



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2024/618*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/618*.

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

### Summary

1. *ASIC Corporations (Amendment) Instrument 2024/618* (the **Amendment Instrument**) amends *ASIC Corporations (Employee redundancy funds relief) Instrument 2015/1150* (the **Principal Instrument**) to:
  - a. extend the relief provided to employee redundancy funds under the Principal Instrument for 18 months until 1 April 2026; and
  - b. insert a new condition that a person who relies on the relief must notify ASIC by the later of 31 October or one month after the day the person first relies on the relief.

### Purpose of the instrument

2. Employee redundancy funds accept contributions from employers in construction and allied industries on behalf of their employees. The contributions represent redundancy benefits, which will be payable to the employee upon termination or cessation of employment, generally for any reason other than misconduct.
3. The Principal Instrument provides relief from the AFS licensing and managed investment provisions of the *Corporations Act 2001* (**Corporations Act**) for operators of employee redundancy funds. Our relief means that operators of these funds are not required to hold an AFS licence, register the employee redundancy fund as a managed investment scheme, or comply with the managed investment provisions of the *Corporations Act*.
4. Our relief under the Principal Instrument is due to expire on 1 October 2024.
5. The purpose of the Amendment Instrument is to extend the relief provided to employee redundancy funds under the Principal Instrument until 1 April 2026 to

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facilitate further work on a permanent framework for the regulation of these funds.

6. The purpose of the Amendment Instrument is also to insert a new condition that a person who relies on the relief must notify ASIC by the later of 31 October or one month after the day the person first relies on the relief

### **Consultation**

7. In August 2024, ASIC consulted on a proposal to extend our current relief for a period of five years. We received four submissions that generally supported extending the relief and one submission that did not support our proposal.

### **Operation of the instrument**

8. Item 1 of Schedule 1 to the Amendment Instrument amends the Principal Instrument by omitting 1 October 2024 and substituting 1 April 2026. The effect is that the relief provided to employee redundancy funds under the Principal Instrument continues to apply until 1 April 2026.
9. Item 2 of Schedule 1 inserts a new condition that a person who relies on the relief must notify ASIC by the later of 31 October or one month after the day the person first relies on the relief.
10. The Amendment Instrument commences on the day after it is registered.

### **Legislative instrument and primary legislation**

11. The subject matter and policy implemented by the Amendment Instrument is more appropriate for a legislative instrument rather than primary legislation because it amends an existing legislative instrument which would otherwise expire on 1 October 2024.

### **Duration of the instrument**

12. The effect of the Amendment Instrument is to extend the duration of the Principal Instrument by 18 months. ASIC considers this period is appropriate to provide certainty for operators of employee redundancy funds while further work is undertaken on a permanent framework for the regulation of these funds.

### **Legislative authority**

13. The Amendment Instrument is made under paragraphs 601QA(1)(a), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the Corporations Act.
14. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall 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.
15. The Amendment Instrument is a disallowable legislative instrument.

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## Statement of Compatibility with Human Rights

16. 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 2024/618***

#### Overview

1. *ASIC Corporations (Amendment) Instrument 2024/618* amends *ASIC Corporations (Employee Redundancy Funds Relief) Instrument 2015/1150* to extend the exemption for employee redundancy schemes from financial services licensing and the managed investments and associated provisions of the *Corporations Act 2001* until 1 April 2026 and insert a new condition that a person who relies on the relief must notify ASIC by the later of 31 October or one month after the day the person first relies on the relief.

#### 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*.