



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations, Superannuation and Credit (Amendment) Instrument 2021/753

This is the Explanatory Statement for *ASIC Corporations, Superannuation and Credit (Amendment) Instrument 2021/753 (Amending Instrument)*.

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

Summary

1. The Amending instrument incorporates an updated version of Regulatory Guide 271 (RG 271) and removes enforceability from four paragraphs that overlapped with existing legislative requirements. It therefore amends *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 (IDR Instrument)*.
2. The updated version of RG 271 makes technical and clarifying amendments to ASIC's IDR standards and requirements arising out of feedback from stakeholders.

Purpose of the instrument

3. The main purpose of the Amending Instrument is to incorporate by reference the most recent version of RG 271, published on 2 September 2021.
4. The Amending Instrument also removes enforceability from several paragraphs of RG 271, by removing those paragraphs from incorporation into the IDR Instrument. The purpose of removing paragraphs 87, 99, 100, and 113 from the enforceable standards and requirements in the IDR instrument is to avoid duplicating existing legal requirements under the *National Consumer Credit Protection Act (2009) (Credit Act)*, *Corporations Act (2001) (Corporations Act)* and *Superannuation Industry (Supervision) Act (1993) (SIS Act)*.

Consultation

5. ASIC published RG 271 about fifteen months ahead of its commencement on 5 October 2021. This was to ensure that financial firms had sufficient time to make changes to their systems and processes to comply with the new standards and requirements. During that time, stakeholders raised a number of queries with ASIC seeking clarification about how RG 271 is intended to operate.

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6. Key issues clarified in the updated RG 271 include: further guidance for superannuation trustees about when a decision is made in relation to a complaint for the purposes of providing written reasons; clarifying the interaction of RG 271 relating to death benefit complaints and the operation of claim staking procedures in the Corporations Act; clarifying when the time starts for the purposes of calculating timeframes and clarifying when a complaint arises in relation to disputed transactions and hardship notices.
 7. ASIC consulted with Treasury, the Australian Financial Complaints Authority, and approximately 15 industry participants and associations, and several consumer representative organisations before finalising the updated RG 271.
 8. Given the technical and clarifying nature of the changes, feedback received was generally positive. A key outcome of the consultation was to align RG 271 more closely to existing legislation. As part of this, ASIC also decided to remove enforceability from areas where existing legislation already provided sufficient requirements.

Operation of the instrument

9. The Amending instrument amends the IDR Instrument so that it incorporates relevant sections of the amended RG 271 published on 2 September 2021. The IDR Instrument will no longer incorporate any parts of the previous version of Regulatory Guide 271 as published on 30 July 2020.
10. The Amending instrument also amends the IDR Instrument to remove paragraphs 87, 99, 100, and 113 of Regulatory Guide 271 from incorporation into the IDR Instrument.
11. The Amending instrument commences on the day after it is registered on the Federal Register of Legislation. RG 271 comes into force on 5 October 2021.
12. The amendments are subject to the existing sunseting date of the IDR Instrument. The existing sunseting date as applied to the amendments is appropriate because the amendments are technical and clarifying. In the lead up to the sunseting of the IDR Instrument, ASIC will review the instrument and consult on options for remaking or revoking it.

Incorporation by reference

13. Section 5 of the IDR instrument sets out the standards and requirements made and approved by ASIC. The contents of the standards and requirements are set out in specific paragraphs of ASIC Regulatory Guide 271 Internal Dispute Resolution (Regulatory Guide 271) published on 2 September 2021.
14. The contents of those paragraphs of Regulatory Guide 271 are incorporated by reference into the principal instrument. The incorporation by reference complies with subsection 14(1) of the Legislation Act as it incorporates matter in the Guide as existing at the time the principal instrument commences. Regulatory Guide 271 is available on the ASIC website at www.asic.gov.au.

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15. These standards and requirements apply in relation to complaints received on or after 5 October 2021 by a financial firm.
 16. In making and approving standards and requirements for IDR, ASIC must take into account Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014 (the **2014 Standard**) and any other matter ASIC considers relevant: see subregulations 7.6.02(1) and 7.9.77(1) of the Corporations Regulations; subregulations 10(1) and 48(1) of the Credit Regulations.
 17. In making the Amending Instrument, ASIC took into account the 2014 Standard. The minor and technical amendments made in this instrument did not affect the matters related to the 2014 standard that we had considered when making the IDR Instrument in 2020.
 18. ASIC also took into account other relevant matters. This included the consultation with financial firms, consumer groups, Treasury and AFCA. The amendments were generally supported as minor technical changes to align with existing law and clarify ambiguities.

Legislative instrument and primary legislation

19. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the instrument is amending an existing legislative instrument made by ASIC. The principal instrument utilises powers given by Parliament to ASIC that allow ASIC to provide a tailored and flexible approach to internal dispute resolution requirements.
20. The Amending Instrument will not change the duration of the IDR Instrument.

Legislative authority

21. The sources of power to make the Amending Instrument are:
 - a. subsection 11(4) of the ASIC Act for the purposes of subparagraphs 912A(2)(a)(i) and 1017G(2)(a)(i) of the Corporations Act; and
 - b. subsection 12A(6) of the ASIC Act for the purposes of:
 - i. paragraph 47(1)(b) of the RSA Act;
 - ii. paragraph 101(1)(b) of the SIS Act;
 - iii. subparagraph 47(1)(h)(i) of the Credit Act;
 - iv. subparagraph 47(1)(e)(i) of the Credit Act as notionally inserted by regulation 25E and Schedule 2 to the Credit Regulations;

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- c. subsection 47(2A) of the RSA Act and subsection 101(1B) of the SIS Act.
22. Per s 33(3) of the *Acts Interpretation Act* 1901, the powers described above shall be construed as including a power exercisable in the like manner and subject to the like conditions to amend, or vary any such instrument.
23. The principal IDR Instrument and the Amending Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

24. 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, Superannuation and Credit (Amendment) Instrument 2021/753.

Overview

1. This instrument makes minor and technical amendments to ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 (IDR Instrument).
2. The amendments incorporate the current version of ASIC Regulatory Guide 271 (RG 271) (published on 2 September 2021) into the IDR Instrument. The amendments also remove several paragraphs of RG 271 from the IDR Instrument that had the effect of restating existing obligations.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. 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*.