



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Commonwealth Financial Counselling—Financial Capability Services) Instrument 2022/221

This is the Explanatory Statement for *ASIC Corporations (Commonwealth Financial Counselling—Financial Capability Services) Instrument 2022/221*

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

Summary

1. *ASIC Corporations (Commonwealth Financial Counselling—Financial Capability Services) Instrument 2022/221* (**the instrument**) provides relief for financial capability service providers from the requirement to hold an Australian financial services (**AFS**) licence when providing financial product advice, limited to advice about basic deposit products, in certain circumstances.
2. Financial capability services, previously known as money management services, are financial literacy and capacity building services provided predominantly to improve the financial knowledge and skills of consumers. The services are provided by financial capability service providers who are funded in whole or in part by the Commonwealth through the Department of Social Services (**DSS**).
3. In the course of providing financial capability services, a financial capability service provider might from time to time provide consumers with basic financial product advice, limited to advice about basic deposit products.
4. Without the relief in this instrument, financial capability service providers would have disproportionately burdensome compliance costs under the AFS licensing regime, which would likely render their services to consumers unviable. This instrument recognises the important assistance and support financial capability service providers give to consumers to build knowledge and understanding for accessing and using basic deposit products.
5. In 2011, ASIC provided an exemption in ASIC Class Order [CO 11/927] (**the class order**) from the AFS licensing requirements to money management services providers (now known as financial capability service providers) under the *Corporations Act 2001* (**Corporations Act**), to enable them to provide

financial product advice, limited to advice about basic deposit services, where it is provided as part of the money management service (now known as a financial capability service). The exemption is set out in ASIC Class Order [CO 11/927] and sunsets on 1 April 2022.

6. To ensure financial capability service providers can continue to provide financial capability services to consumers in a cost effective way, ASIC has remade the class order, without significant changes, under paragraph 926A(2)(a) of the Corporations Act.

Purpose

7. The purpose of the instrument is to continue the relief given in the class order beyond its sunset date of 1 April 2022. In continuing the relief, financial capability service providers will remain exempt from the requirement to hold an AFS licence when providing financial product advice, limited to advice about basic deposit products.
8. Financial capability service providers are financial literacy and capability building services designed to assist people to better manage their money and make informed financial decisions. This could include financial product advice about basic deposit products. They also make referrals, where appropriate, to other services such as financial counselling services or legal services for further specialist assistance.
9. The provision of financial product advice about basic deposit products is not the core business of financial capability service providers. However, it may be provided from time to time depending upon the circumstances and financial position of the client in the context of the broader service.
10. In the absence of relief, financial capability service providers who provide consumers with financial product advice about basic deposit products would be subject to the licensing, conduct and disclosure obligations in Chapter 7 of the Corporations Act. Such obligations include having adequate resources, risk management systems, internal and external dispute resolution systems, compensation arrangements and providing financial services guides to consumers. There is significant public benefit in removing these ongoing obligations for financial capability services, given the costs involved with compliance would be likely to make the services unviable.

Consultation

11. ASIC consulted with the DSS and Financial Counsellors Australia (FCA) on its proposal to remake relief on substantially similar terms to the class order.
12. ASIC sought detailed written feedback from DSS and FCA on ASIC's rationale for remaking the relief, and on a draft version of the instrument to which this explanatory statement relates.

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13. DSS and FCA demonstrated that relief in Class Order [CO 11/927] was operating efficiently and remained purposeful, given the benefits the services provided to consumers, and the regulatory burden of compliance with the AFS licensing regime for financial capability service providers.
 14. ASIC limited its consultation to the DSS and FCA only, given the limited nature of the relief and the direct relevance to DSS and FCA. The relief is only relevant to a specific group of persons (financial capability service providers) engaged and funded by the DSS, and only covers limited services by those persons in relation to basic deposit products. FCA is the peak industry body which represents financial counsellors and supports financial capability service providers.
 15. In 2017 ASIC consulted more broadly on financial counselling exemptions, which cover a broader range of activities, and that consultation resulted in only minor and machinery changes (see *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* and *ASIC Credit (Financial Counselling agencies) Instrument 2017/793*).

Operation of the instrument

16. Subsection 5(1) provides that financial capability service providers are exempt from the requirement to hold an AFS licence to provide financial product advice about a basic deposit product.
17. Subsection 5(2) sets out when the exemption is available. In order for the exemption to apply:
 - the financial product advice must be provided as part of the financial capability service; and
 - no fees or charges are payable by, or on behalf of, the consumer for any aspect of the financial capability service; and
 - no remuneration (whether by way of commission or otherwise) is paid to, or for the benefit of, the financial capability service provider, its representatives, or associates by any person in relation to any action by or on behalf of the consumer; and
 - the financial capability service provider must not engage in any other financial services activity (other than the activity covered by the exemption or for other activities for which the requirement to hold an AFS licence does not apply such as advice on the No Interests Loans Scheme (NILS) or Energy Accounts Payment Assistance (EAPA)); and

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- the financial capability service provider must take reasonable steps to ensure that its representatives do not provide any other financial services activity (other than the activity covered by the exemption); and
 - the financial capability service provider must take all reasonable steps to ensure its representatives who are providing the financial service on its behalf have undertaken appropriate training to ensure that they have adequate skills, knowledge, and experience to satisfactorily provide the financial service and any other aspect of the financial capability service.
18. The instrument continues in force until 1 April 2025.
19. The instrument commences on the later of day after it is registered or on 1 April 2022.

Legislative instrument and primary legislation

20. When the class order was made, the subject matter and policy implemented by the instrument was considered appropriate for a legislative instrument because it applied to a relatively small subset of persons who provided financial capability services under programs funded by the DSS, where compliance with the AFS licensing regime would make their services unviable.
21. ASIC understands that the Government will consider making future amendments to the Corporations Act or Regulations to include an exemption for financial capability workers. The 3 year duration of the instrument has been applied to allow sufficient time for the Government to consider the merits of incorporating the relief into primary legislation.

Legislative authority

22. The instrument is made under paragraph 926A(2)(a) of the Corporations Act.
23. Paragraph 926A(2)(a) of the Corporations Act provides that ASIC may exempt a class of persons from all or specified provisions to which Part 7.6 of the Act (other than Division 4 and 8) applies.
24. As a legislative instrument, the instrument is disallowable under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

26. 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*.

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Overview

1. *ASIC Corporations (Commonwealth Financial Counselling—Financial Capability Services) Instrument 2022/221* provides relief for financial capability service providers from the requirement to hold an Australian Financial Services license when providing financial product advice limited to advice about basic deposit products in the course of providing a financial capability service. The relief is limited to financial capability service providers that deliver services within the parameters set by Government funding and other conditions in the instrument. The instrument remakes the relief in ASIC Class Order [CO 11/927] (which is automatically repealed on 1 April 2022) without significant changes.

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*.