



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC (Amendment) Instrument 2021/344*

This is the Explanatory Statement for *ASIC (Amendment) Instrument 2021/344*.

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 certain new positions to be ‘senior staff members’ for the limited purposes of certain delegation provisions relating to the employment of ASIC staff under section 120 of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*).

### Purpose of the instrument

2. The purpose of the instrument is to facilitate the delegation of employment powers to certain staff within ASIC’s People and Development, Information Technology and Office of Enforcement teams.

### 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 mechanical 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 staff holding particular positions, being Heads within ASIC's People and Development and Information Technology teams and Group Senior Managers in ASIC's Office of Enforcement, are 'senior staff members' for purposes relating to the employment of ASIC staff under section 120 of the ASIC Act. The determination is considered appropriate because it ensures that following internal restructures within ASIC, certain staff members at an appropriate level of seniority can perform human resources functions including signing, varying and terminating employment contracts.

#### Commencement

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

#### Incorporation by reference

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

#### Retrospective application

9. This legislative instrument does not have retrospective application.

#### **Legislative authority**

10. This legislative instrument is made under section 122A of the ASIC Act.
11. This legislative instrument is also an amending instrument. Subsection 33(3) of the *Acts Interpretation Act 1901*<sup>1</sup> 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**

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

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<sup>1</sup> 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*.

### ***ASIC (Amendment) Instrument 2021/344***

#### Overview

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* by determining certain positions in ASIC's People and Development, Information Technology and Office of Enforcement teams to be 'senior staff members' for purposes relating to the employment of ASIC staff under section 120 of the *Australian Securities and Investments Commission Act 2001* (the ***ASIC Act***).

#### Assessment of human rights implications

2. The determination of certain positions to be 'senior staff members' merely facilitates the delegation of powers by ASIC, ASIC's Chairperson and/or the relevant Minister to ASIC staff members holding the specified positions. 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*.