



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2022/0077

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2022/0077*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2022/0077 (Amendment Instrument)* amends *ASIC Corporations (Repeal and Transitional) Instrument 2017/186 (Instrument 2017/186)* to extend its effect until 1 October 2022.
2. Instrument 2017/186 repealed *ASIC Class Order [CO 02/273] (JCO 02/273)* but preserved its effect for two years until 23 March 2019.
3. *ASIC Corporations (Amendment) Instrument 2019/216 (ASIC Instrument 2019/216)* preserved the relief provided by [CO 02/273] until 1 April 2022.
4. [CO 02/273] gave conditional relief from the fundraising, financial product disclosure, anti-hawking and advertising requirements in the *Corporations Act 2001* (the *Act*) that would apply to a person making or calling attention to offers of securities or interests in a managed investment scheme through a business introduction service.

Purpose of the instrument

5. The purpose of the Amendment Instrument is to extend the relief in [CO 02/273] as preserved by Instrument 2017/186 until 1 October 2022.
6. The extension is subject to an additional requirement that the following persons provide notice to ASIC:
 - (a) persons who were relying on the relief on 31 March 2022; and
 - (b) persons who rely on the relief from 1 April 2022.
7. The notification requirement will provide ASIC with important usage data.
8. On 1 October 2022, ASIC intends to confer relief (**October 2022 relief**) that replaces [CO 02/273] to:

- (a) extend the relief for interests in a managed investment scheme until 1 April 2025; and
 - (b) clarify that the design and distribution obligations apply to persons who, but for the relief, would otherwise need to comply with these obligations.
9. ASIC plans to allow the [CO 02/273] relief in relation to Chapters 6D and 2L of the Act to expire on 1 October 2022 on the basis that the crowd-sourced funding (*CSF*) regime facilitates flexible and low-cost access to capital for small to medium sized unlisted companies. The CSF regime was introduced in September 2017 for eligible public companies and October 2018 for eligible proprietary companies.
10. The Amendment Instrument is intended to extend the existing CO 02/273 relief for a six-month period to allow industry adequate time to prepare for compliance with impending changes to the relief. Further extending the relief for a six-month period will avoid disrupting current offers of Chapter 6D securities (including Chapter 2L debentures) to retail investors through a business introduction service that remain open beyond 1 April 2022.
11. ASIC does not intend to extend the October 2022 relief when it expires on 1 April 2025.

Operation of the Instrument

12. The Amendment Instrument amends Instrument 2017/186 to extend its effect until 1 October 2022.
13. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.
14. The Amendment Instrument provides that an exemption specified in [CO 02/273] applies to a person who is relying on the relief on 31 March 2022:
- (a) until 2 May 2022; and
 - (b) after 2 May 2022 if the person has given ASIC a continuing reliance notice.
15. A continuing reliance notice must set out in writing the following:
- (a) the name of the person;
 - (b) each exemption of [CO 02/273] relied upon by the person; and
 - (c) the date the person first relied upon the exemption in [CO 02/273].
16. The Amendment Instrument provides that an exemption specified in [CO 02/273] applies to a person who:
- (a) was not relying on the exemption in [CO 02/273] on 31 March 2022; and
 - (b) has given ASIC an opt-in notice from the date specified in the opt-in notice.

17. The opt-in notice must set out in writing the following:

- (a) the name of the person;
- (b) each exemption of [CO 02/273] relied upon by the person; and
- (c) the date the person will start to rely upon the exemption in [CO 02/273].

Consultation

18. Before making the amending instrument, ASIC engaged in public consultation with respect to the proposal to remake the relief in Consultation Paper 357 *Remaking relief for business introduction services: ASIC Instrument 2017/186 (CP 357)*.
19. The Office of Best Practice Regulation has received ASIC's certification that Instrument 2017/186 is operating effectively and efficiently and therefore a Regulation Impact Statement is not required for this instrument to be extended and remade on 1 October 2022.

Legislative authority

20. ASIC makes this Amendment Instrument under paragraphs 283GA(1)(a), 741(1)(a), 992B(1)(a) and 10120F(10(a) of the Act.
21. The Amendment Instrument is a disallowable legislative instrument.

Why the measure is in delegated legislation rather than primary legislation

22. Business introduction services perform an important role in circulating information about investment opportunities about small to medium sized enterprises. The relief is intended to reduce the regulatory and cost burden associated with providing business introduction services.
23. The Amendment Instrument amends Instrument 2017/186, which preserves the relief in [02/273], to extend its effect until 1 October 2022. This six-month extension is intended to give industry adequate time to prepare for compliance with impending changes to the relief.
24. It would not be appropriate for primary legislation to amend Instrument 2017/186 for the purpose of merely introducing a six-month transition period before ASIC remakes the relief on 1 October 2022. It is more appropriate for a legislative instrument to extend an ASIC relief measure for a further six months.

The appropriate duration of the instrument

25. The extended relief provided by Amendment Instrument has effect until 1 October 2022.
26. ASIC considered a shorter duration for the Amendment Instrument but determined this would not provide adequate time to prepare for compliance with the impending changes to the relief.

27. ASIC understands that going forward the Government will consider the merits of making amendments to the Act as part of the review process before the relief sunsets in 2025.

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 (Amendment) Instrument (2022/0077)

Overview

1. The *ASIC Corporations (Amendment) Instrument (2022/0077)* continues the relief for business introduction services in *ASIC Corporations (Repeal and Transitional) Instrument 2017/186*, with amendments until 1 October 2022.
2. The Instrument facilitates business introduction services which circulates information about investment opportunities about small to medium sized enterprises.
3. The relief has been amended to provide that those persons who rely on, or cease to rely on, the relief from 1 April 2022 must notify ASIC.

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*.