



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Superannuation (Repeal) Instrument 2023/222

This is the Explanatory Statement for *ASIC Superannuation (Repeal) Instrument 2023/222*.

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

Summary

1. *ASIC Superannuation (Repeal) Instrument 2023/222* repeals ASIC Class Order [CO 12/1687].

Purpose of the instrument

2. The purpose of the Instrument is to repeal the competency standards for approved self-managed superannuation fund (SMSF) auditors provided under ASIC Class Order [CO 12/1687]. ASIC has formed the view that the class order is no longer required and does not form a necessary and relevant part of the legislative framework. The class order relates to superannuation and therefore is not subject to sunset. It would have otherwise been due to sunset on 1 April 2023.
3. Part 4 of Chapter 3 of the *Legislation Act 2003* (the Act) provides for the sunset of legislative instruments. Sunset is the process by which instruments are automatically repealed approximately 10 years after they are made unless steps are taken to preserve their operation, or the instruments are exempt from sunset. Section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* prescribes instruments that are exempt from sunset. Item 6 of the table in section 11 prescribes instruments (other than regulations) relating to superannuation as a class of instruments that are exempt from sunset under paragraph 54(2)(b) of the Act.

Consultation

4. On 17 February 2023, ASIC issued media release *23-030MR ASIC will allow SMSF auditors competency standards class order to 'sunset'* (23-030MR) seeking feedback on a proposal to allow class order [CO 12/1687] to sunset. At the time of that release, ASIC had understood that the class order was to sunset on 1 April 2023 rather than being exempt from sunset.

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5. ASIC media release 23-030MR invited submissions by 10 March 2023 from anyone that would be adversely affected by the expiry of [CO 12/1687] or that had feedback in relation to it.
 6. ASIC received two submissions in response to 23-030MR. One respondent expressed support for the proposal to allow [CO 12/1687] to expire. The other response was a joint submission from three relevant professional bodies, which confirmed matters supporting the proposal and that they believed removal of the class order would have no impact on competency requirements for approved SMSF auditors.
 7. While the proposal consulted on was to allow [CO 12/1687] to sunset, there is no practical difference to its removal by way of this Instrument. ASIC therefore considers the consultation to be sufficient.

Operation of the instrument

8. The Instrument repeals [CO 12/1687], commencing the day after it is registered on the Federal Register of Legislation. This removes as requirements for approved SMSF auditors the competency standards contained in the class order.
9. ASIC may under make competency standards for approved SMSF auditors under subsection 128Q(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act), which must be complied with by all approved SMSF auditors under section 128F. Under section 128F of the SIS Act, approved SMSF auditors must also comply with auditing and assurance standards made by the Auditing and Assurance Standards Board (AUASB) and prescribed independence requirements, being *APES 110 Code of ethics for professional accountants (including independence standards)* issued by the Accounting Professional & Ethical Standards Board (APESB). ASIC may disqualify or suspend a person from being an approved SMSF auditor for failing to comply with section 128F of the SIS Act.
10. The competency standards in [CO 12/1687] required approved SMSF auditors to have knowledge of laws applying to those auditors. These knowledge requirements are inherent in the requirement to comply with the applicable AUASB standards and APES 110. Consequently, their removal will simplify the regulatory framework without any significant impact on the approval of SMSF auditors, the quality of their audits, or ASIC's ability to regulate them effectively.

Legislative instrument and primary legislation

11. The repeal by *ASIC Superannuation (Repeal) Instrument 2023/222* is more appropriate for a legislative instrument rather than primary legislation because the instrument being repealed was made under a power specifically delegated to ASIC (i.e. the power to make competency standards for approved SMSF auditors).

Legislative authority

12. *ASIC Superannuation (Repeal) Instrument 2023/222* is made under section 128Q of the SIS Act.
13. Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.
14. As a legislative instrument, the Repeal Instrument is a disallowable legislative instrument under section 42 of the Legislation Act 2003.

Statement of Compatibility with Human Rights

15. 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 Superannuation (Repeal) Instrument 2023/222

Overview

1. The instrument repeals ASIC Class Order [CO 12/1687], which determined competency standards for approved self-managed superannuation fund auditors.

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*.