

Attachment to CP 318: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Departed Temporary Residents' Superannuation—Disclosure Relief) Instrument 2019/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2019

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Departed Temporary Residents' Superannuation—Disclosure Relief) Instrument 2019/XXX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

trustee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Unclaimed Money Act means the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Part 2—Exemption

5 Significant event notices and exit statements

A trustee of a regulated superannuation fund (*the fund*) that pays an amount (the *unclaimed superannuation*) to the Commissioner of Taxation under Division 3 of Part 3A of the Unclaimed Money Act does not have to comply with:

- (a) section 1017B of the Act to the extent that section requires the trustee to notify a person (*the non-resident*) in relation to the payment of the unclaimed superannuation and the non-resident ceasing to hold an interest in the fund; or
- (b) section 1017D of the Act to the extent that section requires the trustee to give the non-resident a periodic statement (*exit statement*) for the reporting period under paragraph 1017D(2)(d) of the Act because the non-resident ceased to hold an interest in the fund as a result of the payment of the unclaimed superannuation.

6 Conditions

(1) The trustee must ensure that:

- (a) any Product Disclosure Statement for an interest in the fund that is prepared after the commencement of this instrument;
- (b) any Supplementary Product Disclosure Statement prepared after the commencement of this instrument which supplements a Product Disclosure Statement for an interest in the fund that is being used as at the commencement of this instrument; and
- (c) any document containing the fund information required under Subdivision 5.6 of Division 5 of Part 7.9 of the *Corporations Regulations 2001* in relation to a fund reporting period that ends on or after 30 June 2019,

includes the following statement and information:

- (d) a statement that the trustee relies on ASIC relief to the effect that the trustee is not obliged to notify or give an exit statement to a non-resident in circumstances where the trustee pays unclaimed superannuation to the Commissioner of Taxation under Division 3 of Part 3A of the Unclaimed Money Act;

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- (e) information about:
 - (i) the obligation of the trustee to pay unclaimed superannuation of a non-resident to the Commissioner of Taxation under Division 3 of Part 3A of the Unclaimed Money Act; and
 - (ii) the right of a non-resident to make an application to the Commissioner of Taxation to claim the unclaimed superannuation under Division 4 of Part 3A of that Act.
- (2) The trustee must ensure that the statement and information specified in paragraphs 6(1)(d) and 6(1)(e) are prominently disclosed on the website for the fund.
- (3) If, after the trustee has paid unclaimed superannuation in relation to the non-resident's interest in the fund to the Commissioner of Taxation under Division 3 of Part 3A of the Unclaimed Money Act, the non-resident enquires about their interest in the fund, the trustee must provide the non-resident with:
 - (a) the information specified in paragraph 6(1)(e); and
 - (b) if requested, any other information or documents that the non-resident reasonably requires for the purpose of making an application to the Commissioner to claim the unclaimed superannuation under Division 4 of Part 3A of that Act.
- (4) The trustee must provide the information and documents mentioned in subsection 6(3) as soon as practicable, and in any event must make reasonable efforts to provide the information and documents within 1 month, after being contacted by the non-resident.