

# Attachment 1 to CP 351: Draft legislative instrument



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/XXX**

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

Date 2022

[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 (Superannuation Calculators and Retirement Estimates) Instrument 2022/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](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

***adjusted current contributions*** means, in relation to a retirement estimate for a member of a superannuation entity, the total contributions (or alternatively, total compulsory contributions) paid into the member's account with the superannuation entity during the year ending on the date of the retirement estimate, less contributions tax and insurance premiums (if insurance is held at the date of the estimate), and excluding amounts transferred into the member's account with the superannuation entity from an account with another superannuation entity.

***administration fee*** has the same meaning as in section 29V of the *Superannuation Industry (Supervision) Act 1993*.

***age pension*** means an age pension under Part 2.2 of Chapter 2 of the *Social Security Act 1991*.

***age pension amount*** has the meaning given to that term in subsection 6(3).

***annual income amount***: see the definition of ***retirement estimate***.

***assumed drawdown period*** means, in relation to a member of a superannuation entity, a period of 25 years commencing on the assumed retirement age or a retirement age inputted by the member.

***assumed retirement age*** means 67 years of age.

**assumptions** means the factors that are applied by a superannuation calculator or retirement estimate in working out the calculation or estimate.

**calculation** means the result of a numerical calculation performed by a superannuation calculator.

**current balance** means, in relation to a retirement estimate for a member of a superannuation entity, the balance of the member's account with the superannuation entity at the date of the retirement estimate.

**date**, in relation to a retirement estimate for a member of a superannuation entity, means:

- (a) if the retirement estimate is included in or with a periodic statement—the date of the last day of the reporting period covered by the periodic statement; and
- (b) otherwise—the date specified by the trustee for the purposes of the retirement estimate.

**default age pension assumptions** mean, in relation to the age pension amount for a member of a superannuation entity, the following assumptions:

- (a) the member qualifies for an age pension under section 43 of the *Social Security Act 1991*;
- (b) the member has a partner;
- (c) the member and their partner jointly own their own home;
- (d) the member and their partner each have a single superannuation fund retirement benefit equal to the estimated lump sum amount at the assumed retirement age;
- (e) the member and their partner have no other assets or income affecting the amount of the age pension payable to the member or their partner including any other superannuation accounts.

**defined benefit interest** has the same meaning as in regulation 1.03AA of the *Superannuation Industry (Supervision) Regulations 1994*.

**drawdown assumptions** means in relation to a retirement estimate for a member of a superannuation entity:

- (a) if the estimate does not include an age pension amount—the assumption that the member's estimated lump sum amount at the assumed retirement age or a retirement age inputted by the member is converted into an annual income stream in a manner that, to the extent that is reasonably possible:
  - (i) results in the present value of the annual income stream being constant for each year over the assumed drawdown period, or a drawdown period inputted by the member; and

- (ii) takes into account the statutory assumptions; and
  - (iii) results in the member's account being drawn down to zero at the end of the period; and
- (b) if the estimate includes an age pension amount—the following assumptions:
- (i) the default age pension assumptions or, if the member has changed any of the default age pension assumptions, the assumptions inputted by the member;
  - (ii) that the member's estimated lump sum amount at the assumed retirement age or a retirement age inputted by the member is converted into an annual income stream in a manner that, to the extent that is reasonably possible:
    - (A) results in the present value of the sum of the annual income stream and age pension amount for the member being maximised and constant for each year over the assumed drawdown period, or a drawdown period inputted by the member; and
    - (B) takes into account the statutory assumptions; and
    - (C) results in the member's account being drawn down to zero at or before the end of the period; and
  - (iii) if the estimate is worked out on the assumption that the member has a partner—the following assumptions or, if the member has changed any of those assumptions, the assumptions inputted by the member:
    - (A) the estimate is calculated assuming that the partner has the same estimated lump sum amount as the member which is converted to an annual income stream in the same manner as for the member; and
    - (B) the age pension amount for the member is half of the age pension amount for the member and their partner.

***estimated lump sum amount***: see the definition of ***retirement estimate***.

***interactive retirement estimate*** means, in relation to a member of a superannuation entity, a retirement estimate provided by an electronic facility or device which:

- (a) initially provides a retirement estimate based on assumptions that include the member data; and
- (b) at a later stage allows the member to provide additional information for the purposes of the retirement estimate.

**member data** means, in relation to a retirement estimate of a member of a superannuation entity, the member's age, current balance held with the fund, adjusted current contributions and total administration fees.

**member's online portal** means an electronic facility provided by the trustee in relation to a member's superannuation interest in the superannuation entity.

**periodic statement** has the same meaning as in subsection 1017D(1) of the Act.

**present value** of a calculation or estimate of an amount payable or accruing to a person at a future time is the amount worked out using the following formula:

- (a) where the amount is payable or accrues to the person before they reach the assumed retirement age or an age for retirement inputted by the person (as the case may be):

$$\frac{C}{(1+r)^n}$$

where:

**C** is the estimate of the amount payable or accruing at the future time.

**n** is the number of years and part years between the present date and the future time that the amount is payable or accrues.

**r** is 0.04;

Note 1: This number assumes an inflation rate of 4.0% (which reflects the long-term forecast of nominal wage growth in the Government's 2021 Intergenerational Report).

Note 2: Among other matters, this formula applies in respect of accumulation phase amounts for members who have not yet reached their retirement age.

- (b) where the amount is payable or accrues to the person on or after they reach the assumed retirement age or an age for retirement inputted by the person (as the case may be) and the person has not yet reached that age:

$$\frac{C}{(1+r)^a (1+s)^b}$$

where:

**C** is the estimate of the amount payable or accruing at the future time.

**a** is the number of years and part years between the present date and the date of retirement.

**b** is the number of years and part years between the date of retirement and the future time that the amount is payable or accrues (zero if the amount is payable or accrues on the date of retirement).

**r** is 0.04.

Note: This number assumes an inflation rate of 4.0% (which reflects the long-term forecast of nominal wage growth in the Government's 2021 Intergenerational Report).

**s** is 0.025;

Note 1: This number assumes an inflation rate of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for consumer price inflation).

Note 2: Among other matters, this formula applies in respect of retirement phase amounts for members who have not yet reached their retirement age.

- (c) where the amount is payable or accrues to the person on or after they reach the assumed retirement age or a retirement age inputted by the person (as the case may be) and the person has reached that age:

$$\frac{C}{(1+s)^b}$$

where:

**C** is the estimate of the amount payable or accruing at the future time.

**b** is the number of years and part years between the present date and the future time that the amount is payable or accrues.

**s** is 0.025.

Note 1: This number assumes an inflation rate of 2.5% (being the mid-point of the Reserve Bank of Australia's target range for consumer price inflation).

Note 2: Among other matters, this formula applies in respect of members who are already in the retirement phase.

**retirement estimate** means, in relation to a member of a superannuation entity, an estimate by the trustee of the following amounts, worked out using any relevant statutory assumptions and the member data:

- (a) an amount (the **estimated lump sum amount**) representing the present value of the estimated balance of the member's account with the superannuation entity when the member is at the assumed retirement age or a retirement age inputted by the member, specified as an amount in dollars rounded to the nearest three significant figures;

- (b) an amount (the **annual income amount**) representing the present value of the estimated amount the member will get every year if the drawdown assumptions are applied in relation to the estimated lump sum amount, specified as an amount in dollars rounded to the nearest three significant figures.

Note: In certain circumstances, a retirement estimate may include an age pension amount: subsection 6(3).

**retirement phase** has the same meaning as in section 995-1 of the *Income Tax Assessment Act 1997*.

**statutory assumption** means an assumption that reflects a rate or amount fixed by legislation.

Note: Statutory assumptions include a rate of taxation, the minimum drawdown rules for payments of superannuation pensions and the rate of compulsory superannuation contributions.

**superannuation calculator** means a facility, device, table or other thing that works out a numerical calculation or finds out the result of a numerical calculation relating to a superannuation product, but does not use information a trustee knows about a member of a superannuation entity unless the information has been inputted by the member.

Note 1: The facility, device, table or other thing will not be a superannuation calculator to the extent that its output goes beyond the numerical result of a calculation and a description of what that result is. For example, an electronic facility will not be a superannuation calculator to the extent that it makes a recommendation about a particular financial product.

Note 2: A superannuation calculator may relate to something else (whether or not a financial product) in addition to relating to a superannuation product (e.g. a superannuation calculator may also relate to the age pension).

**superannuation entity** has the same meaning as in section 761A of the Act.

**superannuation product** has the same meaning as in section 761A of the Act.

**total administration fees** means, in relation to a retirement estimate for a member of a superannuation entity, the total of the administration fees paid in relation to the member's account with the superannuation entity during the year ending on the date of the retirement estimate.

**trustee** means the trustee of a superannuation entity.

**user** means:

- (a) in relation to a superannuation calculator—a person who uses the calculator; and
- (b) in relation to a retirement estimate for a member of a superannuation entity—the member.



## Part 2—Exemptions

### 5 Exemption for providers of superannuation calculators

#### *Exemption*

- (1) A person who provides financial product advice through, or through making available, a superannuation calculator does not have to comply with:
  - (a) the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of that advice; and
  - (b) where the person is a financial services licensee—Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to that advice.

#### *Exclusion*

- (2) The exemption in subsection (1) does not apply to a person if 10 business days have elapsed since the person became or should reasonably have become aware of matters that give the person reason to believe that the person has failed, other than in an immaterial respect, to comply with a condition of this instrument without full particulars of the failure having been notified to ASIC (to the extent that the person knows those particulars or would have known them if they had undertaken reasonable enquiries).

### 6 Exemption for providers of retirement estimates

#### *Exemption*

- (1) A trustee of a superannuation entity who provides financial product advice in a retirement estimate to a member of the superannuation entity does not have to comply with:
  - (a) the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of that advice; and
  - (b) where the trustee is a financial services licensee—Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to that advice.

#### *Where exemption applies*

- (2) Subject to subsection (5), the exemption in subsection (1) applies to a trustee in relation to a member of the superannuation entity if:
  - (a) the member has been a member of the superannuation entity for the year ending on the date of the estimate; and

- (b) the member is less than 67 years of age at the date of the estimate; and
- (c) the superannuation product held by the member is not in the retirement phase at the date of the estimate; and
- (d) a contribution has been made into the member's account with the superannuation entity in the year ending on the date of the estimate; and
- (e) the member has an account balance with the superannuation entity equal to or greater than \$6000 at the date of the estimate; and
- (f) the member does not hold a superannuation product that is a defined benefit interest in the superannuation entity.

*Where retirement estimate may include an age pension amount*

- (3) A retirement estimate may include an amount (***age pension amount***) representing the amount (if any) that would be payable to the member as an age pension on an annual basis, if the retirement estimate is an interactive retirement estimate.

*Exclusion*

- (4) The exemption in subsection (1) does not apply to a trustee if 10 business days have elapsed since the trustee became or should reasonably have become aware of matters that give the trustee reason to believe that the trustee has failed, other than in an immaterial respect, to comply with a condition of this instrument without full particulars of the failure having been notified to ASIC (to the extent that the trustee knows those particulars or would have known them if they had undertaken reasonable enquiries).

## 7 Conditions

- (1) A person who relies on an exemption in subsection 5(1) or 6(1) in relation to a superannuation calculator or retirement estimate must take reasonable steps to ensure the following:
  - (a) in the case of a superannuation calculator—the superannuation calculator must use the following assumptions:
    - (i) if the calculator uses a retirement age for the user—the assumed retirement age or a retirement age inputted by the user;
    - (ii) if the calculator uses a period over which a superannuation account of the user is drawn down—a period of 25 years or a drawdown period inputted by the user;

- (b) in the case of a superannuation calculator—the superannuation calculator does not advertise or promote a specific financial product;
  - (c) in the case of a retirement estimate—the retirement estimate does not advertise or promote a specific financial product other than to the extent necessary to provide the retirement estimate;
  - (d) if the superannuation calculator is an electronic facility or device, or the retirement estimate is an interactive retirement estimate, the facility or device, or interactive retirement estimate:
    - (i) enables the user to input or change any and all of the assumptions that are applied in working out the calculation or estimate relating to a financial product other than:
      - (A) in the case of an interactive retirement estimate—statutory assumptions and drawdown assumptions; and
      - (B) in the case of a superannuation calculator—statutory assumptions and assumptions about the manner in which the balance of the user’s superannuation account is drawn down (other than assumptions about the retirement age of the user or the length of the drawdown period); and
- Note 1: If the calculator applies any assumptions about the retirement age of the user or the length of the drawdown period, the calculator must enable the user to input or change those assumptions.
- Note 2: The calculator or interactive retirement estimate may allow the user to change the assumptions referred to in sub-subparagraphs (A) and (B) but is not required to.
- (ii) works out or enables the user to work out a calculation or estimate on the basis of the changed assumptions;
  - (e) the assumptions applied by the superannuation calculator or retirement estimate, unless inputted or changed by the user, are reasonable for the purposes of working out the calculation or estimate;
  - (f) the superannuation calculator or retirement estimate displays to the user in the ordinary course of its use or has printed on it all of the following:
    - (i) a clear and prominent statement about the purpose and limitations of the calculator or estimate;
    - (ii) a clear and prominent explanation of the impact of any significant limitation of the calculator or estimate;
    - (iii) a clear and prominent statement of the assumptions;

- (iv) where the calculation or estimate is of an amount payable or accruing at a future time of 2 or more years, a clear and prominent statement setting out the present value of the calculation or estimate and identifying that the amount is the present value of the calculation or estimate;
  - (v) a clear and prominent statement to the effect that the superannuation calculator or retirement estimate is not intended to be relied on for the purposes of making a decision in relation to a financial product and that users should consider obtaining advice from a financial services licensee before making any financial decisions;
  - (g) the superannuation calculator or retirement estimate displays to the user (including because of a step taken by the user) or has printed on it an explanation of why the assumptions (unless inputted or changed by the user) are reasonable for the purpose of working out the calculation or estimate;
  - (h) if the superannuation calculator is an electronic facility or device or the retirement estimate is an interactive retirement estimate—the calculator or estimate does not prevent the user from readily printing or electronically storing the calculation or estimate;
  - (i) the person keeps a functioning copy of the superannuation calculator or facility, device, table or other thing that is used to calculate the retirement estimate for 7 years from when the superannuation calculator or retirement estimate is first made available;
  - (j) in the case of a retirement estimate—the retirement estimate must:
    - (i) either:
      - (A) be included in or with a periodic statement given to the user; or
      - (B) be included on the member’s online portal; and
    - (ii) not specify other amounts or figures representing or purporting to represent the member’s expected retirement benefit (however described).
- (2) A statement or explanation required under paragraph (1)(f) or (g) must contain as much detail as a retail client using the superannuation calculator or retirement estimate would reasonably expect to find having regard to the nature of the calculator or estimate.

## **Part 3—Application**

### **8 Cessation**

This instrument is repealed on [insert date].