



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC (Amendment) Instrument 2023/0470

This is the Explanatory Statement for *ASIC (Amendment) Instrument 2023/0470*.

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

Summary

1. This instrument amends the definition of ‘senior staff members’ in *ASIC Instrument 2019/117* (the **principal instrument**) by amending the positions determined to be ‘senior staff member’ positions. This instrument also amends the principal instrument by removing certain positions that were previously determined to be ‘senior staff member’ positions for the purposes of certain delegation provisions relating to the employment of ASIC staff under section 120 of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*).

Purpose of the instrument

2. The purpose of the instrument is to amend positions determined to be ‘senior staff member’ positions at ASIC to reflect an organisational restructure at ASIC which includes removing positions which were previously determined to be ‘senior staff member’ positions for the purposes of performing functions and exercising powers in relation to the employment of staff (including the terms and conditions of employment) under section 120 of the *ASIC Act*.

Consultation

3. 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.
4. 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.
5. 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

6. Item 1 of Schedule 1 to the amending legislative instrument removes the positions of 'Chief Accountant', 'Chief Data and Analytics Officer', 'Chief Information Officer', and 'Chief Supervisory Officer' as 'senior staff member' positions at ASIC and adds for the avoidance of doubt the position of 'Chief Technology Officer' as a 'senior staff member' position at ASIC.
7. Item 2 of Schedule 1 to the amending legislative instrument removes the positions of 'Head, Information Technology' and 'Group Senior Manager, Office of Enforcement' which were previously determined to be 'senior staff member' positions for the purposes of performing functions and exercising powers in relation to the employment of staff (including the terms and conditions of employment) under section 120 of the ASIC Act.
8. The amending legislative instrument is considered appropriate as following the internal organisational restructure of ASIC the positions removed by the amending legislative instrument will cease to exist at ASIC. Further, the addition of the position of 'Chief Technology Officer' as a 'senior staff member' position at ASIC is for the avoidance of doubt only.

Commencement

9. This legislative instrument commences on the later of:
 - (a) 1 July 2023; and
 - (b) the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

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

Retrospective application

11. This legislative instrument does not have retrospective application.

Legislative authority

12. This legislative instrument is made under section 122A of the ASIC Act.
13. 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.

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

14. 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 (Amendment) Instrument 2023/0470

Overview

1. This instrument amends *ASIC (Senior Staff Members—Determination) Instrument 2019/117* to remove references to certain positions as ‘senior staff member’ positions at ASIC and adds for the avoidance of doubt the ‘Chief Technology Officer’ as a ‘senior staff member’ position at ASIC.

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*.