



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2022/719

This is the Explanatory Statement for the *ASIC Corporations (Amendment) Instrument 2022/719*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2022/719* (the **amending instrument**) implements temporary measures to assist with any pressures on resources for the financial reporting and audits of smaller entities and provide adequate time for the completion of the audit process considering challenges presented by COVID-19 and other conditions. The temporary measures are intended to allow entities up to one additional month to complete financial reports and have those reports audited, in compliance with the financial reporting and audit requirements of the *Corporations Act 2001* (the *Act*).
2. The amending instrument affects the operation of sections 250N, 315, 316A, 319, 320, 601HG and 989D of the Act by allowing unlisted entities one additional month to report to members and lodge reports with ASIC, and for unlisted public companies to hold an Annual General Meeting (*AGM*).
3. The amending instrument makes the following amendments to ASIC instruments:
 - (a) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* – the relief providing an additional month for unlisted entities to lodge financial reports with ASIC and report to members for certain financial years and half-years has been amended to now provide an additional month to lodge and report for financial years and half-years ending between 24 June 2022 and 7 July 2022 (both inclusive);

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- (b) *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* – the deadlines for lodging certain documents with ASIC in this instrument have been extended by one month consistent with the primary instrument. *Instrument 2016/785* provides relief to wholly-owned companies that enter into deeds of cross guarantee with their parent entity subject to meeting certain other requirements that include lodging specified documents with ASIC;
 - (c) *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770* – the relief extending the time for certain public companies to hold their AGMs has been amended to now provide an additional month for unlisted public companies with financial years ending between 24 June 2022 and 7 July 2022 (both inclusive).
4. The amending instrument also makes a minor amendment to *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191* to correct a drafting error.
 5. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.

Purpose of the instrument

6. The purpose of the amending instrument is to assist unlisted entities affected by the impacts of COVID-19 by enabling them more time to report and have audits. This includes unlisted public companies, companies limited by guarantee, proprietary companies, unlisted registered schemes, unlisted disclosing entities and unlisted Australian Financial Services (AFS) licensees.
7. The extended deadlines for reporting periods ending between 24 June 2022 and 7 July 2022 (both inclusive) will assist with any pressures on resources for the financial reporting and audits of smaller entities and provide adequate time for the completion of the audit process. Following industry engagement, ASIC recognises that companies and audit firms may have reduced staff numbers due to varying travel restrictions and increased staff resignations in the last two years. There may be higher staff absences due to increases in COVID-19 and influenza case numbers during the reporting season. Some companies may be required to prepare consolidated financial statements for the first time. There may also be a need to make more difficult judgements on asset values, provisions and disclosures given changed economic and other conditions.
8. Directors of some unlisted entities may be asked by their auditors to facilitate the spreading of deadlines for lodging audited financial reports.
9. Directors should consider the information needs of shareholders and other users of their financial reports, as well as meeting borrowing covenants or other obligations, when deciding whether to depart from the normal statutory deadlines.

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10. The amending instrument also makes a minor amendment to an ASIC instrument to correct an erroneous cross-reference to a paragraph of an accounting standard.
 11. The amending instrument does not affect the duration of the instruments to be amended, nor does it make any substantive change to the policy settings of those instruments.

Consultation

12. Before making this amending instrument, ASIC engaged with a range of financial reporting and audit stakeholders (including audit firms and professional accounting bodies) to understand and invite feedback on the impacts of COVID-19 and other factors on reporting and audit.
13. Given that the measures being implemented are temporary and the amending instrument neither substantively impacts the policy settings of the instruments to be amended, nor changes their duration, ASIC did not consider it necessary to engage in further consultation before making the amending instrument.

Operation of the instrument

14. The extended deadlines for the lodgment of financial reports, directors' reports and audit reports for unlisted entities are summarised below. The deadlines are calculated as periods after balance dates and references to Chapters are to Chapters of the Act:
 - (a) Under Chapter 2M, the deadline for lodgment of full year financial reports, directors' reports and audit reports for:
 - (i) unlisted disclosing entities and for unlisted registered schemes, is extended from 3 months to 4 months; and
 - (ii) all other unlisted entities is extended from 4 months to 5 months (will apply to public companies, companies limited by guarantee and proprietary companies that are not disclosing entities or registered schemes);

Note: An extension of the deadline for unlisted registered schemes to lodge compliance plan audit reports will automatically occur as a result of the extension for registered schemes. The period for auditors to complete the compliance plan audit report will be extended from 3 months to 4 months.
 - (b) Under Chapter 2M, the deadline for lodgment of half-year financial reports, directors' reports and audit/review reports for unlisted disclosing entities (including unlisted registered schemes that are disclosing entities) is extended from 75 days to 75 days plus 1 month; and
 - (c) Under Chapter 7, the deadline for lodgment of profit and loss and balance sheets (and other associated information) for:

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- (i) unlisted AFS licensees that are bodies corporate and also disclosing entities or registered schemes is extended from 3 months to 4 months;
 - (ii) unlisted AFS licensees that are bodies corporate and are not disclosing entities or registered schemes is extended from 4 months to 5 months; and
 - (iii) AFS licensees that are not bodies corporate is extended from 2 months to 3 months.
15. For example, the normal deadline for an unlisted public company that is not a disclosing entity to lodge its reports for the year ended 30 June 2022 is 31 October 2022 and the extended deadline will be 30 November 2022.
16. The relief will not apply to registered foreign companies.

Consequential relief

17. Similar extended deadlines are available for sending reports to members. Some of those deadlines also operate by reference to the date of the next AGM.
18. The time for unlisted public companies to hold their AGMs under section 250N of the Act is extended from 5 months to 6 months for balance dates between 24 June 2022 and 7 July 2022 by amending *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*. The extension of time also applies to the requirement in subsection 250N(2) of the Act that entities must hold an AGM once in each calendar year and the requirement in subsection 250N(1) of the Act that entities must hold an AGM within 18 months after its registration. Directors must comply with their directors' duties in deciding whether it is appropriate to rely on this relief.
19. The deadlines for unlisted registered schemes to lodge compliance plan audit reports is extended from 3 months to 4 months.
20. The reporting deadlines in *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* are extended by 1 month for balance dates from 24 June 2022 to 7 July 2022.

Minor amendment

21. The amending instrument also makes a minor amendment to *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191* to correct a cross-referencing error. In the definition of *rounding factor*, the reference to the requirement to disclose remuneration of auditors is amended to refer to paragraph 98 of Accounting Standard AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*.

Commencement

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22. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

Duration of principal instruments to be amended

23. None of these changes substantively affect the policy settings or the duration of the above instruments. As such, the amendments made by the amending instrument will sunset at the same time as the principal instruments, that is:
- (i) *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*: 1 October 2026;
 - (ii) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395*: 1 October 2030;
 - (iii) *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*: 1 October 2031; and
 - (iv) *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191*: 1 April 2026.
24. ASIC will review the instruments ahead of their sunset and consult on options for amending or remaking them as appropriate.

Legislative authority

25. The amending instrument is made under section 253T and subsections 341(1), 601QA(1) and 992B(1) of the Act.
26. Section 253T provides that ASIC may make a determination specifying a class of public companies, if ASIC considers that it may be unreasonable to expect the companies in the specified class to hold AGMs within the time required under section 250N because of a situation that is beyond the control of those companies. ASIC is of the view that unlisted public companies may not be able to comply with the AGM timing requirements due to the extended reporting deadlines.
27. Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.
28. To make an order under subsection 341(1), ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 of the Act would:
- (a) make the financial report or other reports misleading; or
 - (b) be inappropriate in the circumstances; or

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- (c) impose unreasonable burdens.
29. ASIC is satisfied that complying with the statutory financial reporting deadlines for balance dates between 24 June 2022 and 7 July 2022 (both inclusive) would impose unreasonable burdens because, having regard to pressures on financial reporting and audit resources under COVID-19 conditions, reporting and audit processes can take more time.
 30. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the Act.
 31. Subsection 992B(1) provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the Act.
 32. 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.
 33. The amending instrument is a disallowable legislative instrument.
 34. The matters contained in the amending instrument and the principal instruments are appropriately used to deal with specific, temporary, technical and machinery issues. As a consequence, if the matters in the amending instrument and the principal instruments were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of provisions that are highly specific in nature and may become redundant over time.

Statement of Compatibility with Human Rights

35. 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 2022/719

Overview

1. *ASIC Corporations (Amendment) Instrument 2022/719* implements temporary measures aimed at facilitating financial reporting by unlisted entities whose reporting processes take additional time due pressures on audit resources and other impacts of COVID-19. The measures are intended to allow unlisted entities sufficient time to complete their financial reports and for those reports to be audited.
2. *ASIC Corporations (Amendment) Instrument 2022/719* makes amendments to the following instruments – *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395*, *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*, *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*, and *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191*.

Assessment of human rights implications

3. The instruments do 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*.