ASIC

Australian Securities & Investments Commission

REPORT 266

Response to submissions on CP 122 Superannuation forecasts: ASIC relief and guidance for super funds

December 2011

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 122 *Superannuation forecasts: ASIC relief and guidance for super funds* (CP 122) and details our responses in relation to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 229 *Superannuation forecasts* (RG 229).

Contents

A Overview

1 In Consultation Paper 122 *Superannuation forecasts: ASIC relief and guidance for super funds* (CP 122), we consulted on proposals to facilitate the provision of superannuation forecasts by super fund trustees to their members.

2 A superannuation forecast is an estimate provided to a fund member of the potential balance of their superannuation investment at retirement, taking into account their current account balance, the impact of fees, and assumptions about future contributions, earnings and other matters.

Note: In this report, we refer to superannuation forecasts in the form of a statement as a 'retirement estimate', and superannuation forecasts presented in an interactive manner as 'superannuation calculators': see paragraph 20.

3 In 2010, as part of the Stronger Super reforms, the Australian Government announced that it would ask ASIC to 'continue development of retirement forecasts that can be used by trustees, having regard to the Future of Financial Advice reforms'.

Note: See Commonwealth of Australia, 'Stronger Super—Government Response', Commonwealth of Australia, 2010.

4 We have now released our final policy on superannuation forecasts. This is set out in Regulatory Guide 229 *Superannuation forecasts* (RG 229).

5 This report highlights the key issues that arose out of the submissions received to CP 122. While it does not provide a comprehensive summary of all responses received, it provides our responses to the key issues raised during the consultation process.

Consultation process

CP 101

6 CP 122 built on our earlier consultation paper on superannuation forecasts, Consultation Paper 101 *Superannuation forecasts* (CP 101).

7 Rather than consulting on specific proposals, CP 101 aimed to stimulate discussion on how best to increase members' engagement with and understanding of their superannuation. We sought to identify whether there was a need for personalised superannuation forecasts and, if so, how these should be provided and what issues would need to be considered in designing them.

8 We received a wide range of responses to CP 101. In general, there was strong support for ASIC to undertake further work to facilitate superannuation forecasts.

9 A small number of respondents were more cautious about the potential for superannuation forecasts to have a positive impact on members, and were concerned that attempting to predict an end benefit far into the future could potentially be misleading. Other respondents thought that, while a superannuation forecast can only ever give an estimate of a member's end benefit, the potential for forecasts to engage members with their superannuation would outweigh this concern. These respondents felt that, if properly designed and explained to members, superannuation forecasts would be less likely to be confusing or misleading.

CP 122

10 CP 122 was developed as a result of feedback to CP 101. In it, we proposed that ASIC should provide:

(a) relief to super fund trustees who give their members superannuation forecasts in the form of a statement (a 'retirement estimate'), including:

  (i) the conditions super fund trustees would have to comply with in order to rely on the relief, including how retirement estimates should be provided to members and the content of the retirement estimate; and

  (ii) how the retirement estimate should be calculated; and

(b) guidance on how our existing general relief for providers of financial product calculators should apply to superannuation calculators.

Consultation by the Australian Government Actuary

11 CP 101 and CP 122 contained proposals consulting on the regulatory framework for facilitating superannuation forecasts. ASIC also engaged the Australian Government Actuary (AGA) to develop the methodology for calculating retirement estimates. The final calculation methodology is set out in Class Order [CO 11/1227] *Relief for providers of retirement estimates*. Super fund trustees must use this methodology to provide retirement estimates under our relief.

12 In undertaking this work, the AGA conducted its own consultation with industry associations and actuarial firms. This consultation was limited to the technical aspects of calculation methodology, including the assumed rate of investment earnings to be applied and the formulae that would need to be used in calculating retirement estimates.

13 There was widespread support for an assumed real investment earnings rate of 3% per year. Those providing feedback as part of this process were also supportive of us setting out detailed calculation formulae in our relief, to make the process of calculating retirement estimates efficient and simple for super fund trustees. We have incorporated this feedback into our final relief.

Responses to consultation

14 We received 16 responses to CP 122 from industry bodies, super fund trustees and actuarial firms. We are grateful to respondents for taking the time to send us their comments.

15 There was broad support in submissions for the general principle of using retirement estimates and calculators to increase super fund members' engagement with their superannuation accounts.

16 About half of the submissions supported doing this through retirement estimates based on assumed figures, arguing that retirement estimates should be a simple starting point for members to engage with their superannuation accounts. Those respondents preferring this approach thought it would be the best way to engage members, as using assumed figures would make retirement estimates consistent and easy to understand. In general, these respondents thought that the main purpose of retirement estimates should be to provide a quick prompt to members to engage with superannuation, rather than a comprehensive estimate of their potential retirement benefit.

17 Respondents who disagreed with our approach of using assumed figures generally preferred using assumptions that were more tailored to features of each member's superannuation account (e.g. each member's expected investment earnings rate and actual fees). In general, these respondents were concerned that assumed figures might be so different from a member's actual situation that using them could create some confusion, or could be misleading.

18 One submission argued that superannuation calculators would provide a better tool to improve member engagement rather than retirement estimates.

19 The main issues raised by respondents related to:

- how retirement estimates should be provided, including the scope of any ASIC relief;
- the format for presenting retirement estimates;
- how retirement estimates should be calculated, including whether assumed figures should be mandated; and
- the scope of ASIC guidance for providers of superannuation calculators.

20 Based on the feedback we received, we refer in RG 229 to 'retirement estimates' rather than 'retirement projections'. Some submissions to CP 122 suggested that 'retirement projections' could provide a misleading impression to members that the forecasted outcome is definite and that 'retirement estimate' would be a more appropriate term. In this report, we have adopted the terminology used in RG 229.

21 For a list of the respondents to CP 122, see the Appendix. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 122.

B Providing retirement estimates

Key points

In CP 122, our proposals on how retirement estimates should be provided to members covered:

- the scope of any relief provided by ASIC;
- how retirement estimates should be presented; and
- how and when retirement estimates should be given to members.

There was general support for ASIC to grant relief to facilitate the provision of retirement estimates to super fund members. Some respondents provided specific feedback on how retirement estimates should be presented and provided to members.

Scope of our relief

22 In CP 122, we proposed to give class order relief from the licensing provisions of the *Corporations Act 2001* (Corporations Act) to super fund trustees who provide retirement estimates to their existing members with their periodic statements. This relief would be given on condition that:

(a) the retirement estimate sets out mandatory content, including the standard information;

(b) a member's retirement benefit is calculated taking into account all of the required variables and using the default assumptions; and

(c) retirement estimates are given at the same time as periodic statements, and are included in or accompany the statements.

23 For a super fund trustee that already holds an Australian financial services (AFS) licence with an authorisation to give personal advice, we proposed to give relief from the personal advice, conduct and disclosure requirements of Pt 7.7.

24 Submissions were generally supportive of relief being granted from the licensing and personal advice requirements in the Corporations Act. One respondent argued that the relief should not be limited to super fund trustees, but should also apply to financial advisers and others that may wish to provide retirement estimates. However, we also received feedback that it is appropriate to limit relief to super fund trustees, given that they owe specific duties to their members under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), which are not imposed on other types of AFS licensees.

25 In CP 122, we asked for feedback on whether there are any types of super funds or accounts for which retirement estimates would be less appropriate. Respondents nominated various types of funds or accounts as being less suitable for retirement estimates, including defined benefit funds, eligible rollover funds, and inactive accounts. Respondents also nominated certain types of members for whom a retirement estimate might be less useful, including those who are very near to retirement, those who are aged over 65 years of age, and those whose accounts are in de-accumulation phase.

26 However, some respondents thought that a better approach would be to allow super fund trustees the discretion to decide when it is appropriate to provide a retirement estimate.

27 Some respondents argued that ASIC should go further than simply providing relief and should mandate the provision of retirement estimates by all super fund trustees to their members.

ASIC's response

Although some respondents argued for our relief to apply broadly, we think it is appropriate to limit our relief to super fund trustees. This is because of the additional duties imposed on these trustees under the SIS Act, which are not imposed on other AFS licensees. Super fund trustees are also in the best position to have access to information about members and their accounts that will need to be included in retirement estimates as mandatory content: see RG 229.26.

While there may be some types of funds, accounts and members for which retirement estimates are less appropriate, we consider that super fund trustees are best placed to judge this. Therefore, we do not propose to exclude any types of funds, accounts, or members from our relief. We have provided guidance that a retirement estimate may be more likely to be misleading if it is prepared for a member:

- of an eligible rollover fund;
- of a defined benefit fund;
- with an account with a small balance;
- with an account in de-accumulation, rather than accumulation phase; and
- who is aged 65 years and over: see RG 229.16.

While our relief allows super fund trustees to provide retirement estimates to members, they are not required to do so.

We encourage super fund trustees to make use of the relief, where possible, to give their members the benefit of receiving retirement estimates.

How retirement estimates should be presented

28 In CP 122, we proposed that, in order to take advantage of our relief, super funds would need to include certain mandatory content in retirement estimates, but would be free to present this content as they chose, including the design and whether to use aids such as graphs and tables. Our rationale for this proposal was to allow super fund trustees flexibility to develop projections that best serve the needs of their members and to give them some freedom to innovate.

29 There were mixed views on this issue among respondents to CP 122. Some respondents agreed that this flexibility would produce the best outcome for members. Other respondents thought that a standard presentation format would help members to become familiar with the concept of retirement estimates and better understand their key elements. Some respondents thought that a standard format would also allow members to better compare retirement estimates from year to year, and, for members with multiple accounts, across different funds.

ASIC's response

We note the view of some respondents that mandating a standard format for all retirement estimates could help members to understand and compare them.

However, our objective in granting relief for retirement estimates is to help super fund trustees develop and deliver tools to engage their members with their superannuation. We think the best way to do this is by allowing some flexibility in the way they present estimates. We do not think retirement estimates should be used to compare funds.

The relief we have provided is conditional on super fund trustees including a significant amount of mandatory content, and calculating an estimated end benefit according to a prescribed methodology. We think that these requirements will ensure that retirement estimates contain enough key information and are sufficiently consistent to be readily understood by members and achieve their purpose of engaging members with their superannuation.

When and how to provide retirement estimates to members

30 In CP 122, we proposed that super funds should give members their retirement estimates at the same time as they give members their periodic statements, either within the periodic statement itself or in a separate, accompanying document.

31 Our rationale for restricting the manner and timing of giving retirement estimates was to ensure members would benefit from receiving projections on a predictable and regular basis (i.e. annually, when they receive their periodic statements). Receiving their statements and projections at the same time could enhance members' understanding of both documents, allowing them to cross-reference information in each.

32 While some respondents agreed with this approach, others asked for more flexibility, including allowing super fund trustees to give their members retirement estimates at any time, including on request. These respondents thought that this could benefit members by motivating them to engage with their superannuation at any time.

ASIC's response

We have taken into account respondents' feedback on greater flexibility in the timing and manner of giving projections.

However, at this stage, we believe that retirement estimates will provide the greatest benefit to members if given at regular and predictable intervals. Providing retirement estimates with a periodic statement will also ensure that members have ready access to further information about their accounts and provide important context to the information.

C Calculating retirement estimates

Key points

In CP 122, our proposals on how retirement estimates should be calculated covered:

- dealing with investment earnings and fees;
- estimating future contributions;
- incorporating other mandatory content; and
- taking into account the age pension and members' other funds.

A number of these issues raised strong and diverging views among respondents.

Investment earnings and fees

33 In CP 122, we proposed that as part of the standard methodology for calculating retirement estimates, super funds would need to apply a single assumed figure for both investment earnings and fees.

34 We proposed taking this approach so that retirement estimates would be consistent, simple to understand and instantly engaging for members. However, we acknowledged that this approach also has some disadvantages, in that it may result in a retirement estimate that is less personalised to a member's own circumstances.

35 Respondents to CP 122 expressed a number of strong and diverging views on this issue.

36 Around half of the submissions we received supported using a single assumed figure for investment earnings; a slightly smaller number supported a single standardised figure for fees. These respondents generally felt that this approach would avoid over-complicating projections and focus members' attention on the impact of their current contribution levels on the potential end benefit, rather than on more uncertain variables like future investment earnings.

37 Some respondents supported the concept of using standardised assumptions for these variables, but asked ASIC to set multiple standardised figures for investment earnings and fees, from which super fund trustees could make a selection in calculating retirement estimates. They felt this could provide a balance between achieving consistency among retirement estimates and providing an accurate estimate of a member's potential end benefit.

38 Another group of respondents strongly believed that retirement estimates should be calculated using actual investment earnings rates (e.g. the performance of a fund's default option over the previous five years). This group felt that using assumed figures could be confusing or even misleading for members.

39 A slightly larger group of respondents supported using super funds' actual fees to calculate retirement estimates, arguing that this would encourage awareness among members of the fees they pay and the potential impact of this on their end benefit. As for respondents preferring the use of actual investment earnings rates, these respondents were concerned that using a single assumed figure for fees could be confusing or even misleading.

ASIC's response

We recognise that there are arguments for and against using single, as opposed to multiple, rates for investment earnings and fees and costs, and this is a difficult issue to resolve.

For *investment earnings*, we note the concern of some respondents that providing members with retirement estimates based on a standardised earnings rate may potentially cause some confusion or be misleading.

However, we consider that a retirement estimate can only ever give a member an approximation of their potential end benefit. Using actual investment returns (e.g. the performance of a fund's default option over the previous five years) may risk confusing members if similar performance is not repeated in future years. We think that the primary focus of retirement estimates should be on engaging members with their superannuation and encouraging them to take practical steps to improve their retirement security, such as increasing contributions, rather than on more uncertain variables like future investment earnings.

On balance, we think that calculating a retirement estimate using a standard investment earnings rate will help to ensure that retirement estimates are consistent and simple to understand as an initial engagement tool for members. As a condition of our relief in [CO 11/1227], retirement estimates must be calculated using a uniform assumed earnings rate of 3% per year for each member, regardless of their particular investment strategy. To mitigate the risk that a retirement estimate is misleading, we have prescribed standard information that must be included with the retirement estimate to explain its purpose and how the estimates of account balance at retirement and annual income stream after retirement have been calculated.

On the other hand, we think that different arguments apply to *fees*. Fees can have an impact on a member's ultimate end benefit, so we think members need to be aware of the fees they are paying. In RG 229, we have stated that, to take advantage of our relief, super fund trustees must use a figure representing the amount of all administration fees and costs paid by the member over the previous 12 months in calculating retirement estimates.

> Similarly, retirement estimates must be calculated using members' actual annual insurance premiums. While we encourage super fund members to ensure that they are adequately insured, including through their superannuation, insurance premiums are still a factor influencing the size of their end benefit. It is important that members are aware of this.

Future contributions

40 In CP 122, we proposed that assumptions about a member's future contributions should be based on their contributions from all sources over the previous 12 months.

41 Some respondents were concerned that this approach could be sensitive to changing patterns in members' contributions—for example, a one-off lump sum contribution in the previous 12 months could distort estimates of future contributions. These respondents thought the best approach would be to ignore lump sum contributions for the purposes of calculating retirement estimates, or to only take into account employer superannuation guarantee contributions, as these are least likely to change into the future.

42 However, other respondents noted that it is common for some members to make lump sum contributions on a regular basis (e.g. self-employed members). We also received feedback that, as super fund trustees do not always have access to information allowing them to identify which member contributions come from particular sources, it would be difficult for them to determine whether to ignore certain contributions when calculating retirement estimates.

43 Some respondents also asked ASIC to facilitate the provision of retirement estimates that model the impact of different levels of member contributions on the end benefit.

> *ASIC's response*
>
> In general, we think that it may be unreasonable to expect super fund trustees to make complex assumptions about future contributions based on a detailed understanding of each member's circumstances.
>
> Under our relief, super fund trustees may include additional information with retirement estimates for the purposes of engaging members with their superannuation. However, they are not allowed to illustrate alternative scenarios (e.g. the potential effect on a member's end benefit of retiring later or making additional contributions).
>
> We consider including this information could undermine the key message of a retirement estimate, and members may require more detailed financial advice before making a decision to change their current approach to superannuation.

Other mandatory content and assumptions

44 In CP 122, we proposed that super funds should incorporate other mandatory content and assumptions into retirement estimates, including an assumed retirement age and life expectancy for each member, with standard warnings and disclosures to accompany the estimate.

45 Respondents were generally supportive of using an assumed retirement age and life expectancy for all members. Most respondents preferred a retirement age of 65 years and life expectancy of 25 years post-retirement.

46 Respondents also generally supported the concept of standard warnings and disclosures to accompany retirement estimates. However, a number had specific suggestions for improving our proposed wording.

47 In CP 122, we also proposed that retirement estimates should display the projected end benefit broken down to show the effect of and connection between contributions, earnings and fees (i.e. Lump sum = Total contributions + Total earnings − Total fees). A number of respondents thought that this approach could be misleading, as it does not take into account tax or insurance premiums. They also thought that this approach would not suit a retirement estimate calculated using assumed figures, as it might cause members to believe that actual figures had been used.

> *ASIC's response*
>
> Based on the feedback we received, our final guidance states that a retirement estimate must assume income payments will be required every year from the age of retirement until the age specified in [CO 11/1227]—that is, between the ages of 65 and 90: see RG 229.49–RG 229.51.
>
> We have also modified the wording of the standard information that must accompany retirement estimates.
>
> On displaying the estimated end benefit, we have modified our approach so that super fund trustees will not need to break this down to show the connection between contributions, earnings and fees. The end benefit must simply be presented in today's dollars as both:
>
> - a lump sum; and
> - an annual income stream.

Age pension and other funds

48 In CP 122, we proposed that retirement estimates should not consider the potential effects on a member's end benefit of:

(a) any entitlement to the age pension; or

(b) any other super fund account the member might hold.

49 The rationale for our proposed approach was that member's entitlement to the age pension, or the status of accounts they may hold with other funds, are

factors that are very difficult to take into account in a projection, because super fund trustees are unlikely to have access to all of the relevant information.

50 We received strong feedback from some members that the age pension should be considered in retirement estimates, due to the number of members who may need to rely on it as a source of income in retirement. Others emphasised the need to include statements in the retirement estimate so that it encourages members to take into account their potential eligibility for the age pension as part of their retirement planning.

51 We did not receive any significant feedback on whether retirement estimates should consider the potential effects on the member's end benefit of any other super fund account they might hold.

ASIC's response

While we acknowledge the importance of the age pension in Australia's retirement income system, we are nevertheless concerned that a member's entitlement to the age pension is extremely difficult to take into account in a retirement estimate, and super fund trustees are unlikely to have access to all of the information relevant to determine a member's eligibility.

Under our relief, the standard information that must be included with retirement estimates states that a member's final income in retirement will be affected by their eligibility to receive any age pension or other government benefit.

D Guidance on superannuation calculators

Key points

In CP 122, we proposed to give guidance to providers of superannuation calculators that are relying on our relief in Class Order [CO 05/1122] *Relief for providers of generic calculators*.

Generally, respondents welcomed further guidance on how to satisfy the conditions of the relief in [CO 05/1122], and agreed that the assumptions we set for retirement estimates are a good starting point for superannuation calculators.

However, a number of respondents also sought clarification on whether superannuation calculators may expand beyond these default assumptions, including by taking into account additional variables not covered by retirement estimates (e.g. additional accounts, or career breaks).

Relief under [CO 05/1122]

52 In CP 122, we proposed to give guidance to providers of calculators of superannuation products that are relying on the relief in Class Order [CO 05/1122] *Relief for providers of generic calculators*. Specifically, the proposed guidance covered how providers of superannuation calculators could best satisfy the condition of our relief that default assumptions applied by the calculator for the purposes of working out the estimate must be 'reasonable' (unless altered by the user).

53 The proposed guidance in CP 122 stated that:

(a) providers will best be able to satisfy this requirement by ensuring that the default assumptions used by the calculator are as close as possible to those we have set for retirement estimates; and

(b) where calculators illustrate alternative strategies, providers will need to ensure that alternative assumptions applied are reasonable.

54 Generally, respondents welcomed further guidance on how to satisfy the conditions of the relief in [CO 05/1122]. They agreed that superannuation calculators can complement retirement estimates and that the assumptions we set for retirement estimates are a good starting point for these calculators.

55 However, many respondents also asked us to clarify that this guidance would not prevent providers of superannuation calculators from diverging from the default assumptions in some cases. Respondents stated that it would be useful for members to have access to calculators more tailored to their personal circumstances that take into account additional variables not covered by retirement estimates (e.g. additional accounts or career breaks).

ASIC's response

[CO 05/1122] gives relief from the AFS licensing, advice, conduct and disclosure requirements of Pt 7.7 to providers of financial calculators that do not advertise or promote a specific financial product. Our relief also allows the user to change any of the assumptions applied in making the calculation (except for certain factors fixed by statute).

Our guidance on superannuation calculators is intended to help providers meet the requirement in our relief that the default assumptions of a calculator must be 'reasonable', unless changed by the user. However, this guidance does not change the scope of the relief, and we recognise that providers of calculators may wish to expand the scope of assumptions used in calculators beyond the assumptions we have set for retirement estimates. We encourage providers to design calculators that meet members' needs as long as any divergence from the assumptions we have set for retirement estimates is reasonable.

Where superannuation calculators are tailored to members' personal circumstances, our guidance states that assumptions are likely to be reasonable if they are based on the members' fees, contributions and expected returns (e.g. based on their investment options): see RG 229.80. Including a clear and prominent explanation to this effect satisfies the requirement in [CO 05/1122] for why the default assumptions are reasonable.

We note that, in order to rely on the relief in [CO 05/1122], providers of financial calculators must take reasonable steps to ensure that the calculator does not advertise or promote a specific financial product.

Appendix: List of respondents

- Association of Superannuation Funds of Australia
- Australasian Compliance Institute
- Australian Bankers' Association
- Australian Institute of Superannuation Trustees
- AustralianSuper
- Corporate Super Association
- Financial Planning Association of Australia
- Industry Super Network
- Institute of Actuaries
- Investment & Financial Services Association
- Law Council of Australia
- Mercer
- Plan B Trustees
- QSuper
- UniSuper
- Watson Wyatt Australia