



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2021/381

This is the Explanatory Statement for the *ASIC Corporations (Amendment) Instrument 2021/381*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2021/381* (the **amending instrument**) amends the dates upon which two instruments will be repealed from April 2026 to April 2024, effectively reducing the duration period of each instrument from 5 years to 3 years.
2. The amending instrument changes the repeal dates in the following instruments:
 - (a) *ASIC Corporations (Auditor Independence) Instrument 2021/75* – replacing the repeal date of 30 April 2026 with 30 April 2024, and
 - (b) *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* – replacing the repeal date of 1 April 2026 with 1 April 2024.
3. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.

Purpose of the instrument

4. The purpose of the amending instrument is to effectively reduce the duration period of each principle instrument from 5 years to 3 years.

Consultation

5. In advance of the expiry dates of each of the instruments, ASIC will consult on whether the relief should be continued and, if so, any changes to the relief.

Operation of the instruments

6. *ASIC Corporations (Auditor Independence) Instrument 2021/75* allows the lead auditor for the audit to be relieved from the requirement to disclose a contravention of paragraph R510.4(c) of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* in relation to a financial interest held by a relevant person in the relevant entity or a controlled entity in the auditor's independence declaration pursuant to section 307C of the *Corporations Act 2001* in certain limited circumstances.
7. *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* 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.
8. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.
9. *ASIC Corporations (Auditor Independence) Instrument 2021/75* and *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* will be repealed on 30 April 2024 and 1 April 2024 respectively.
10. The subject matters and policies implemented by *ASIC Corporations (Auditor Independence) Instrument 2021/75* and *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* are more appropriate for legislative instruments rather than primary legislation because the matters contained in the two instruments only affect a relatively small subset of entities. The instruments provide 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 the instruments are of a highly specific nature which are more appropriate for legislative instruments rather than primary legislation.

Legislative authority

11. The amending instrument is made under subsections 341(1) of the Act.
12. 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.
13. 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

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- (b) be inappropriate in the circumstances; or
 - (c) impose unreasonable burdens.
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. The amending 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 2021/381

Overview

1. *ASIC Corporations (Amendment) Instrument 2021/381* amends the dates upon which *ASIC Corporations (Auditor Independence) Instrument 2021/75* and *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* will be repealed from April 2026 to April 2024, effectively reducing the duration period of each instrument from 5 years to 3 years.

Assessment of human rights implications

2. The 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*.