



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC (Amendment) Instrument 2019/606*

This is the Explanatory Statement for *ASIC (Amendment) Instrument 2019/606*.

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

### Summary

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* (the **principal instrument**) by adding a new category of ‘senior staff member’ for the purposes of certain delegation provisions in the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) relating to the employment of ASIC staff under section 120 of the ASIC Act.

### Purpose of the instrument

2. The purpose of the instrument is to facilitate the delegation of employment powers to Senior Managers within ASIC’s People and Development Team.
3. ASIC staff will cease to be employed under the *Public Service Act 1999* (the **PS Act**) from 1 July 2019, as a result of amendments made by the *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018* (the **Transition Act**). Transitional provisions will operate to transition existing ASIC employees from the PS Act.
4. From 1 July 2019, ASIC’s Chairperson, on behalf of ASIC, will be given the power under section 120 of the ASIC Act to employ staff as the Chairperson considers necessary for the performance or exercise of any of ASIC’s functions or powers. The terms and conditions of employment (including as to remuneration) are to be determined by the Chairperson.
5. The power that will be conferred on ASIC’s Chairperson by section 120 of the ASIC Act can only be delegated to another ASIC member or to a ‘senior staff member’: see section 119A of the ASIC Act. The Transition Act introduces a new section 122A of the ASIC Act enabling ASIC’s Chairperson to make a determination identifying which ASIC staff members are ‘senior staff members’.

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## **Consultation**

6. Section 17 of the *Legislation Act 2003* provides that, before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate, and reasonably practicable to undertake.
7. In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the proposed instrument.
8. No consultation was undertaken prior to the making of this amending legislative instrument. The reason why no consultation was undertaken is because consultation would be inappropriate given the machinery nature of this legislative instrument. This legislative instrument deals with the identification of certain staff members in ASIC who are considered appropriate to be delegated employment powers that have been conferred on ASIC's Chairperson.

## **Operation of the instrument**

9. The amending legislative instrument determines that Senior Managers within ASIC's People and Development Team are 'senior staff members' for purposes relating to the employment of ASIC staff under section 120 of the ASIC Act.
10. The determination is considered appropriate because it lessens the administrative burden imposed on the smaller pool of Executive Directors and Senior Executive Leaders (who are also 'senior staff members') to sign, vary and terminate employment contracts.
11. There will continue to be centralised oversight of the management of employment contracts. This will ensure that employment contracts remain consistent and are not varied. It also ensures that any clauses which are intended to protect ASIC's risks arising out of the employment relationship remain. It also means that ASIC's human resource function "People and Development", can continue to manage matters involving contract termination. This will ensure that there is no apprehended bias in any investigation into misconduct resulting in termination of employment or disciplinary action.

## **Commencement**

12. This amending instrument commences on the later of the time immediately after the commencement of the principal instrument and the day after this amending instrument is registered on the Federal Register of Legislation. The commencement date is expected to be 1 July 2019.

## **Incorporation by reference**

13. This legislative instrument does not incorporate any documents by reference.

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### Retrospective application

14. This legislative instrument does not have retrospective application.

### **Legislative authority**

15. This legislative instrument is made under section 122A of the ASIC Act. Section 122A of the ASIC Act commences on 1 July 2019. This instrument has been made before its enabling provision has commenced, relying on subsection 4(1) of the *Acts Interpretation Act 1901* (the *AIA*).<sup>1</sup>
16. This legislative instrument is also an amending instrument. Subsection 33(3) of the *AIA* states that 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 any such instrument.

### **Statement of compatibility with human rights**

17. A Statement of Compatibility with Human Rights is in the Attachment.

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<sup>1</sup> The *Acts Interpretation Act 1901* as in force on 1 January 2005 applies to the ASIC Act: see section 5A of the ASIC Act.

## **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*.

### ***ASIC (Amendment) Instrument 2019/606***

#### Overview

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* by adding a new category of ‘senior staff member’ for the limited purposes of certain delegation provisions in the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) relating to the employment of ASIC staff under section 120 of the ASIC Act.

#### Assessment of human rights implications

2. The addition of the new category of ‘senior staff members’ merely facilitates the delegation by ASIC’s Chairperson of employment powers to Senior Managers within ASIC’s People and Development Team. Accordingly, 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*.