



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC (Amendment) Instrument 2021/0139

This is the Explanatory Statement for *ASIC (Amendment) Instrument 2021/0139*.

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

Summary

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* (the **principal instrument**) by determining a new position as a ‘senior staff member’ for the purposes of certain delegation provisions in the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) and other legislation. This instrument also specifies other positions with particular titles as senior staff members for the avoidance of doubt.

Purpose of the instrument

2. The purpose of the instrument is to facilitate the delegation of various powers to the Chief Operating Officer, a newly created senior position within ASIC’s management structure.

Consultation

3. Section 17 of the *Legislation Act 2003* provides that, before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate, and reasonably practicable to undertake.
4. In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the proposed instrument.
5. No consultation was undertaken prior to the making of this amending legislative instrument. The reason why no consultation was undertaken is because consultation would be inappropriate given the machinery nature of this legislative instrument. This legislative instrument deals with the identification of certain staff members in ASIC who are considered appropriate to be delegated certain powers that have been conferred on ASIC, ASIC’s Chairperson and the relevant Minister.

Operation of the instrument

6. Item 1 of Schedule 1 to the amending legislative instrument determines that the Chief Operating Officer is a ‘senior staff member’ for all purposes. The determination is considered appropriate because the Chief Operating Officer will have primary oversight of operational matters within ASIC, and will perform executive functions delegated by ASIC’s Chairperson.
7. Items 2 and 3 of Schedule 1 to the amending legislative instrument specify several senior positions with particular titles to be senior staff members for all purposes. The addition of these positions to the principal instrument is for the avoidance of doubt only.

Commencement

8. This legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

9. This legislative instrument does not incorporate any documents by reference.

Retrospective application

10. This legislative instrument does not have retrospective application.

Legislative authority

11. This legislative instrument is made under section 122A of the ASIC Act.
12. This legislative instrument is also an amending instrument. Subsection 33(3) of the *Acts Interpretation Act 1901*¹ states that where an Act confers a power to make an 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.

Statement of compatibility with human rights

13. A Statement of Compatibility with Human Rights is in the Attachment.

¹ The *Acts Interpretation Act 1901* as in force on 1 January 2005 applies to the ASIC Act: see section 5A of the ASIC Act.

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*.

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Overview

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* by determining a new position in ASIC, the Chief Operating Officer, to be a ‘senior staff member’ for the purposes of certain delegation provisions in the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*) and other legislation.

Assessment of human rights implications

2. The determination of the Chief Operating Officer to be a ‘senior staff member’ merely facilitates the delegation of powers by ASIC, ASIC’s Chairperson and/or the relevant Minister to an ASIC staff member holding the specified position. Accordingly, this instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. 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*.