



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Credit (Amendment) Instrument 2020/148

This is the Explanatory Statement for the *ASIC Credit (Amendment) Instrument 2020/148 (legislative instrument)*.

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

Summary

1. The legislative instrument extends the relief provided by ASIC Class Order [CO 14/41] (*CO 14/41*) for simple arrangements to 1 March 2022.
2. Simple arrangements are any agreement that defers or reduces the obligations of a debtor or lessee for a period of no more than 90 days. Where a simple arrangement is agreed, CO 14/41 exempts credit providers and lessors from the requirements in the *National Credit Code* (the *Code*) to record any contractual changes and provide written notice to debtors and lessors.

Purpose of the instrument

3. ASIC makes the legislative instrument to extend the relief given by CO 14/41 for a further two-year period to 1 March 2022.
4. Relief to the same effect was originally provided by regulations 69A and 69B of the *National Consumer Credit Protection Regulations 2010* (the *Regulations*) until 1 March 2014. Relief has been extended through the operation of CO 14/41; most recently by the *ASIC Credit (Amendment) Instrument 2018/114* (the *2018 Amendment Instrument*) made on 28 February 2018.
5. The 2018 Amendment Instrument was made on the basis that it would allow ASIC time to consult with industry and affected stakeholders about simple arrangements and the interaction between the hardship process and credit reporting requirements more broadly.
6. The Government has since introduced legislation to implement a mandatory comprehensive credit reporting regime. Specifically, on 25 June 2018, the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 (the *Bill*) passed the House of Representatives; however, the Bill did not pass prior to the dissolution of Parliament due to the election. The Bill was then revised and updated to include changes to the

reporting of hardship arrangements (based on a review conducted by the Attorney-General's Department). The *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019* (the **Revised Bill**) introduces a new category of information within credit reporting, enabling hardship information to be reported alongside repayment history information. The Revised Bill was introduced into Parliament on 5 December 2019.

7. Subject to the passage of the legislation, financial hardship information will need to be reported and credit providers will likely need to make changes to current practices. ASIC considers that it is desirable that these matters should be settled before ASIC consults on CO 14/41.

Consultation

8. Treasury conducted extensive consultation with stakeholders (including ASIC, individual credit providers and industry bodies) as part of the development and implementation of the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* which amended the *National Consumer Credit Protection Act 2009* (the **Credit Act**), including the Code, to introduce a number of reforms to the regulation of hardship variations. The concerns addressed by regulations 69A and 69B of the Regulations were identified by industry stakeholders during this consultation process.
9. In 2014 and 2015, ASIC consulted with stakeholders (including industry bodies, individual credit providers and consumer advocates) in relation to the transitional exemptions in regulations 69A and 69B.
10. During 2016 to 2019, ASIC has continued to consult with industry and affected stakeholders about the hardship process and its interaction with credit reporting requirements.
11. In 2020, ASIC consulted with Treasury, industry bodies and consumer representative groups on whether the relief provided by CO 14/41 should be extended for a further two-year period. On the basis of this consultation, ASIC considers the extension to be appropriate.

Operation of the instrument

12. This legislative instrument amends CO 14/41 to extend the relief given by that instrument for two years to 1 March 2022. CO 14/41 as amended will provide continued relief from requirements in the Code for a credit provider or lessor to:
 - record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
 - provide written notice setting out the particulars of any changes to the terms of the contract (or consumer lease)in the case of simple arrangements.

Legislative authority

13. ASIC makes this legislative instrument under subsection 203A(3) of the Code. Under subsection 203A(3), ASIC may exempt a class of persons, credit contracts or consumer leases from all or specified provisions of the Code.
14. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
15. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

16. 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 Credit (Amendment) Instrument 2020/148

Overview

1. This legislative instrument extends until 1 March 2022 the relief provided by ASIC Class Order [CO 14/41] from requirements in the *National Credit Code* for a credit provider or lessor to:
 - record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
 - provide written notice setting out the particulars of any changes to the terms of the contract (or consumer lease)in the case of simple arrangements.
2. Relief to the same effect was given by regulations 69A and 69B of the *National Consumer Credit Protection Regulations 2010* until 1 March 2014 and has been extended since then through various instruments.

Assessment of human rights implications

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

Conclusion

4. 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*.