

EXPLANATORY STATEMENT for

ASIC Credit (Charities) Instrument 2017-64

Prepared by the Australian Securities and Investments Commission

National Consumer Credit Protection Act 2009

The Australian Securities and Investments Commission (ASIC) makes *ASIC Credit (Charities) Instrument 2017-64* under paragraph 109(3)(d) of the *National Consumer Credit Protection Act 2009* (the Act). Paragraph 109(3)(d) of the Act provides that ASIC may declare that provisions to which Part 2-6 of the Act applies apply in relation to a class of persons as if specified provisions were omitted, modified or varied as specified in the amendment.

1. Background

Subregulation 20(12) of the *National Consumer Credit Protection Regulations 2010* (the Regulations) provides a licensing exemption for specified credit activities where credit contracts or consumer leases are offered as part of a program designed for certain low income consumers. As drafted, the types of credit service that can be provided under the exemption vary depending on whether the person engaging in the activity “is a charitable body (within the same meaning as in *ASIC Class Order* [CO 02/184])”.

[CO 02/184] was an ASIC instrument that provided conditional relief to charitable bodies from aspects of the financial services regulatory regime in the *Corporations Act 2001*. [CO 02/184] was set to expire on 1 October 2016. Following public consultation, ASIC repealed [CO 02/184] and replaced it with *ASIC Corporations (Charitable Investment Fundraising) 2016/813* (Instrument 2016/813).

Instrument 2016/813 does not use the term ‘charitable bodies’. Instead, the relief provided in that instrument applies to a charity, or a trustee of a charity, that raises funds to support the charitable purposes of the charity through the issue of debentures or interests in a managed investment scheme. The terms ‘charity’ and ‘charitable purpose’ are defined in the *Charities Act 2013*.

2. Purpose of the instrument

The purpose of the *ASIC Credit (Charities) Instrument 2017-64* is to modify the Regulations to remove references to terminology that was used in [CO 02/184]. The instrument replaces those references with terminology used in the *Charities Act 2013*, which is also used in Instrument 2016/813 (which replaced [CO 02/184]). This clarifies that the exemption in the Regulations continues to operate as intended and remains sufficiently clear for charities and consumers.

3. Operation of the instrument

Section 5 of the *ASIC Credit (Charities) Instrument 2017-64* omits the words ‘a charitable body (within the same meaning as in *ASIC Class Order* [CO 02/184])’ and substitutes ‘a charity (within the meaning of the *Charities Act 2013*) or a trustee of a charity’.

4. Consultation

There has been no consultation because the instrument is minor and machinery in nature.

The Office of Best Practice Regulation advised that a RIS is not required in order to make the legislative instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Credit (Charities) Instrument 2017-64

ASIC Credit (Charities) Instrument 2017-64 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.

Overview

The *National Consumer Credit Protection Regulations 2010* contain references to terminology used in the former ASIC Class Order [CO 02/184]. ASIC Class Order [CO 02/184] has recently been repealed and replaced by *ASIC Corporations (Charitable Investment Fundraising) 2016/813*.

ASIC Credit (Charities) Instrument 2017-64 modifies the *National Consumer Credit Protection Regulations 2010* to reflect to the terminology used in *ASIC Corporations (Charitable Investment Fundraising) 2016/813*.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.