



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195 and ASIC Corporations (Amendment and Repeal) Instrument 2021/196

This is the Explanatory Statement for *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* and *ASIC Corporations (Amendment and Repeal) Instrument 2021/196*.

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

Summary

1. *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195 (Legislative Instrument)* allows a parent entity which is required to include consolidated financial statements in its financial report to also include its single entity financial statements in that report.
2. *ASIC Corporations (Amendment and Repeal) Instrument 2021/196 (Amendment and Repeal Instrument)* repeals ASIC Class Order [CO 10/654], which has been reissued as the Legislative Instrument and makes consequential amendments to other ASIC legislative instruments. The Amendment and Repeal Instrument also repeals *ASIC Corporations (Amendment and Repeal) Instrument 2015/843* which contains amendments to ASIC Class Orders which have since been repealed.

Background

3. Certain entities must prepare a financial report and directors' report for each financial year: see section 292 in Chapter 2M of the *Corporations Act 2001*. The basic contents of the financial report are specified in subsection 295(1) and include the financial statements for the year.
4. An individual entity must include the financial statements in its financial report as required by the accounting standards: see paragraph 295(2)(a). If the accounting standards require the entity to prepare consolidated financial statements, then the financial report of the entity can only include the consolidated financial statements and cannot also include single entity financial statements: see paragraph 295(2)(b).

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5. If consolidated financial statements are prepared, some financial information about the parent entity as set out under regulation 2M.3.01 of the *Corporations Regulations 2001* must be disclosed in those consolidated financial statements.
 6. Section 303(2) places restrictions on presenting single entity financial statements in half-year financial reports similar to the restrictions for annual financial reports in subsection 295(2).
 7. The Legislative Instrument allows entities to include single entity financial statements in financial reports prepared under Chapter 2M of the *Corporations Act 2001*. Examples of circumstances where an entity might apply the relief to include both the consolidated and single entity financial statements in their financial report are:
 - (a) where an entity is required to present single entity financial statements by its constitution, other Federal or State/Territory legislation, the Australian Prudential Regulation Authority, another regulator, a lender, or a royalty agreement or other contractual arrangement;
 - (b) where the directors consider the single entity financial statements would provide useful information to the users of the financial report; and
 - (c) where the entity is an Australian financial services (AFS) licensee.
 8. An AFS licensee may be subject to requirements to prepare financial reports under both Chapter 2M and Chapter 7 of the *Corporations Act 2001*. An AFS licensee that prepares consolidated financial statements for the purposes of Chapter 2M must still prepare a true and fair single entity profit and loss statement and balance sheet for each financial year under Chapter 7: see section 989B. The requirement for single entity financial statements under Chapter 7 is consistent with the financial requirements for AFS licensees, which apply on a standalone basis.

Purpose of the Legislative Instrument

9. We may grant relief from all or some of the provisions of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the *Corporations Act 2001* if the relevant requirements would, among other things, impose an unreasonable burden on an entity, its directors or its auditor (sections 341 and 342 of the *Corporations Act 2001*).
10. The Legislative Instrument allows entities to present the consolidated financial statements and single entity financial statements in one financial report. This relieves the entity from the unreasonable burden of incurring costs in preparing, and in some cases having audited, two separate financial reports.
11. The relief applies to an annual financial report and a half-year financial report. The relief previously given for a concise financial report has not been continued. The inclusion of parent entity financial information in a concise financial report is addressed by Accounting Standard AASB 1039 *Concise Financial Reports*.

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12. Relief was previously provided by ASIC Class Order [CO 10/654]. Under the *Legislation Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them.
 13. To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.
 14. ASIC Class Order [CO 10/654] is due to sunset on 1 April 2021. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that the class order relief is necessary, fit-for-purpose and relevant.
 15. As such, ASIC has decided to reissue the relief underlying ASIC Class Order [CO 10/654] in the new Legislative Instrument.

Consultation

16. Before reissuing the relief underlying ASIC Class Order [CO 10/654], ASIC has consulted with stakeholders through ASIC Consultation Paper 338: *Remaking ASIC class order on parent entity financial statements: [CO 10/654]* which was issued on 9 February 2021 and was open for comment to 9 March 2021. Four submissions were received in the consultation process and all supported continuation of the relief.
17. ASIC has assessed that a Regulatory Impact Statement is not necessary for this instrument as it is operating effectively and efficiently, as informed by the consultation process, and is being remade without significant changes.

Operation of the Legislative Instrument

18. The Legislative Instrument allows a parent entity which is required to include consolidated financial statements in its financial report to also include its single entity financial statements in the same financial report. This relieves the parent entity from preparing and lodging with ASIC two separate financial reports.
19. The Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.
20. The Legislative Instrument will be repealed on 1 April 2026.
21. The subject matter and policy implemented by the Legislative Instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the Legislative Instrument only affect a relatively small subset of entities. The Legislative Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. On this basis, it is appropriate for ASIC to provide relief through its exemption and modification powers, as the matters contained in this particular instrument are of a highly

specific nature which are more appropriate for legislative instrument rather than primary legislation.

The Amendment and Repeal Instrument

22. The Amendment and Repeal Instrument repeals ASIC Class Order [CO 10/654] and *ASIC Corporations (Amendment and Repeal) Instrument 2015/843* and makes consequential amendments to [CO 13/1050], *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* and *ASIC Corporations (Stapled Group Reports) Instrument 2015/838*.

Legislative authority

23. The Legislative Instrument is made under subsection 341(1) of the *Corporations Act 2001*.
24. The Amendment and Repeal Instrument is made under subsections 341(1), 741(1) and 1020F(1) of the *Corporations Act 2001*.
25. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the *Corporations Act 2001*), 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 or revoke any such instrument.
26. Both the Legislative Instrument and the Amendment and Repeal Instrument are disallowable legislative instruments.

Statement of Compatibility with Human Rights

27. 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 (Parent Entity Financial Statements) Instrument 2021/195

and

ASIC Corporations (Amendment and Repeal) Instrument 2021/196

Overview

1. *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* allows a parent entity required to include consolidated financial statements in its financial report to also include its single entity financial statements in that report.
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Assessment of human rights implications

3. These instruments do not engage any of the applicable rights or freedoms.

Conclusion

4. These instruments are 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*.