



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2019/216

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2019/216.

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

Summary

1. ASIC Corporations (Amendment) Instrument 2019/216 (*Legislative Instrument*) amends ASIC Corporations (Repeal and Transitional) Instrument 2017/186 (*Instrument 2017/186*) to extend its effect until 1 April 2022. Instrument 2017/186 preserves the effect of ASIC Class Order [CO 02/273] *Business matching and introduction services (ASIC Class [CO 02/273])* until 23 March 2019.
2. ASIC Class Order [CO 02/273] provides conditional relief from certain requirements in the *Corporations Act 2001* (the *Act*) for persons involved in a business introduction service. Separate relief is provided for each of the following categories:
 - (a) operators of business introduction services;
 - (b) those who propose to issue or sell securities or interests in a registered managed investment scheme through the use of introduction services;
 - (c) persons who endorse or verify information which appears in introduction services; and
 - (d) those who sponsor or publish introduction services.
3. The Legislative Instrument extends until 1 April 2022 the effect of Instrument 2017/186 which preserves the effect of ASIC Class Order [CO 02/273] to provide relief from the requirements that otherwise apply to a person involved in a business introduction service in relation to:
 - (a) the offer or issue of debentures;
 - (b) fundraising;

-
- (c) the issue, sale and purchase of financial products; and
 - (d) the prohibition on advertising and hawking.
4. Since March 2017 when Instrument 2017/186 came into effect ASIC's review of the policy settings of the relief in ASIC Class Order [CO 02/273] as preserved by Instrument 2017/186 has been limited due to the infancy of the crowd-sourced funding regime (*CSF regime*). The CSF regime came into effect in September 2017 for public companies and in October 2018 for eligible proprietary companies.

Purpose of the instrument

5. The purpose of the Legislative Instrument is to extend the relief in ASIC Class Order [CO 02/273] as preserved by Instrument 2017/186 until 1 April 2022. This three-year period will:
 - Allow further time to evaluate how and to what extent the CSF regime interacts with the relief in ASIC Class Order [CO 02/273] as preserved by Instrument 2017/186.
 - Enable ASIC to undertake a full review of the policy settings of the relief in ASIC Class Order [CO 02/273] to determine whether the current scope of this relief preserved by Instrument 2017/186 is appropriate in light of the CSF regime and whether there is an ongoing need for ASIC to provide this relief.
 - Enable ASIC to publicly consult on whether the policy settings of the relief in ASIC Class Order [CO 02/273] as preserved by Instrument 2017/186 remain appropriate or not.

Consultation

6. ASIC engaged in limited consultation before making this Legislative Instrument as ASIC is of the view that the relief in ASIC Class Order [CO 02/273] as preserved by Instrument 2017/186 has generally been effective at removing unnecessary regulatory burden and costs, providing certainty for business and assisting SMEs to raise funds, in particular, from wholesale investors.
7. The Office of Best Practice Regulation has agreed with ASIC's assessment that Instrument 2017/186 is operating effectively and efficiently, and it will continue have effect until 1 April 2022 without significant changes and therefore no Regulatory Impact Statement is required.

Operation of the instrument

8. The Legislative Instrument operates to amend Instrument 2017/186 to extend its effect until 1 April 2022.
9. The Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.

Legislative authority

10. ASIC makes this Legislative Instrument under paragraphs 283GA(1)(a), 741(1)(a), 992B(1)(a) and 1020F(1)(a) of the Act. There are no pre-conditions to the exercise of the power.
11. The Legislative Instrument is a disallowable legislative instrument.

Statement of compatibility with human rights

12. 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*.
13. This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.

Assessment of human rights implications

14. This Legislative Instrument does not engage any of the applicable rights or freedoms.
15. This Legislative Instrument amends Instrument 2017/186 to extend its effect until 1 April 2022. Instrument 2017/186 preserves the effect ASIC Class [CO 02/273] which gives conditional relief from the fundraising, financial product disclosure, hawking and advertising requirements in the Act that would otherwise apply to a person making or calling attention to offers of securities or interests in a registered managed investment scheme through a business introduction service.