



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations and Credit (Repeal) Instrument 2023/131

This is the Explanatory Statement for *ASIC Corporations and Credit (Repeal) Instrument 2023/131*.

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

Summary

1. *ASIC Corporations and Credit (Repeal) Instrument 2023/131 (Instrument)* repeals three legislative instruments (*ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*, *ASIC Credit (Financial Counselling Agencies) Instrument 2017/793* and *ASIC Corporations (Commonwealth Financial Counselling-Financial Capability Services) Instrument 2022/221*) (the **three legislative instruments**) in a single instrument. These instruments relate to relief for financial counselling agencies, which has been incorporated into the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 (Regulations)*.

Purpose of the instrument

2. The purpose of the Instrument is to repeal the three legislative instruments, as the relief they provided has been incorporated into the Regulations by the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 (Amending Regulations)*. The Regulations continue to provide relief for financial counselling for:
 - a. financial counselling agencies from the Australian financial services (**AFS**) licensing, conduct and disclosure obligations in Chapter 7 of the *Corporations Act 2001 (Corporations Act)*, when providing particular financial product advice;
 - b. financial capability service providers from the requirement to hold an AFS licence when providing financial product advice, limited to advice about basic deposit products, in certain circumstances; and
 - c. rural financial counselling service providers from the requirement to have an Australian credit licence when providing credit assistance.

Consultation

3. Consultation on the Amending Regulations occurred from 24 August 2022 to 20 September 2022. Minor amendments were made to the Amending Regulations following consultation to ensure that the Amending Regulations apply as intended.

Operation of the instrument

Part 1 – Preliminary

4. Section 2 provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.
5. Section 3 provides that the Instrument is made under powers conferred by the Corporations Act and *National Consumer Credit Protection Act 2009 (Credit Act)*, specifically those in paragraphs:
 - a. 926A(2)(a) of the Corporations Act that allows ASIC to exempt person or class of persons from all or specified provisions of the Corporations Act;
 - b. 109(3)(a) of the Credit Act that allows ASIC to exempt a class of persons from all or specified provisions of the Credit Act; and
 - c. 109(3)(d) of the Credit Act that allows ASIC to declare that all or specified provisions of the Credit Act apply in relation to a credit activity (other than a credit activity referred to in paragraph 109(1)(b)), or a class of persons or credit activities, as if specified provisions were omitted, modified or varied as specified in the declaration.
6. Section 4 provides that each instrument specified in the Schedule to the Instrument is amended or repealed according to its terms.

Legislative authority

8. Subsections 926A(2) of the Corporations Act and 109(3) of the Credit Act provide the legislative authority for the Instrument.
9. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force at the date this instrument commences for the instruments made under powers conferred by the Credit Act, and as at 1 January 2005 and as applicable to the relevant powers of the Corporations Act because of section 5C of the Corporations 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 repeal, rescind, revoke, amend, or vary any such instrument.
10. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

11. 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 and Credit (Repeal) Instrument 2023/131

Overview

1. *ASIC Corporations and Credit (Repeal) Instrument 2023/131* repeals three legislative instruments (*ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*, *ASIC Credit (Financial Counselling Agencies) Instrument 2017/793* and *ASIC Corporations (Commonwealth Financial Counselling-Financial Capability Services) Instrument 2022/221*), which provide relief related to financial counselling agencies, financial capability service providers, and rural financial counselling service providers. This relief has been incorporated into the Corporations Regulations 2001 by the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022*.

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*.