



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC (Amendment) Instrument 2022/0427

This is the Explanatory Statement for *ASIC (Amendment) Instrument 2022/0427*.

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

Summary

1. This instrument expands the definition of ‘senior staff members’ in *ASIC Instrument 2019/117* (the **principal instrument**) to include certain staff from the Australian Taxation Office (the **ATO**). The amendment will enable certain ATO staff to perform and exercise registry functions and powers conferred to the Minister under subsections 147(2), 601DC(2) and 1213B(6) of the *Corporations Act 2001* (**Corporations Act**), subsections 27(2), 28(2) and 32(3) of the *Business Names Registration Act 2011* (**Business Names Registration Act**), and subsections 9(1) and (2) of the *Business Names Registration (Availability of Names) Determination 2015* (**Availability of Names Determination**), and ASIC, under section 37 and subsections 41(1) and 47(1) of the Business Names Registration Act.
2. This instrument also amends the principal instrument by removing the determination that certain staff members are senior staff members for the purposes of performing functions and exercising powers in relation to matters referred to the Financial Services and Credit Panel. This panel was previously formed as a division of ASIC under section 97 of the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) and no longer exists in this form.

Purpose of the instrument

3. The purpose of the instrument is to facilitate the delegation of functions and powers conferred to the Minister and ASIC under the Corporations Act, Business Names Registration Act and Availability of Names Determination to certain officers from the ATO who will assist ASIC to exercise functions and powers relating to its registry operations under section 122 of the ASIC Act, and are therefore staff members for the purposes of the ASIC Act. These ATO officers have been delegated certain registry functions by ASIC as part of the implementation of the Modernising Business Registers program by the ATO.
4. This instrument also facilitates the removal of references to the former Financial Services and Credit Panel which was formed as a division of

ASIC. This panel is superseded by the Financial Services and Credit Panel that is able to be convened by ASIC following the passage of the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*.

Consultation

5. Section 17 of the *Legislation Act 2003* provides that, before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate, and reasonably practicable to undertake.
6. In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the proposed instrument.
7. No consultation was undertaken prior to the making of this amending legislative instrument. The reason why no consultation was undertaken is because consultation would be inappropriate given the machinery nature of this legislative instrument. This legislative instrument deals with the identification of certain staff members in ASIC who are considered appropriate to be delegated certain powers that have been conferred on ASIC, ASIC's Chairperson and the relevant Minister.

Operation of the instrument

8. Items 1 and 2 of Schedule 1 to the amending legislative instrument remove references to the former Financial Services and Credit Panel and remove a determination that certain staff are senior staff members for the purposes of performing functions and exercising powers in relation to a matter referred to the Financial Services and Credit Panel.
9. Item 3 of Schedule 1 determines that staff holding particular positions, being the Deputy Registrar, Deputy Commissioner and Assistant Commissioner in the ATO, are 'senior staff members' for the purposes of performing functions and exercising powers under subsections 147(2), 601DC(2) and 1213B(6) of the Corporations Act, subsections 27(2), 28(2), 32(3), section 37 and subsections 41(1) and 47(1) of the Business Names Registration Act, and subsections 9(1) and (2) of the Availability of Names Determination. The determination is considered appropriate because it ensures that as part of the implementation of the Modernising Business Registers program by the ATO, certain ATO officers can perform registry functions that the Minister and ASIC are able to delegate to senior staff members.

Commencement

10. This legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

11. This legislative instrument does not incorporate any documents by reference.

Retrospective application

12. This legislative instrument does not have retrospective application.

Legislative authority

13. This legislative instrument is made under section 122A of the ASIC Act.
14. This legislative instrument is also an amending instrument. Subsection 33(3) of the *Acts Interpretation Act 1901*¹ states that where an Act confers a power to make an 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 or vary any such instrument.

Statement of compatibility with human rights

15. A Statement of Compatibility with Human Rights is in the Attachment.

¹ The *Acts Interpretation Act 1901* as in force on 1 January 2005 applies to the ASIC Act: see section 5A of the ASIC Act.

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 (Amendment) Instrument 2022/0427

Overview

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* by determining certain ATO officers to be 'senior staff members' for purposes relating to the performance and exercise of registry functions conferred to the Minister and ASIC, and also to remove the determination that certain staff members are senior staff members for the purposes of performing functions and exercising powers in relation to matters referred to the Financial Services and Credit Panel.

Assessment of human rights implications

2. The determination of certain positions to be 'senior staff members' merely facilitates the delegation of powers by ASIC, ASIC's Chairperson and/or the relevant Minister to ASIC staff members holding the specified positions. Accordingly, 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*.