



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2021/868*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2021/868*.

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

### Summary

1. *ASIC Corporations (Amendment) Instrument 2021/868* (the **amending instrument**) makes minor and technical amendments to ASIC instruments by updating references and correcting drafting errors.
2. The amending instrument makes the following minor and technical amendments to ASIC instruments:
  - (a) *ASIC Corporations (Non-Reporting Entities) Instrument 2015* – the name of the instrument is amended to correct an error in the original instrument name, and the definition of ‘reporting entity’ is amended because the definition has been relocated in the accounting standards;
  - (b) *ASIC Corporations (Audit Relief) Instrument 2016/784* and *ASIC Corporations (Qualified Accountant) Instrument 2016/786* – the post-nominals “ACA” and “FACA” are removed as specified classes of members of Chartered Accountants Australia and New Zealand (*CA ANZ*), as they were included in error;
  - (c) *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* – the definition of ‘reporting entity’ is amended because the definition has been relocated in the accounting standards;

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- (d) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* – the relief providing an additional month for unlisted entities to lodge financial reports with ASIC and report to members is amended to now include reporting to members for companies limited by guarantee for financial years ending between 23 June 2021 and 7 July 2021 (both inclusive). The provisions on reporting to members for companies limited by guarantee had been omitted from the original instrument in error.
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 make minor and technical amendments to ASIC instruments to update references and correct drafting errors.
5. ASIC is made aware of such matters from time-to-time through stakeholder engagement and/or internal review. Where necessary, minor amendments are made through an amending instrument to ensure that ASIC instruments remain technically correct and operate as intended.
6. The amending instrument does not affect the duration of the instruments to be amended, nor does it make any substantive change to the policy settings of those instruments.

### **Consultation**

7. Before making this amending instrument, ASIC engaged with a range of financial reporting and audit stakeholders (including audit firms, professional accounting bodies and standard-setters) to understand where minor and technical amendments may be required.
8. Given that the amending instrument neither impacts upon policy settings of the instruments to be amended, nor changes their duration, ASIC did not consider it necessary to engage in further consultation before making the amending instrument.

### **Operation of the instrument**

9. The amending instrument makes minor and technical amendments to ASIC instruments as follows:
  - (a) *ASIC Corporations (Non-Reporting Entities) Instrument 2015*:
    - (i) the name of the instrument is amended to *ASIC Corporations (Non-Reporting Entities) Instrument 2015/841* to correct an error in the original instrument as it appears on the Federal Register of Legislation; and

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- (ii) the definition of ‘reporting entity’ is amended because the definition has been relocated in the accounting standards. The definition was previously located in AASB 1053 *Application of Tiers of Australian Accounting Standards*, but for annual reporting periods beginning on or after 1 January 2020, the definition is located in AASB 1057 *Application of Australian Accounting Standards*.
- (b) *ASIC Corporations (Audit Relief) Instrument 2016/784* and *ASIC Corporations (Qualified Accountant) Instrument 2016/786*. The post-nominals “ACA” and “FACA” are removed as specified classes of members of CA ANZ as they had been included in error. “ACA” and “FACA” are legacy membership classes of the New Zealand Institute of Chartered Accountants and may not require the same type of professional accounting expertise and skills as the “CA” and “FCA” classes of members of CA ANZ that these instruments were intended to specify.
- (c) *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*. The definition of ‘reporting entity’ is amended to update for the change in location of the definition in accounting standards. The definition was previously located in AASB 1053 *Application of Tiers of Australian Accounting Standards*, but for annual reporting periods beginning on or after 1 January 2020, the definition is located in AASB 1057 *Application of Australian Accounting Standards*.
- (d) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395*. The relief providing an additional month to both lodge financial reports with ASIC and to report to members was intended to apply to all unlisted entities. However, in relation to reporting to members, the instrument only provides relief from Section 315 of the Act, which excludes companies limited by guarantee reporting under Section 316A of the Act. The instrument is updated so that companies limited by guarantee are provided with the relief for financial years ending between 23 June 2021 and 7 July 2021 (both inclusive).
10. None of these changes affect the policy settings or the duration of any of the above instruments. As such, each of these instruments will be subject to a separate review process prior to their relevant sunseting dates.
11. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Legislative authority**

12. The amending instrument is made under subsections 88B(2) and 341(1) of the *Corporations Act 2001* (the *Act*).
13. Subsection 88B(2) provides that ASIC may, in writing, declare that all members of a specified professional body, or all persons in a specified class of members of a specified professional body, are ‘qualified accountants’ for the purposes of the Act.

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14. 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.
  15. 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
    - (b) be inappropriate in the circumstances; or
    - (c) impose unreasonable burdens.
  16. ASIC is satisfied that complying with the statutory financial reporting deadlines for balance dates between 23 June 2021 and 7 July 2021 (both inclusive) would impose unreasonable burdens because, having regard to pressures on audit resources under COVID-19 conditions, auditing can take more time.
  17. 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 Act), 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.
  18. The amending instrument is a disallowable legislative instrument.

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

19. 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 2021/868***

#### Overview

1. *ASIC Corporations (Amendment) Instrument 2021/868* makes minor amendments to ASIC instruments where ASIC has become aware that certain details require update or correction.
2. *ASIC Corporations (Amendment) Instrument 2021/868* makes minor amendments to the following instruments – *ASIC Corporations (Non-Reporting Entities) Instrument 2015/841*, *ASIC Corporations (Audit Relief) Instrument 2016/784*, *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*, *ASIC Corporations (Qualified Accountant) Instrument 2016/786* and *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395*.

#### 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*.