. The Relief Instrument requires superannuation calculations and retirement estimates relying on the relief to be expressed in present values, using the default rate of inflation, unless the user of the calculation or estimate inputs an alternative rate. Present values express future dollars in today's dollars, which assist users in understanding the real value of their estimated superannuation benefit.

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6. Prior to the commencement of the Amendment Instrument, the default rate of inflation applying to the accumulation phase (the period between the date of the superannuation calculation or retirement estimate and the assumed retirement age) was 4.0% per year. This reflected the long-term forecast of nominal wage inflation in the Government's 2021 Intergenerational Report.
 7. The Government's 2023 Intergenerational Report and the Retirement Income Review reflected a long-term forecast of nominal wage inflation of 3.7% per year. Based on this revised forecast, superannuation calculations and retirement estimates, expressed in present values using the previous default inflation rate of 4.0% per year, tended to be overly conservative.
 8. The Amendment Instrument also introduces transitional arrangements so that providers of superannuation calculators and retirement estimates have sufficient time to implement the updated default inflation rate.

Consultation

9. On 5 July 2024, ASIC commenced consultation *Proposed update to superannuation forecasts relief instrument*. This consultation sought submissions from industry on ASIC's proposals to change the default inflation rate and introduce transitional arrangements, on the terms set out in the Amendment Instrument. The submission period closed on 2 August 2024.
10. ASIC received multiple submissions to the consultation from a range of stakeholders, including superannuation trustees, industry associations and the actuarial profession. The submissions were supportive of ASIC's proposals overall. ASIC's response to the submissions will be published when the Amendment Instrument commences.
11. ASIC also consulted Treasury and the Australian Government Actuary in relation to the proposal to change the default inflation rate.

Operation of the instrument

Part 1 – Preliminary

12. Section 1 provides the name of the Amendment Instrument.
13. Section 2 provides the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.
14. Section 3 provides that the Amendment Instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001*.
15. Section 4 provides for the effect of items in a Schedule to the Amendment Instrument.

Schedule 1 – Amendments

16. Item 1 replaces the formula in paragraph (a) of the definition of 'present value' in section 4 of the Relief Instrument, which applies to amounts payable or

accrued before a person reaches the assumed retirement age. This formula revises the default inflation rate to:

- a. 3.7% per year or 4.0% per year, if the formula is used between the commencement of the Amendment Instrument and 31 December 2024;
 - b. 3.7% per year, if the formula is used on or after 1 January 2025.
17. Item 2 replaces the formula in paragraph (b) of the definition of ‘present value’ in section 4 of the Relief Instrument, which applies to amounts payable or accrued after a person reaches the assumed retirement age and the person has not yet reached that age. This formula revises the default inflation rate applying to the accumulation phase (the period between the date of the superannuation calculation or retirement estimate and the assumed retirement age) to:
- a. 3.7% per year or 4.0% per year, if the formula is used between the commencement of the Amendment Instrument and 31 December 2024;
 - b. 3.7% per year, if the formula is used on or after 1 January 2025.
18. Item 3 repeals the definition of ‘superannuation entity’ in section 4 of the Relief Instrument, on the basis that the definition is no longer required. Given paragraph 13(1)(b) of the *Legislation Act 2003*, the definition of ‘superannuation entity’ in section 9 of the *Corporations Act 2001* will also apply to the Relief Instrument.
19. Item 4 repeals the definition of ‘superannuation product’ in section 4 of the Relief Instrument, on the basis that the definition is no longer required. Given paragraph 13(1)(b) of the *Legislation Act 2003*, the definition of ‘superannuation product’ in section 9 of the *Corporations Act 2001* will also apply to the Relief Instrument.
20. Item 5 amends the definition of ‘transition to retirement income stream’ in section 4 of the Relief Instrument, to correct the reference to subregulation 6.01(2) of the *Superannuation Industry (Supervision) Regulations 1994*.

Incorporation by reference

21. The Government’s 2023 Intergenerational Report and 2021 Intergenerational Report, while mentioned in the Repeal Instrument, are not incorporated by reference within section 14 of the *Legislation Act 2003*.

Legislative instrument and primary legislation

22. The Amendment Instrument, together with the Relief Instrument, provide certainty for superannuation trustees and other providers about their ability to provide members and consumers with access to superannuation calculators and retirement estimates.
23. Both instruments utilise powers given by Parliament to ASIC that allow ASIC to modify or affect the operation of the *Corporations Act 2001*, to provide a

tailored and flexible regulatory environment that is fit for purpose for certain financial products.

24. It will be a matter for the Government and for Parliament as to whether the *Corporations Act 2001* or the *Corporations Regulations 2001* may be amended in future to include the relief in the Relief Instrument, as amended by the Amendment Instrument.

Duration of the instrument

25. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation. It will be repealed under section 48A of the *Legislation Act 2003*.
26. Noting that the Amendment Instrument does not change the duration of the Relief Instrument, ASIC considers the duration of both instruments to be appropriate.

Legislative authority

27. The Amendment Instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001*.
28. Paragraph 926A(2)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.6 other than Divisions 4 and 8.
29. Paragraph 951B(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.7.
30. Subsection 33(3) of the *Acts Interpretation Act 1901* states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument.
31. The Amendment Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

32. 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.

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 (Amendment) Instrument 2024/733

Overview

1. *ASIC Corporations (Amendment) Instrument 2024/733* amends the relief provided by *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603*, which applies to persons who provide financial product advice through, or through making available, a superannuation calculator or retirement estimate.
2. The instrument revises the default inflation rate used to calculate the present value (applying to the accumulation phase) of a superannuation calculation or retirement estimate relying on the relief from 4.0% per year to 3.7% per year.
3. The instrument also provides transitional arrangements. During the period between the commencement of the instrument and 31 December 2024, providers of superannuation calculators and retirement estimates may use a default inflation rate of either 3.7% per year or 4.0% per year. From 1 January 2025, providers must use the default inflation rate of 3.7% per year.

Assessment of human rights implications

4. The instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. 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*.