



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Credit (Amendment) Instrument 2022/81

This is the Explanatory Statement for *ASIC Credit (Amendment) Instrument 2022/81 (legislative instrument)*.

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

Summary

1. The legislative instrument extends the relief provided by ASIC Class Order [CO 14/41] for simple arrangements following a hardship notice to 1 April 2024.
2. Simple arrangements are agreements that defer or reduce the obligations of debtors and lessees for a period of no more than 90 days. Where simple arrangements are agreed, [CO 14/41] exempts credit providers and lessors from the requirements in the National Credit Code (the *Code*) to give debtors and lessees notices recording the agreement and setting out the particulars of the change in the terms of the credit contract or consumer lease.

Purpose of the instrument

3. ASIC makes the legislative instrument to extend the relief given by [CO 14/41] until 1 April 2024. This period will provide the Government with the necessary time to consider legislative amendments to the relevant provisions in s72(4)(a), 73(1), 177B(4)(a) and 177C(1) of the Code and for Parliament to make appropriate amendments.
4. Relief to the same effect was originally provided by regulations 69A and 69B of the *National Consumer Credit Protection Regulations 2010* (the *Regulations*) until 1 March 2014. Relief has been extended through the operation of [CO 14/41]; most recently by the *ASIC Credit (Amendment) Instrument 2020/148* made on 24 February 2020.

Consultation

5. On 8 December 2021, ASIC published a consultation paper seeking feedback from interested stakeholders on whether ASIC should:

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- (a) extend [CO 14/41] until 1 April 2024, without significant changes, if it continues to be a useful part of the regulatory framework; or
 - (b) allow [CO 14/41] to expire on 1 March 2022 if it no longer serves a regulatory purpose.
6. ASIC received six submissions from industry bodies and consumer organisations. Submissions from industry bodies indicated that certain industry participants continue to rely on [CO 14/41] in how they administer their financial hardship arrangements. The submission from consumer organisations indicated the view that the class order should be allowed to expire.
 7. On the basis of this consultation, ASIC has formed the view that [CO 14/41] remains a useful part of the regulatory framework and extending [CO 14/41] until 1 April 2024 is appropriate.

Operation of the instrument

8. This legislative instrument amends [CO 14/41] to extend the relief given by that instrument until 1 April 2024. [CO 14/41] as amended will provide continued relief from requirements in the Code for a credit provider or lessor to:
 - record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
 - provide written notice setting out the particulars of any changes to the terms of the contract (or consumer lease)in the case of simple arrangements.

Legislative instrument and primary legislation

9. It may be appropriate for the relief extended by this instrument to be implemented through permanent modifications to the requirements of the Code. Extending the instrument for a further two-year period will provide the Government with the necessary time to consider the merits of modifications to the requirements of the Code before the relief expires.

Legislative authority

10. ASIC makes this legislative instrument under subsection 203A(3) of the Code. Under subsection 203A(3), ASIC may exempt a class of persons, credit contracts or consumer leases from all or specified provisions of the Code.
11. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
12. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

13. 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 Credit (Amendment) Instrument 2022/81

Overview

1. This legislative instrument extends until 1 April 2024 the relief provided by ASIC Class Order [CO 14/41] from requirements in the *National Credit Code* for a credit provider or lessor to:
 - record the fact that the credit provider and debtor (or lessor and lessee) have agreed to change the contract (or consumer lease) in a hardship variation; and
 - provide written notice setting out the particulars of any changes to the terms of the contract (or consumer lease)in the case of simple arrangements.
2. Relief to the same effect was given by regulations 69A and 69B of the *National Consumer Credit Protection Regulations 2010* until 1 March 2014 and has been extended since then through various instruments.

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*.