



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/187

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/187*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2024/187* (the **Amending Instrument**) amends the dates upon which two instruments will be repealed, to extend their operation for a further 5 years.
2. The Amending Instrument changes the repeal dates in the following instruments (the **Principal Instruments**):
 - (a) *ASIC Corporations (Auditor Independence) Instrument 2021/75* – amending the repeal date of 30 April 2024 to 30 April 2029;
 - (b) *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* – amending the repeal date of 1 April 2024 to 1 April 2029.
3. The Amending Instrument also aligns the treatment of registrable superannuation entity audit clients with that of other statutory audit clients following the passage of *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*, which amended the *Corporations Act 2001* to include financial reporting and auditing requirements for registrable superannuation entities from 1 July 2023.

Purpose of the instrument

4. The purpose of the Amending Instrument is to:
 - (a) extend the operation of the Principal Instruments for a further 5 years; and
 - (b) align the treatment of registrable superannuation entity audit clients with that of other statutory audit clients.

Consultation

5. Before making the Amending Instrument, ASIC consulted publicly. Four submissions were received, which supported extending the operation of the Principal Instruments.
6. Two submissions were received which noted the changes introduced by *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* to introduce financial reporting and auditing requirements for registerable superannuation entities.
7. Submissions supported amending the Principal Instruments to align the treatment of registrable superannuation entity audit clients with that of other statutory audit clients by amending the definitions of “relevant entity” and “entity” include registerable superannuation entities and thereby provide potential relief to lead auditors. One submission also supported enhancing the relief provided to auditors by extending the maximum threshold conditions under which lead auditors are entitled to relief in the Principal Instruments.
8. *ASIC Corporations (Auditor Independence) Instrument 2021/75* allows the lead auditor for the audit to be relieved from the requirement to disclose a contravention of paragraph R510.4(c) of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* in relation to a financial interest held by a relevant person in the relevant entity or a controlled entity in the auditor’s independence declaration pursuant to section 307C of the *Corporations Act 2001* in certain limited circumstances.
9. *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* allows a parent entity which is required to include consolidated financial statements in its financial report to also include its single entity financial statements in that report.
10. Schedule 6 of *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* amended the *Corporations Act 2001* to include financial reporting and auditing requirements for registrable superannuation entities from 1 July 2023. This aligns the treatment of registrable superannuation entity audit clients with that of other statutory audit clients.
11. We expect that the compliance systems, processes and controls adopted by audit firms would be the same for all audit clients. Not amending the Principal Instruments would mean that audit firms would be required to disclose an inadvertent or immaterial breach relating to a minor financial interest held by a non-engagement partner or family member when auditing a registerable superannuation entity, but not for other audit clients.
12. The Amending Instrument amends the definition of “relevant entity” (in *ASIC Corporations (Auditor Independence) Instrument 2021/75*) and “entity” (in *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195*) to include registerable superannuation entities, along with companies, registered schemes and disclosing entities.

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13. The Principal Instruments were each originally made in 2021 for a duration of 5 years. This was subsequently reduced to 3 years by *ASIC Corporations (Amendment) Instrument 2021/381*.
 14. ASIC has reviewed the operation of the Principal Instruments. In light of this review and following public consultation, ASIC considers that the Principal Instruments remain necessary, fit-for-purpose and relevant, subject to the minor amendments set out in paragraphs 9 to 11 above. As such, ASIC has decided to extend their operation for a further 5 years.
 15. The Amending Instrument commences on the day after it is registered on the Federal Register of Legislation.

Legislative instrument and primary legislation

16. The subject matter and policy implemented by the Amending Instrument is more appropriate for a legislative instrument rather than primary legislation because the instrument extends the operation of the Principal Instruments, which are themselves legislative instruments.

It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument, including whether to extend the maximum threshold conditions under which lead auditors are entitled to relief in the Principal Instruments.

Duration of the instrument

17. The effect of the instrument is to extend the duration of the Principal Instruments by 5 years. This allows sufficient time for the Government and for Parliament to determine whether to amend the primary legislation or regulations to include the relief.

Legislative authority

18. The amending instrument is made under subsections 341(1) of the Act.
19. 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.
20. 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.
21. The amending instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

22. 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 2024/187

Overview

1. *ASIC Corporations (Amendment) Instrument 2024/187* amends the dates upon which *ASIC Corporations (Auditor Independence) Instrument 2021/75* and *ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195* will be repealed, to extend their operation for a further 5 years.
2. *ASIC Corporations (Amendment) Instrument 2024/187* also aligns the treatment of registrable superannuation entity audit clients with that of other statutory audit clients following the passage of *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*, which amended the *Corporations Act 2001* to include financial reporting and auditing requirements for registrable superannuation entities from 1 July 2023.

Assessment of human rights implications

3. This instrument does 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*.