



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations and Credit (Breach Reporting–Reportable Situations) Instrument 2024/620

This is the Explanatory Statement for *ASIC Corporations and Credit (Breach Reporting–Reportable Situations) Instrument 2024/620 (Instrument)*.

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

Summary

1. The Instrument remakes and consolidates the following instruments that were to expire on 5 and 1 October 2024 respectively for a five-year period until the start of 1 October 2029:
 - (a) *ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2021/716 (LI 2021/716)*; and
 - (b) *ASIC Credit (Breach Reporting—Prescribed Commonwealth Legislation) Instrument 2021/801 (LI 2021/801)*.
2. Following consultation on a proposal to remake the instruments, ASIC considered that the relief and requirements in LI 2021/716 and LI 2021/801 were broadly operating effectively and efficiently to achieve their objectives and continued to form a necessary and useful part of the legislative framework.
3. LI 2021/716 and LI 2021/801 have been repealed by the *ASIC Corporations and Credit (Repeal) Instrument 2024/507 (LI 2024/507)*.

Purpose of the instrument

4. The Instrument extends the effect of relief and requirements in LI 2021/716 and LI 2021/801 for a further five years to the start of 1 October 2029 and consolidates them into a single legislative instrument. LI 2021/716 and LI 2021/801 have been repealed by LI 2024/507.
5. LI 2021/716 and LI 2021/801 prevented unintended regulatory and reporting burdens from being imposed upon Australian financial service (*AFS*) licensees as part of the breach reporting obligation (*reportable situations regime*) in Subdivision B, Division 3 of Part 7.6 of the *Corporations Act 2001 (Act)*. These burdens were due to initially unforeseen interactions between the Act, *National*

Consumer Credit Protection Act 2009 (Credit Act) and ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 (LI 2020/98) following the enactment of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020.

6. Modifications that LI 2021/716 and LI 2021/801 made to exclude certain insignificant contraventions of core obligations from being reportable under the reportable situations regime, or to extend the period of time to report related contraventions, were consistent with the rationale the Legislature had applied in excluding other civil penalty provisions from being deemed ‘significant’ breaches of core obligations that had to be reported.
7. By preserving the notional modifications to the Act and Credit Act that LI 2021/716 and LI 2021/801 made, the Instrument also continues to exclude certain minor, technical, or inadvertent non-compliance with standards set out in LI 2020/98 from the categories of situations that are deemed to be ‘significant’ breaches of core obligations.

Consultation

8. Before making the Instrument, ASIC consulted publicly (in *CS 10 Proposed extension of breach reporting and record-keeping legislative instruments*) on the proposal to remake and consolidate LI 2021/716 and LI 2021/801. Six submissions were received which agreed that the relief in LI 2021/716 and LI 2021/801 is operating effectively and efficiently and continues to form a necessary and useful part of the legislative framework.
9. However, four of these submissions also sought wider relief from the obligation to report breaches under the reportable situations regime that ASIC is considering further. One submission also sought migration of the relief and requirements to the primary law.

Operation of the instrument

10. Section 1 of the Instrument specifies the title of the legislative instrument.
11. Section 2 of the Instrument specifies that the Instrument commences on the day after it is registered on the Federal Register of Legislation. The Instrument does not have retrospective application.
12. Section 3 of the Instrument specifies the modification powers in subsection 926A(2) of the Act and subsection 109(3) of the Credit Act under which ASIC makes the Instrument.
13. Section 4 of the Instrument specifies definitions to be relied upon in the Instrument.

Preserving the effect of LI 2021/716

14. Section 5 of the Instrument notionally replaces:

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- (a) paragraph 912D(4)(b) of the Act such that a breach of subsection 912A(5A) of the Act is not a significant breach of a core obligation; and
 - (b) paragraph 50A(4)(b) of the Credit Act such that a breach of subsection 47(4) of the Credit Act is not a significant breach of a core obligation,

in each case to the extent that the contravention results from a contravention of standards notionally inserted into the Act or Credit Act by LI 2020/98.

15. Section 6 of the Instrument notionally:

- (a) modifies subsection 912D(4) of the Act and inserts notional subsections 912D(4A) and (4B) into the Act; and
- (b) modifies subsection 50(4) of the Credit Act and inserts notional subsections 50(4A) and (4B) into the Credit Act,

such that breaches of standards relating to misleading or deceptive conduct are not taken to be a significant breach of a core obligation if the circumstances would otherwise only be likely to give rise to a single reportable situation, only a limited number of clients are likely to be affected and the contravention is unlikely to result in any financial loss.

16. Section 7 of the Instrument notionally replaces:

- (a) subsection 912DAA(3) of the Act with a modified subsection 912DAA(3); and
- (b) subsection 50B(4) of the Credit Act with a modified subsection 50B(4),

such that if an AFS or credit licensee has previously lodged a report with ASIC, pursuant to Part 7.6 of the Act or Part 2-6 of the Credit Act, relating to a reportable situation that is substantially similar to a new reportable situation, the time in which the licensee is required to report to ASIC is extended to ninety (rather than thirty) days.

Preserving the effect of LI 2021/801

17. Section 8 of the Instrument preserves the effect of section 6 of LI 2021/801 by notionally replacing paragraph 50A(3)(c) of the Credit Act which limits what breaches under other Commonwealth legislation related to credit activities must be reported.

18. The modifications mean that the scope of the 'core obligation' in paragraph 47(1)(d) of the Credit Act is limited to the following Commonwealth legislation:

- (a) *Banking Act 1959*;
- (b) *Corporations Act 2001*;
- (c) *Financial Sector (Collection of Data) Act 2001*;

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- (d) *Financial Sector (Shareholders) Act 1998*; and
 - (e) *Financial Sector (Transfer and Restructure) Act 1999*.

19. Section 9 of the Instrument specifies that the Instrument is repealed at the start of 1 October 2029.

Legislative instrument and primary legislation

20. The subject matter and policy implemented by the Instrument are more appropriate for a legislative instrument, rather than primary legislation, because:
- (a) the Instrument is made under powers specifically delegated to ASIC to modify or affect the operation of the Act and Credit Act to provide a tailored and flexible regulatory environment that is fit for purpose; and
 - (b) ASIC understands that the Government will consider whether to make future amendments to incorporate the Instrument into primary law or regulations.

Duration of the instrument

21. The Instrument is repealed at the start of 1 October 2029. Extending the relief and requirements for a period of five years will give the Government an opportunity to determine whether to amend the primary legislation or regulations to include the relief and/or requirements. If the primary legislation or regulations is amended to include the relief and requirements, ASIC will repeal the Instrument.

Legislative authority

22. The Instrument is made under subsection 926A(2) of the Act and subsection 109(3) of the Credit Act.
23. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

24. 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 (Breach Reporting—Reportable Situations) Instrument 2024/620

Overview

1. The Instrument remakes and consolidates into a single legislative instrument *ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2021/716* and *ASIC Credit (Breach Reporting—Prescribed Commonwealth Legislation) Instrument 2021/801*.
2. The Instrument prevents unintended regulatory and reporting burdens from being imposed upon Australian financial services and credit licensees due to unforeseen interactions between the *Corporations Act 2001*, *National Consumer Credit Protection Act 2009* and *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*.

Assessment of human rights implications

3. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. The 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*.