



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations and Credit (Internal Dispute Resolution—Transitional) Instrument 2019/965

ASIC Corporations and Credit (Repeal) Instrument 2019/966

This is the Explanatory Statement for the:

- (a) *ASIC Corporations and Credit (Internal Dispute Resolution—Transitional) Instrument 2019/965* (the **principal instrument**); and
- (b) *ASIC Corporations and Credit (Repeal) Instrument 2019/966* (the **repeal instrument**).

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

Summary

1. ASIC Class Orders [CO 09/339], [CO 10/250] and [CO 10/517] implement ASIC's existing policy in relation to internal dispute resolution for:
 - (a) financial services licensees and unlicensed secondary sellers and unlicensed product issuers for the purposes of the *Corporations Act 2001*;
 - (b) trustees of regulated superannuation funds and of approved deposit funds for the purposes of the *Superannuation (Industry) Supervision Act 1993*;
 - (c) retirement savings account (RSA) providers for the purposes of the *Retirement Savings Accounts Act 1997*; and
 - (d) credit licensees and unlicensed carried over instrument lenders for the purposes of the *National Consumer Credit Protection Act 2009*.
2. The repeal instrument repeals the class orders. The principal instrument grandfathers the existing policy through a single instrument—the principal instrument—for a short transitional period. The principal instrument applies until 30 June 2020 and is a transitional measure pending the expected finalisation of ASIC's new policy on internal dispute resolution.

Purpose of the instrument

3. The financial sector legislation imposes internal dispute resolution requirements on the following kinds of regulated entities:
 - (a) financial services licensees and unlicensed secondary sellers and unlicensed product issuers;
 - (b) trustees of regulated superannuation funds and of approved deposit funds, and retirement savings account (RSA) providers; and
 - (c) credit licensees and unlicensed carried over instrument lenders.
4. Subparagraphs 912A(2)(a)(i) and 1017G(2)(a)(i) of the *Corporations Act 2001* require financial services licensees, and persons to whom section 1017G of that Act applies (generally, unlicensed secondary sellers and product issuers) to have an internal dispute resolution procedure that complies with the standards and requirements made or approved by ASIC and covers complaints made by retail clients in relation to the financial services provided.
5. Paragraph 47(1)(h) of the *National Consumer Credit Protection Act 2009* requires credit licensees to have an internal dispute resolution procedure that complies with the standards and requirements made or approved by ASIC and covers disputes in relation to the credit activities engaged in by the licensee or its representatives. A similar obligation is imposed on unlicensed carried over instrument lenders under notional paragraph 47(1)(e) of that Act.
6. Trustees of regulated superannuation funds (other than self-managed superannuation funds), trustees of approved deposit funds and retirement savings account (RSA) providers are subject to the same internal dispute resolution obligations as financial services licensees: see paragraph 101(1)(b) of the *Superannuation (Industry) Supervision Act 1993* and paragraph 47(1)(b) of the *Retirement Savings Act 1997*.
7. The purpose of the principal instrument is to continue, until 30 June 2020, ASIC's existing policy in relation to approved standards and requirements for an internal dispute resolution procedure, pending the finalisation of ASIC's proposed new policy on internal dispute resolution.

Consultation

8. ASIC did not engage in consultation before making these instruments. This is because the principal instrument preserves ASIC's existing policy, as reflected in Class Orders [CO 09/339], [CO 10/250] and [CO 10/517], until 30 June 2020 pending finalisation of ASIC's new policy on internal dispute resolution.
9. ASIC's consultation on its proposed new internal dispute resolution policy is being done in stages, some of which has already occurred, and other aspects to be further consulted on in the first half of 2020.

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10. ASIC commenced a three-month public consultation about the proposed new policy on 15 May 2019 with the release of *Consultation Paper 311—Internal dispute resolution: Update to RG 165*. Consultation closed on 9 August 2019. ASIC received 68 written submissions from a range of stakeholders including consumer advocate groups, industry associations, financial firms and individuals. Throughout September 2019, ASIC conducted a series of stakeholder meetings to discuss issues raised in submissions.
 11. ASIC intends to engage in further consultation in the first half of 2020 in relation to collection and reporting of internal dispute resolution data.

Operation of the instrument

12. The versions of standards that apply to complaints-handling are respectively:
 - (a) Australian / New Zealand Standard AS/NZS 10002:2014 “Guidelines for complaint management in organizations” published jointly by, or on behalf of, Standards Australia and Standards New Zealand as in force or existing on 29 October 2014 (the **2014 Standard**); and
 - (b) Australian Standard AS ISO 10002-2006 “Customer satisfaction—Guidelines for complaints handling in organizations” as in force as at 5 April 2006 (the **2006 Standard**).
13. In the principal instrument, ASIC approves the following standards and requirements in relation to an internal dispute resolution procedure:
 - (a) the procedure covers a “complaint” as defined in the 2006 Standard;
 - (b) the “Guiding Principles” in section 4 of the 2006 Standard;
 - (c) the following sections of the 2006 Standard:
 - (i) section 5.1 – Commitment;
 - (ii) section 6.4 – Resources;
 - (iii) section 8.1 – Collection of information;
 - (iv) section 8.2 – Analysis and evaluation of complaints;
 - (d) the procedure must include adequate measures for informing complainants about the availability and accessibility of the AFCA scheme.
14. ASIC must take into account the 2014 Standard: see subregulations 7.6.02(1) and 7.9.77(1) of the *Corporations Regulations 2001* and subregulations 10(1) and 48(1) of the *National Consumer Credit Protection Regulations 2010*. While ASIC is obliged to take into account the current 2014 Standard, it is not obliged to approve any of the contents of that standard.
15. ASIC must also take into account any other matters ASIC considers relevant. The existing policy as reflected in ASIC Class Orders [CO 09/339],

[CO 10/250] and [CO 10/517] approves part of the contents of the 2006 Standard. As these class orders will be repealed, it is necessary to grandfather their effect, through the principal instrument. ASIC considers the 2006 Standard to be a relevant consideration and has approved part of the contents of that standard because the purpose of the principal instrument is to maintain the status quo for a transitional period.

16. ASIC expects that the proposed new policy, once finalised, will approve the contents of the 2014 Standard rather than the 2006 Standard.
17. Both the principal and the repeal instrument commence on the day after the respective instrument is registered on the Federal Register of Legislation.

Incorporation by reference

18. In making the principal instrument, ASIC has incorporated part of the contents of the 2006 Standard by reference. This incorporation by reference is in accordance with section 14 of the *Legislation Act 2003* as it applies, adopts incorporates matter in the 2006 Standard) as in force on 5 April 2006.
19. The 2006 Standard is published by SAI Global and is available for purchase on their website. It is also available through public libraries across Australia.

Legislative authority

20. The principal instrument is made under:
 - (a) subsection 11(4) of the *Australian Securities and Investments Commission Act 2001* for the purposes of subparagraphs 912A(2)(a)(i) and 1017G(2)(a)(i) of the *Corporations Act 2001*; and
 - (b) subsection 12A(6) of the *Australian Securities and Investments Commission Act 2001* for the purposes of:
 - (i) subparagraph 47(1)(h)(i) of the *National Consumer Credit Protection Act 2009*;
 - (ii) subparagraph 47(1)(e)(i) of the *National Consumer Credit Protection Act 2009* as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*.
21. The repeal instrument is made under the same sources of power as those sources of power used to make the principal instrument. Under subsection 33(3) of the *Acts Interpretation Act 1901*, the power to make an instrument includes the power to repeal it.
22. Both instruments are disallowable legislative instruments.

Statement of Compatibility with Human Rights

23. 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*.

ASIC Corporations and Credit (Internal Dispute Resolution—Transitional) Instrument 2019/965 (the **principal instrument**)

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Overview

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Assessment of human rights implications

3. The instruments do not engage any of the applicable rights or freedoms.

Conclusion

4. The instruments are 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*.