



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations, Credit and Superannuation (Amendment) Instrument 2020/99

This is the Explanatory Statement for *ASIC Corporations, Credit and Superannuation (Amendment) Instrument 2020/99* (the **amending instrument**).

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

Glossary

The following definitions of primary and delegated legislation are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001*.

Corporations Act means the *Corporations Act 2001*.

Corporations Regulations means the *Corporations Regulations 2001*.

Credit Act means the *National Consumer Credit Protection Act 2009*.

Credit Regulations means the *National Consumer Credit Protection Regulations 2010*.

Legislation Act means the *Legislation Act 2003*.

RSA Act means the *Retirement Savings Account Act 1997*.

SIS Act means *Superannuation Industry (Supervision) Act 1993*.

Summary

1. On 24 September 2019, ASIC made *ASIC Corporations and Credit (Repeal) Instrument 2019/966* (the **repeal instrument**) and *ASIC Corporations and Credit (Internal Dispute Resolution—Transitional) Instrument 2019/965* (the **transitional instrument**).
2. The repeal instrument repealed a number of ASIC Class Orders [CO 09/339], [CO 10/250] and [CO 10/517] that implemented ASIC's existing policy in relation to internal dispute resolution for: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*;

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- (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*.
 4. The transitional instrument preserved the existing internal dispute resolution policy through a single instrument for a short transitional period, until 30 June 2020, pending the expected finalisation of ASIC's new internal dispute resolution standards and requirements.
 5. The release of ASIC's new internal dispute resolution standards and requirements was delayed due to the impacts of COVID-19. The new standards and requirements will be publicly released in July 2020 and will apply to complaints received by a financial firm on or after 5 October 2021.
 6. The amending instrument amends the application of the transitional instrument to complaints received before 5 October 2021 so as to preserve the status quo until the commencement of ASIC's new policy.

Purpose of the instrument

7. 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 approved deposit funds, and retirement savings account (RSA) providers; and
 - (c) credit licensees and unlicensed carried over instrument lenders.
8. 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 provision of financial services.
9. 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.

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10. 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 Accounts Act 1997*.
 11. The purpose of the amending instrument is to preserve ASIC's existing policy in relation to approved standards and requirements for an internal dispute resolution procedure, pending the commencement of ASIC's new policy on 5 October 2021.

Consultation

12. ASIC did not engage in consultation before making the amending instrument. This is because the amending instrument preserves ASIC's existing policy, pending the commencement of ASIC's new internal dispute resolution standards and requirements.
13. ASIC conducted a 3-month public consultation about the proposed new internal dispute resolution standards and requirements between May and August 2019 with the release of Consultation Paper 311 *Internal dispute resolution: Update to RG 165*. 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.
14. ASIC intends to engage in further consultation throughout 2020 in relation to collection and reporting of internal dispute resolution data.

Operation of the instrument

15. The amending instrument amends the transitional instrument.
16. First, it removes the expiry date (30 June 2020) of the transitional instrument and replaces it with an application provision. ASIC's new policy will be released publicly in July 2020 and will apply in relation to complaints received on or after 5 October 2021 by financial firms. Accordingly, it is appropriate for the transitional instrument to apply in relation to complaints received before 5 October 2021.
17. Second, the title of the transitional instrument has been changed to *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution—Transitional) Instrument 2019/965*. The title was changed to make it more readily apparent that the instrument also affects trustees of regulated superannuation funds, trustees of approved deposit funds and RSA providers.
18. Third, the legislative authority for making the transitional instrument has been amended so as to clarify it is also made for the purposes of paragraph 47(1)(b) of the RSA Act and paragraph 101(1)(b) of the SIS Act.

19. Fourth, consequential definitions have been added.

Legislative authority

20. The sources of the power to make the amending instrument are:

- (a) subsection 11(4) of the ASIC Act for the purposes of subparagraphs 912A(2)(a)(i) and 1017G(2)(a)(i) of the Corporations Act;
- (b) subsection 12A(6) of the ASIC Act for the purposes of:
 - (i) paragraph 47(1)(b) of the RSA Act;
 - (ii) paragraph 101(1)(b) of the SIS Act;
 - (iii) subparagraph 47(1)(h)(i) of the Credit Act;
 - (iv) subparagraph 47(1)(e)(i) of the Credit Act as notionally inserted by regulation 25E and Schedule 2 to the Credit Regulations.

21. The amending instrument is made under the same sources of power as the sources of power used to make the transitional instrument. Under subsection 33(3) of the *Acts Interpretation Act 1901*, the power to make an instrument includes the power to amend it.

22. The amending instrument is a disallowable legislative instrument.

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, Credit and Superannuation (Amendment) Instrument 2020/99

Overview

1. This instrument amends *ASIC Corporations and Credit (Internal Dispute Resolution—Transitional) Instrument 2019/965* (the ***transitional instrument***), which gives effect to ASIC’s existing internal dispute resolution policy in relation to financial firms, so that it applies to complaints received before 5 October 2021. ASIC’s new internal dispute resolution policy will be released publicly in July 2020 and will apply to complaints received on or after 5 October 2021.
2. This instrument also amends the title of the transitional instrument, the legislative authority for making the transitional instrument and adds consequential definitions.

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*.