



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*

This is the Explanatory Statement for *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*.

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

#### Summary

1. This instrument extends the time for certain public companies to hold their annual general meetings (*AGMs*) to allow companies to plan and prepare for holding their AGMs in the context of the ongoing COVID-19 pandemic restrictions on gathering and movement.
2. It is intended to complement the temporary modifications to the *Corporations Act 2001* made by Parliament in *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*. These came into effect on 14 August 2021 and allow meetings to be convened electronically and held using virtual meeting technology.

#### Purpose of the instrument

3. *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* also conferred on ASIC permanent powers to grant short-term relief to extend the timeframe for a class of public companies to hold an AGM if ASIC considers it may be unreasonable to expect compliance with the meeting requirements due to a situation that is beyond the control of the companies in the specified class (such as those circumstances related to the COVID-19 pandemic).
4. This instrument utilises the powers given by Parliament to ASIC in *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.
5. *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* also introduced temporary measures which allow companies to convene meetings electronically and hold meetings using virtual meeting technology. However as the measures only came into effect on 14 August 2021, companies have encountered uncertainty in planning their AGMs, particularly in light of restrictions on gathering and movement across large parts of Australia.

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6. Under section 250N of the *Corporations Act 2001*, public companies are required to:
    - (a) hold an AGM within 5 months after the end of their financial year;
    - (b) hold an AGM once every calendar year; and
    - (c) hold an AGM within 18 months after its registration.
  7. While some companies may be able to hold their AGMs using virtual technology under the temporary legislation within the time required by section 250N of the *Corporations Act 2001*, other companies may need more time to organise a meeting using virtual technology.
  8. ASIC is satisfied that it would be unreasonable to expect public companies with balance dates of between 21 February 2021 and 7 July 2021, and public companies limited by guarantee with balance dates of between 24 January 2021 and 7 July 2021, to hold their AGM within the time required under section 250N due to the ongoing COVID-19 restrictions imposed by a number of State governments across Australia and which are beyond the control of the public companies.
  9. ASIC previously had in place a ‘no-action’ position where public companies do not hold their AGMs within five months after the end of financial years that ended up to 7 July 2021, where they do so up to seven months after year end.
  10. This instrument maintains that position allowing public companies an additional two months to hold their AGM but converts it into a legislative instrument for greater ability of companies to rely on it as a modification to the law rather than a statement of regulatory intent.
  11. The instrument also provides public companies limited by guarantee with balance dates of between 24 January 2021 and 7 April 2021 an extension of four months to hold their AGMs. Public companies limited by guarantee are often not-for-profit or community membership-based organisations who may have limited resources and additional logistical issues with holding a virtual meeting within the time required.
  12. These entities would have been required to hold their AGMs between 30 June 2021 and 31 August 2021 (or between 31 August 2021 and 31 October 2021 if relying on ASIC’s ‘no-action’ position). During this initial period there were significant restrictions on gathering and movement and no legislative measures in place to permit meetings to be held using virtual technology.
  13. Under section 250P of the *Corporations Act 2001*, individual entities not covered by this instrument may make an individual application to ASIC.

## **Consultation**

14. ASIC consulted with a number of industry stakeholders regarding the exercise of this power.

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## Operation of the instrument

15. Under this instrument, public companies with a balance date of between 21 February 2021 and 7 July 2021 (other than public companies limited by guarantee with balance dates between 24 January 2021 and 7 April 2021) will have an additional two months within which to hold that AGM. Public companies limited by guarantee with balance dates between 24 January 2021 and 7 April 2021 will have an additional four months within which to hold the AGM.
16. For example, this means that a public company with a balance date of 28 February 2021 will have until 30 September 2021 to hold their AGM, and a public company with a balance date of 30 June 2021 will have until 31 January 2022 to hold their AGMs.
17. The extension of time in the instrument also applies to the requirement in subsection 250N(2) that entities must hold an AGM once in each calendar year and the requirement in subsection 250N(1) that entities must hold an AGM within 18 months after its registration.
18. While companies with balance dates of 24 January 2021 to 7 April 2021 will already have been required under section 250N to hold their AGM prior to the commencement of this instrument, they have been included to formalise the position for companies that, in reliance on ASIC's 'no-action' position, have not yet held an AGM. Section 70 of the *Corporations Act 2001* provides that a power to extend the period for doing an act may be exercised even if the period within which the act was due to be done has ended. Section 70 applies to section 253T so that time can be extended under section 253T even if the time for the meeting has otherwise already passed.

### Provisions that apply to public companies limited by guarantee with balance dates between 24 January 2021 and 7 April 2021

19. Under this instrument, all public companies limited by guarantee with a balance date of between 24 January 2021 and 7 April 2021 will have an extension of four months within which to hold that AGM.
20. For example, this means that a public company limited by guarantee with a balance date of 31 January 2021 will have until 31 October to hold their AGM and a public company limited by guarantee with a balance date of 31 March 2021 will have until 31 December 2021 to hold their AGMs.

### Commencement

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

### Retrospective application

22. This instrument is not retrospective in accordance with subsection 12(2) of the *Legislation Act 2001* because it does not commence before the instrument is

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registered, however the instrument applies notwithstanding that the time for the holding of an AGM may have expired, in accordance with section 70 of the *Corporations Act 2001*.

#### Duration of instrument

23. This instrument is repealed at the end of 12 months after the date on which it commences under subsection 253T(5) of the *Corporations Act*. This is considered an appropriate duration given the nature of the timing of the extension. ASIC would need to re-satisfy itself of the matters in subsection 253T(2) if it were to make another determination after the repeal of this instrument. While the instrument is repealed at the end of 12 months after it commences, it applies at the latest to a specified class of companies with balance dates of 7 July 2021, and accordingly will have no practical effect after 7 February 2022 unless remade, which is the last date by which a public company with a 7 July 2021 year end could hold its AGM under the extension of time.

#### Possible future amendments to primary legislation

24. While ASIC is not aware of any future review process given the operation of subsection 253T(5), ASIC understands that the Government may consider the merits of making future amendments to the relevant enabling Acts .

#### Legislative instrument and primary legislation

25. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the instrument utilises powers given by Parliament to ASIC that allow ASIC to modify or affect the operation of section 250N of the *Corporations Act 2001* in circumstances which are unreasonable and beyond the control of companies, to provide a tailored and flexible regulatory environment that is fit for purpose for the market.

#### **Legislative authority**

26. This instrument is made under subsection 253T(2) of the *Corporations Act 2001*.
27. This instrument is a disallowable instrument under the *Legislation Act 2003*.

#### **Statement of Compatibility with Human Rights**

28. 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 (Extension of Time to Hold AGM) Instrument 2021/770***

#### Overview

1. This instrument extends the time for certain classes of public companies to hold an AGM.

#### Assessment of human rights implications

2. 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*.