



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2020/853

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2020/853*.

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

Summary

1. The instrument makes a minor amendment to ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070 (the **principal instrument**) in relation to the fees and costs disclosure requirements for superannuation products. The principal instrument wholly substitutes Schedule 10 to the Corporations Regulations 2001 (Schedule 10). References to clauses are to clauses of Schedule 10 unless otherwise stated.

Purpose of the instrument

2. In November 2019, ASIC made the principal instrument to give effect to proposals to enhance comparability and transparency about fees and costs of superannuation products and collective investment products. ASIC considered that those changes would improve and promote better decision-making by consumers and their financial advisers and improve their ability to exert demand-side competitive pressure in the superannuation and collective investment product markets.
3. The modifications made by the principal instrument were accompanied by the release of a restructured and updated version of ASIC Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements (RG 97).
4. ASIC made minor amendments to the principal instrument in July 2020. A further amendment is necessary to give effect to ASIC's intended policy positions. That amendment is made through this instrument.

Consultation

5. ASIC had conducted formal consultation in relation to policies to be reflected in the principal instrument by seeking submissions in relation to its proposals in CP 308, which was open from 8 January 2019 to 2 April 2019. ASIC also

conducted further informal consultation with industry on aspects of some proposals following the CP 308 consultation period.

6. Since the release in November 2019 of the revised RG 97 and the principal instrument ASIC has conducted further meetings and informal consultation with industry stakeholders and responded to questions raised by industry which have informed our decision on where amendments are required.

Operation of the instrument

7. The instrument amends one aspect of the fees and costs disclosure regime that will apply as a result of the principal instrument. This instrument commences on the day after it is registered on the Federal Register of Legislation.
8. The instrument inserts subclause 218(2A). This is to allow for the words “, plus \$[] regardless of your balance” to be included in the administration fees and costs line item of the Example of annual fees and costs after the words “For every \$50,000 you have in the superannuation product, you will be charged or have deducted from your investment \$[] in administration fees and costs”. Whether it applies depends on the fee charging structure of the issuer.
9. Including these words increases the accuracy of the example for particular fee structures used by issuers of superannuation products. This is because where the total amount of administration fees and costs includes an amount that applies regardless of balance, that amount must be disclosed separately.

Incorporation by reference

10. The instrument does not incorporate any matters by reference.

Retrospective application

11. The instrument does not apply retrospectively.

Legislative instrument and primary legislation

12. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) The requirements that govern the disclosure of fees and costs in PDSs and periodic statements for superannuation products and collective investment products are not found in primary legislation such as Part 7.9 of the Act. The existing requirements are not found in the primary legislation because the imposition of complex, detailed requirements is not suitable for primary legislation.
 - (b) The imposition of complex, detailed requirements is more suitable to legislative instruments. The existing unmodified requirements are found in Division 4C of Part 7.9 of the Corporations Regulations, including in Schedules made for the purposes of the regulations. The regulations are

legislative instruments. The ASIC instruments, which affect the operation of the regulations and the Schedules, are also legislative instruments.

Legislative authority

13. Under subsection 1020F(1) of the Act, ASIC may declare that Part 7.9 of the Act applies in relation to a class of financial products as if specified provisions were omitted, modified or varied as specified in the declaration. The provisions of Part 7.9 of the Act include regulations (and Schedules to regulations) made for the purposes of that Part: see subsection 1020F(7). There are no pre-conditions to the exercise of the power.
14. The instrument is made under subsection 1020F(1), having regard to subsection 33(3) of the Acts Interpretation Act 1901 (as in force on 1 January 2005). Where an Act confers a power to make an instrument the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend or repeal the instrument.
15. The classes of financial products to which the instrument relates are superannuation products and collective investment products.
16. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

17. 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*.

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Overview

1. The instrument has the effect of clarifying the intended operation of an aspect of the fees and costs disclosure regime for Product Disclosure Statements that will apply to superannuation products under the ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. 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*.