



ASIC

Australian Securities & Investments Commission

REPORT 418

Response to submissions on CP 203 Age pension estimates in superannuation forecasts: Update to RG 229

November 2014

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 203 *Age pension estimates in superannuation forecasts: Update to RG 229* (CP 203) and details our responses 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/consultation process	4
	Responses to consultation.....	4
B	Response to submissions on CP 203.....	5
	Inclusion of the age pension in a retirement estimate	5
	Retirement age assumption.....	7
	Liability for a misleading estimate.....	8
	Definition of 'administration fees'	9
	Rounding of retirement estimates.....	10
	Wording accompanying retirement estimates	10
	Appendix: List of non-confidential respondents	11

A Overview/consultation process

- 1 We published Consultation Paper 203 *Age pension estimates in superannuation forecasts: Update to RG 229* (CP 203) on 20 March 2013. CP 203 set out our proposed refinements to Regulatory Guide 229 *Superannuation forecasts* (RG 229) and Class Order [CO 11/1227] *Relief for providers of retirement estimates*. These proposals included:
 - (a) allowing super funds to include the age pension as part of a retirement estimate;
 - (b) clarifying that super funds may rely on the prescribed assumptions about contributions and earnings in calculating a member's retirement estimate. We do not expect the super fund trustee to make specific inquiries to determine whether the member's individual circumstances match the prescribed assumptions; and
 - (c) making other minor amendments to improve the operation of the relief.
- 2 This report discusses the key issues that arose out of the submissions received on CP 203, and our responses to those issues.
- 3 This report is not meant to be a comprehensive summary of all responses received. For a list of the non-confidential respondents to CP 203, see the appendix. Copies of the non-confidential submissions are currently on our website at www.asic.gov.au/cp under CP 203.

Responses to consultation

- 4 We received 15 responses to CP 203 from industry associations, professional bodies and consulting actuarial firms. We are grateful to respondents for taking the time to send us their comments.
- 5 We also had meetings with the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST) and the Actuaries Institute (IAA).
- 6 Most submissions were generally supportive of our proposals. The main issues raised by respondents related to:
 - (a) allowing the age pension to be included in a retirement estimate;
 - (b) the retirement age assumption;
 - (c) the liability for potentially misleading estimates;
 - (d) the definition of 'administration fees';
 - (e) the use of rounding in retirement estimates; and
 - (f) the wording of the prescribed consumer warnings.

B Response to submissions on CP 203

Key points

This section outlines the key issues covered in submissions received on CP 203, and our responses to those issues.

It covers:

- our proposal to allow a super fund trustee (if they wish) to include an estimate of the age pension in a member's superannuation forecast;
- our proposal relating to a member's assumed retirement age;
- our proposal to clarify in RG 229 our original intent that we will not take action if a super fund trustee follows the prescribed assumptions and methodology set out in that guide; and
- our proposed amendments to:
 - the definition of 'administration fees';
 - the way that retirement estimates are rounded; and
 - the wording of the prescribed consumer warning.

Inclusion of the age pension in a retirement estimate

- 7 In CP 203, we proposed to amend RG 229 and issue a class order to amend [CO 11/1227] to allow a super fund trustee (if they wish) to include an estimate of the age pension in a member's superannuation forecast. We also proposed that, if the fund includes an age pension estimate, it must be based on the following prescribed assumptions:
- (a) that the member qualifies for an age pension;
 - (b) that the member owns their own home and has no other assets or income, other than a superannuation pension; and
 - (c) that the member has a partner and the partner has the same assets and income as the member.
- 8 Submissions generally supported allowing a super fund to include the age pension in a retirement estimate.
- 9 Only one respondent opposed allowing the inclusion of the age pension. They submitted that the proposed set of assumptions would add unnecessary complexity to the calculation of the retirement estimate and would be potentially misleading for the many individuals who do not conform to the majority of assumptions.

- 10 One respondent noted a preference for the inclusion of the age pension to be mandatory, because this would remove the burden for trustees of making another decision. While the respondent had no objection to the inclusion being optional, they preferred to see this become compulsory in the future.
- 11 Most submissions generally supported the proposed assumptions about a member's age pension eligibility. The assumptions are a best estimate of a member's circumstances at retirement, not at the point the member receives the forecast. Respondents generally accepted the arbitrary nature of the assumptions as long as the notes accompanying the forecast clearly indicated the broad nature of the assumptions.
- 12 Some submissions opposed the proposed assumptions:
- (a) One respondent commented that there were too many exceptions to the assumptions to ignore, and that the super fund trustee should have to make inquiries into the member's financial situation to determine the member's eligibility for the pension. They submitted that the fund should assume that the member would not be eligible for the pension, unless information to the contrary was provided by the member.
 - (b) Another respondent submitted that the proposed assumptions represented a practical way forward, given the potential variety of members' circumstances at retirement. However, there should be some flexibility to permit trustees to use readily available information to vary certain assumptions or data to produce better results that are less likely to be misleading or deceptive.
- 13 Some respondents made specific suggestions to improve the accuracy of the assumptions. These comments mainly related to the assumption about the partner's assets and income.

ASIC's response

This proposal was generally well supported. We have therefore proceeded with the reforms as proposed in CP 203.

While we acknowledge that the assumptions about eligibility for the age pension will not be accurate for every member at the point of retirement, we believe they are likely to be accurate for a majority of members.

We believe an appropriate consumer warning will be sufficient protection for members against being misled, and will alert members to the importance of checking how their individual circumstances may affect their age pension eligibility.

We believe that allowing funds to provide different estimates of eligibility for the age pension based on different assumptions would unduly increase the complexity of superannuation forecasts.

Retirement age assumption

- 14 In CP 203, we proposed that the superannuation forecast must be calculated based on assumptions that:
- (a) the member will retire at the age the member becomes eligible for the age pension (currently 65 for men and 64.5 for women, but increasing to 67 for both men and women by 2024); and
 - (b) the annual income stream amount is based on an assumed lifespan of 25 years following retirement.
- 15 Submissions generally supported moving away from an assumed retirement age of 65. Most submissions supported changing the assumed retirement age to match the age pension eligibility age.
- 16 Some respondents argued that it would be too complex for funds to apply different assumptions in their estimates for different members. Because the pension eligibility age will eventually rise to 67 for both men and women, these respondents argued that the assumed retirement age should be 67 for all members.
- 17 Some respondents argued that 25 years was too short for the assumed post-retirement lifespan, particularly since improvements in life expectancy meant that increasing numbers of people would live beyond age 92. These respondents argued that a longer period (e.g. 30 years) would be more appropriate.
- 18 Other respondents suggested that the assumed income period should be regularly updated to reflect changes in average life expectancy.
- 19 In the 2014–15 Federal Budget, the Government announced an intention to gradually increase the age pension eligibility age to 70 by 1 July 2035.

ASIC's response

We have altered our approach so that retirement estimates must be calculated based on a retirement age of 67 for all members.

While we acknowledge the proposed increase in age pension eligibility age to 70, legislation has not yet been enacted to give effect to this. We will review our approach once this legislation is in place.

We have retained the assumed post-retirement lifespan of 25 years, but we will reconsider this as part of any future review of RG 229. We acknowledge that 25 years is an arbitrary figure, but we believe it is appropriate for a large proportion of the population. According to current life expectancy figures, around one in six men and one in four women will live beyond age 92.

Liability for a misleading estimate

- 20 In CP 203, we proposed that we would clarify in RG 229 our original intent that we will not take action if a super fund trustee follows the prescribed assumptions and methodology set out in that guide. We do not consider that it is necessary for a trustee to make specific inquiries to determine whether a member's individual circumstances match the prescribed assumptions.
- 21 Submissions generally supported our proposed approach, although respondents suggested that there may still be some risk for trustees:
- (a) Some respondents acknowledged that the chance of third-party claims, where RG 229 had been followed, was low. They submitted that trustees were loath to take unnecessary risks.
 - (b) One respondent commented that there was still a risk that a forecast may be potentially misleading or deceptive in certain situations, and depending on a person's specific circumstances. However, they suggested that a very clear explanation that a forecast is not a guarantee may reduce the risk of investors not understanding that actual outcomes may differ significantly from the forecast.
 - (c) Another respondent commented that the proposed no-action position provided inadequate protection for trustees against third-party claims. They suggested that stronger legislative protection was required to give full immunity from civil action if specified minimum standards were met.
- 22 Some respondents sought further clarification from ASIC about whether a superannuation forecast was personal advice. In RG 229, we state that superannuation forecasts may involve personal advice because they take into account the personal circumstances of the member. These respondents felt that RG 229 did not provide sufficient explanation about when a retirement estimate could qualify as factual information only, and when it crossed over into personal advice.
- 23 One respondent was concerned that treating superannuation forecasts as personal advice would attract the best interests duty. However, the Government has subsequently exempted forecasts given under [CO 11/1227] from the best interests obligations in the *Corporations Act 2001*: see Corporations Amendment Regulation 2013 (No. 2).
- 24 Some respondents suggested that the possibility of a misleading estimate could be minimised if trustees were permitted to vary the prescribed assumptions in certain circumstances where the trustee was aware of information about the member that would improve the estimate. They submitted that such variation was necessary so that trustees could minimise complaints and potential actions from members and third parties.

ASIC's response

We have retained the approach proposed in CP 203.

We acknowledge that there are still some risks for super fund trustees in relation to claims by members for a misleading or deceptive forecast. However, from our consultations with industry, it appears that super funds are primarily concerned with reputational risk, rather than the legal risk of giving a misleading or deceptive forecast.

We do not believe that permitting a trustee to vary the prescribed assumptions is appropriate. Under our relief for superannuation forecasts, trustees are not required to have a personal advice authorisation. This is because the forecast is intended to take a standardised approach in order to engage the member and direct them to a calculator or adviser to explore further scenarios.

Trustees who wish to provide estimates that vary the prescribed assumptions or address a variety of situations should do so under a personal advice authorisation.

Definition of 'administration fees'

- 25 In CP 203, we proposed that we would amend the definition of 'administration fees' to clarify that:
- (a) any amount of administration fees and costs effectively paid or borne by the super fund member in the previous year (either directly or indirectly) should be included in the calculation of a retirement estimate; and
 - (b) the reference in [CO 11/1227] to 'management of the assets of the entity' only excludes costs related to the management of *investment* of the super fund's assets.
- 26 Some respondents commented that the treatment of fees was confusing as the terminology was different from that used for MySuper product fees.

ASIC's response

We have aligned the definition of 'administration fees' with s29V of the *Superannuation Industry (Supervision) Act 1993*.

Rounding of retirement estimates

- 27 In CP 203, we proposed to require that the estimated lump sum amount and annual income stream amount should be rounded to three significant figures.
- 28 Submissions generally supported this approach. One respondent commented that three significant figures implied an unrealistic level of precision, and suggested that amounts should be rounded to two significant figures.

ASIC's response

We have retained the approach proposed in CP 203.

We believe that requiring an estimate to be rounded to three significant figures appropriately balances maintaining the accuracy for quoted estimates (particularly for those super fund members who are close to retirement age and/or have small account balances) with conveying to the member the inherent uncertainty of the estimate.

Wording accompanying retirement estimates

- 29 In CP 203, we proposed to make minor refinements to the wording of the prescribed consumer warnings.
- 30 Some respondents suggested alternative and/or additional wording to improve the consumer warnings. Respondents were particularly interested in the explanation of the age pension estimate and in making consumers aware that the prescribed assumptions may not match their individual circumstances.

ASIC's response

We have amended the wording of the standard information required under [CO 11/1227] (reproduced in Appendix 1 of RG 229) to clarify and improve the prescribed consumer warnings.

Appendix: List of non-confidential respondents

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- Actuaries Institute (IAA)
 - ALEA Actuarial Consulting
 - Association of Superannuation Funds of Australia (ASFA)
 - Australian Institute of Superannuation Trustees (AIST) and Industry Super Network (ISN) (joint submission)
 - Challenger
 - Cumpston Sarjeant
 - CV Solutions
 - Financial Services Council (FSC)
 - Lander & Rogers
 - Law Council of Australia
 - Mercer
 - National Seniors Australia
 - Towers Watson
 - UniSuper
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