



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Amendment) Instrument 2022/264

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2022/264* (the **instrument**).

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

Summary

1. The dollar disclosure provisions in the *Corporations Act 2001* (**Act**) require various costs, fees, charges, expenses, benefits and interests to be stated as amounts in dollar terms in Product Disclosure Statements and other types of documents.
2. *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* (**Dollar Disclosure Instrument**) provides exemptions from the dollar disclosure provisions in circumstances where ASIC considers that compliance with the provisions would be impossible, unreasonably burdensome or not in the interests of clients.
3. *ASIC Corporations (Amendment) Instrument 2021/292* (**2021 Amending Instrument**) amended the Dollar Disclosure Instrument to provide dollar disclosure relief for litigation funding schemes. The instrument amends the 2021 Amending Instrument and the Dollar Disclosure Instrument to continue the dollar disclosure relief for litigation funding schemes.

Purpose of the instrument

4. The purpose of the instrument is to extend the dollar disclosure relief introduced in the 2021 Amending Instrument so that the relief continues to operate until the Dollar Disclosure Instrument sunsets on 1 October 2026.

Consultation

5. In July 2021, ASIC sought feedback from litigation funding industry participants and other stakeholders on ASIC's proposal to extend the dollar disclosure relief for registered litigation funding schemes provided under the Dollar Disclosure Instrument in Consultation Paper 345 *Litigation funding schemes: Guidance and relief* (CP 345). Submissions generally supported the need for relief.

-
6. ASIC also consulted with the Department of the Treasury regarding the effect of the instrument.

Operation of the instrument

Schedule 1

7. Item 1 repeals the commencement provision in paragraph 2(b) of the 2021 Amending Instrument. Schedule 2 of the 2021 Amending Instrument is repealed under Item 2 and will not commence after 12 months.
8. Item 2 repeals Schedule 2 of the 2021 Amending Instrument.
9. Item 3 amends section 8 of the Dollar Disclosure Instrument to remove Note 2 which no longer applies.

Legislative authority

10. The instrument is made under subsections 601QA(1), 926A(2), 951B(1) and 1020F(1) of the Act. Under subsection 601QA(1), ASIC may exempt a person from a provision of Chapter 5C of the Act, or ASIC may declare that Chapter 5C applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration. Under subsection 926A(2), ASIC may grant an exemption from, or omit, modify or vary, a provision of Part 7.6 of the Act (other than Divisions 4 and 8). Under subsection 951B(1), ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.7 of the Act, or declare that Part 7.7 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied. Under subsection 1020F(1), ASIC may grant an exemption from, or omit, modify or vary, a provision of Part 7.9 of the Act.
11. 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.
12. The instrument is a disallowable legislative instrument.

Legislative instrument and primary legislation

13. The Explanatory Statement to the *Corporations Amendment (Litigation Funding) Regulations 2020 (Litigation Funding Regulations)* contemplates that ASIC may need to grant exemptions or modifications to facilitate the operation of the regulatory framework for litigation funding schemes established by the Litigation Funding Regulation and the Act.
14. The Dollar Disclosure Instrument deals with specific or technical issues and is designed to ensure that the regulatory framework for litigation funding schemes is appropriate and operates effectively.

-
15. The Dollar Disclosure Instrument will expire on 1 October 2026. We consider that the extension of the duration of relief provides adequate time for the Government and Parliament to consider any changes to incorporate the relief in the Act or the *Corporations Regulations 2001*.

Regulation Impact Statement

16. The relief contained in the instrument is expressly contemplated by the Explanatory Statement to the Litigation Funding Regulations. ASIC makes the instrument to facilitate the amendments made by the Litigation Funding Regulations.
17. ASIC considers that the relief in the instrument is within the scope of the Regulation Impact Statement (**RIS**) prepared by Treasury for the Litigation Funding Regulations and is relying on that RIS for the instrument. No separate RIS has been prepared for the instrument.

Statement of Compatibility with Human Rights

18. 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 2022/264

Overview

1. The legislative instrument amends:
 - (a) the *ASIC Corporations (Amendment) Instrument 2021/292* by repealing the commencement provision in paragraph 2(b) and Schedule 2 of that instrument to continue the dollar disclosure relief for litigation funding schemes; and
 - (b) the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* by repealing a note which no longer applies.

Assessment of human rights implications

2. The instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. The 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*.