



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2020/1080

This is the Explanatory Statement for the *ASIC Corporations (Amendment) Instrument 2020/1080*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2020/1080* (the **amending instrument**) implements temporary measures aimed at facilitating financial reporting by listed and unlisted entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The temporary measures are intended to allow listed entities up to one additional month to complete financial reports and have those reports audited, in compliance with the financial reporting and audit requirements of the *Corporations Act 2001* (the *Act*).
2. The amending instrument affects the operation of sections 315, 319, 320, 601HG and 989A of the Act by allowing one additional month to report to members and lodge reports with ASIC. The instrument applies for financial years ending between 8 July 2020 and 7 January 2021 (both inclusive) and half-years ending between 8 July 2020 and 7 January 2021 (both inclusive) where the statutory deadline for reporting or lodgment has not already passed.
3. The amending instrument makes the following amendments to ASIC instruments:
 - (a) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* – the relief providing an additional month for unlisted entities to lodge financial reports with ASIC and report to members applied for financial years and half-years ending between 31 December 2019 and 7 July 2020 (both inclusive) has been amended to now provide an additional month to lodge and report for financial years and half-years ending between 31 December 2019 and 7 January 2021 (both inclusive);

-
- (b) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Listed Entities) Instrument 2020/451* – the relief providing an additional month for listed entities to lodge financial reports with ASIC and report to members applied for financial years and half-years ending between 31 December 2019 and 7 July 2020 (both inclusive) has been amended to now provide an additional month to lodge and report for financial years and half-years ending between 31 December 2019 and 7 January 2021 (both inclusive);
 - (c) *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* – the relief to preserve the grandfathered status of certain proprietary companies that use the relief under Instrument 2020/395 (as amended). Grandfathered proprietary companies must meet certain conditions, including reporting to members within the statutory deadline each year, to be exempt from lodging financial reports with ASIC;
 - (d) *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* – the deadlines for lodging certain documents with ASIC in this instrument have been extended by one month consistent with the primary instrument. *Instrument 2016/785* provides relief to wholly owned companies that enter into deeds of cross guarantee with their parent entity subject to meeting certain other requirements that include lodging specified documents with ASIC.
4. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.

Purpose of the instrument

5. The purpose of the amending instrument is to assist listed and unlisted entities affected by the impacts of COVID-19 by enabling them more time to report and have audits. This includes public companies, proprietary companies, registered schemes, disclosing entities and financial services licensees.
6. Where possible, entities should continue to lodge and report to members within the statutory deadlines having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

Consultation

7. Before making this amending instrument, ASIC engaged with a range of stakeholders to understand and invite feedback on the impacts of COVID-19 on reporting and audit, including remote working arrangements and other factors.

Operation of the instruments

8. The extended deadlines for the lodgment of financial reports, directors' reports and audit reports for listed and unlisted entities are summarised below. The deadlines are calculated as periods after balance dates and references to Chapters are to Chapters of the Act:
- (a) Under Chapter 2M, the deadline for lodgment of full year financial reports, directors' reports and auditor's reports for:
 - (i) listed entities and listed schemes is extended from 3 months to 4 months;
 - (ii) unlisted disclosing entities and for unlisted registered schemes, is extended from 3 months to 4 months; and
 - (iii) all other unlisted entities is extended from 4 months to 5 months (will apply to public and proprietary companies that are not disclosing entities);
- Note: An extension of the deadline for listed and unlisted registered schemes to lodge compliance plan audit reports will automatically occur as a result of the financial reporting extension for registered schemes. The period for auditors to complete the compliance plan audit report will be extended from 3 months to 4 months.
- (b) Under Chapter 2M, the deadline for lodgment of half-year financial reports, directors' reports and audit/review reports for listed entities and unlisted disclosing entities (including unlisted registered schemes that are disclosing entities) is extended from 75 days to 75 days plus 1 month; and
 - (c) Under Chapter 7, the deadline for lodgment of profit and loss statements and balance sheets (and other associated information) for:
 - (i) listed Australian financial services (AFS) licensees is extended from 3 months to 4 months;
 - (ii) unlisted AFS licensees that are bodies corporate and also disclosing entities is extended from 3 months to 4 months;
 - (iii) unlisted AFS licensees that are body corporates and are not disclosing entities is extended from 4 months to 5 months; and
 - (iv) AFS licensees that are not bodies corporate is extended from 2 months to 3 months.
9. For example, the normal lodgment deadline for an unlisted public company that is not a disclosing entity to lodge its reports for the year ending 31 December 2020 is 30 April 2021 and the extended deadline will be 31 May 2021.
10. A listed entity seeking to rely on the extended lodgment deadline relief must disclose to the financial market on which it is listed that it is relying on the relief. The listed

entity must make this disclosure before the normal lodgment deadline to ensure the market is kept informed.

11. The relief will not apply to registered foreign companies.
12. Similar extended deadlines are available for sending reports to members. Some of those reporting deadlines also operate by reference to the date of the next Annual General Meeting (AGM). ASIC media release 20-276MR *ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs* provides information on the ASIC 'no action' position for AGMs of public companies with year ends from 31 December 2019 to 7 January 2021.

Legislative authority

13. The amending instrument is made under subsections 341(1), 601QA(1), and 992B(1) of the Act.
14. Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.
15. To make an order under subsection 341(1), ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 of the Act would:
 - (a) make the financial report or other reports misleading; or
 - (b) be inappropriate in the circumstances; or
 - (c) impose unreasonable burdens.
16. ASIC is satisfied that complying with the statutory financial reporting deadlines for balance dates between 31 December 2019 and 7 January 2021 (both inclusive) would impose unreasonable burdens because, having regard to COVID-19, reporting and auditing can take more time as there will continue to be a need to apply more experience and expertise to complex judgement areas such as asset values, going concern assessments and disclosure on impacts and key assumptions. Some stakeholders expressed concern about people fatigue and the knock-on impacts of the Victorian lockdown during the second half of the 2020 calendar year.
17. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the Act.
18. Subsection 992B(1) provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the Act.

-
19. 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.
 20. The amending instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

21. 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 2020/1080

Overview

1. *ASIC Corporations (Amendment) Instrument 2020/1080* implements temporary measures aimed at facilitating financial reporting by listed and unlisted entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The measures are intended to allow listed and unlisted entities sufficient time to complete their financial reports and for those reports to be audited.
2. *ASIC Corporations (Amendment) Instrument 2020/1080* makes amendments to the following instruments – *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395*, *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451*, *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* and *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*.

Assessment of human rights implications

3. The instruments do 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*.