



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2020/885

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2020/885*.

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

Summary

1. *ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401* (the **Principal instrument**) provides exemptions and modifications in relation to the hawking and product disclosure requirements in the *Corporations Act 2001* (the **Act**) in relation to issuing basic deposit products, linked non-cash payment facilities and debit cards due to adverse implications on consumers without debit cards – including vulnerable and elderly consumers – due to COVID-19.
2. The *ASIC Corporations (Amendment) Instrument 2020/885* (the **Amending instrument**) extends the relief provided by the Principal instrument until 31 December 2020.

Purpose of the instrument

3. The purpose of the Amending instrument is to extend the relief given by the Principal instrument until 31 December 2020.
4. Lockdown restrictions in response to COVID-19 may affect cohorts of consumers who rely on cash to make purchases for goods and services. This includes difficulties with accessing bank branches to withdraw funds – particularly for consumers who are required to self-isolate or where bank branches may be closed. Additionally, there is reduced acceptance of cash by merchants for public health reasons.
5. The Principal instrument intended to address these challenges by facilitating ADIs providing their existing customer bases with debit cards. Debit cards will allow these consumers to:
 - a. access their deposits otherwise than by withdrawing cash; and

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- b. complete contactless purchases in stores, as well as card-not-present purchases (e.g. online or telephone-based transactions).
 6. Lockdown restrictions in response to COVID-19 have continued in some jurisdictions. Extending the cessation date of the relief will allow ADIs who have yet to take advantage of the principal relief to complete their distributions of debit card before the end of 2020 and to continue to support this cohort of customers.

Consultation

7. ASIC did not undertake a formal consultation process on extending the operation of the Principal instrument, as the extension is a transitional measure of a minor and machinery nature. ASIC discussed the creation of the Amending instrument with relevant industry stakeholders.
8. The Prime Minister has granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements for all Australian Government measures made in response to COVID-19.

Operation of the instrument

9. The Amending instrument amends section 3 of the Principal instrument to replace the original cessation date of that instrument (30 September 2020) with a new cessation date (1 January 2021). As a result, the Principal instrument will operate for an additional three months, until the end of 31 December 2020.

Legislative instrument and primary legislation

10. The subject matter and policy implemented by the Amending instrument is more appropriate for a legislative instrument rather than primary legislation. The Amending instrument uses powers given by Parliament to ASIC, which allow ASIC to affect the operation of Chapter 7, and specifically Parts 7.8 and 7.9, of the Act to respond quickly and temporarily to issues in connection with or arising from COVID-19 which may prevent consumers without debit cards from accessing their deposits.

Legislative authority

11. The Amending instrument is made under subsection 992B(1) and 1020F(1)(c) of the Act.
12. Subsection 992B(1) provides that ASIC may declare that Part 7.8 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions from this Part were omitted, modified or varied as specified in the declaration.
13. Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of

persons or financial products, as if specified provisions from this Part were omitted, modified or varied as specified in the declaration.

14. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any 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.
15. This 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 Corporations (Amendment) Instrument 2020/885

Overview

The purpose of the legislative instrument is to amend *ASIC Corporations (COVID-19 Distribution of Debit Cards) Instrument 2020/401* (the **Principal instrument**).

The Principal instrument provides exemptions and modifications in relation to the hawking and product disclosure provisions of the *Corporations Act 2001* to facilitate timely distribution of debit cards banks' existing customers who are reliant on cash. The Principal instrument was due to cease on 30 September 2020. The Principal instrument allows for unsolicited offers to issue debit cards to existing customers without those cards in certain circumstances, as well as allowing for product disclosure information to be provided at a later time with the debit card.

The legislative instrument extends this relief to allow ADIs to distribute unsolicited debit cards to existing customers until 31 December 2020.

Assessment of human rights implications

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

Conclusion

- 2 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*.