



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/809

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/809*.

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

Summary

1. The *ASIC Corporations (Amendment) Instrument 2024/809* (**Amendment Instrument**) amends the *ASIC Corporations (Financial Services Guides) Instrument 2015/541* (**Principal Instrument**). The Amendment Instrument allows financial services licensees and authorised representatives (**providing entities**) to, in place of giving a Financial Services Guide (**FSG**) to a client, make available website disclosure information for dealing in a financial product for the purpose of implementing financial product advice that the providing entity provided to that client.
2. The Amendment Instrument is intended to be an interim measure to provide certainty for providing entities ahead of consideration of potential future legislative changes by the Government to implement the relief in the primary law or regulations.

Purpose of the instrument

3. Sections 941A and 941B of the *Corporations Act 2001* (**Corporations Act**) require providing entities to give retail clients an FSG if they provide a financial service to the client unless a situation described in section 941C applies.
4. Schedule 1 of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (**DBFO Act**) amended section 941C to insert subsection 941C(5A) which permits providing entities to make available 'website disclosure information' as a further situation in which they do not have to give clients an FSG.
5. There are requirements that must be met before a providing entity may rely on website disclosure information instead of giving an FSG to a client. The DBFO Act required that the financial service provided to the client had to be financial product advice.

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6. This condition meant that providing entities had to still give a client an FSG if they wanted to deal in a financial product for the purpose of implementing the advice they provided to the client, including if the entity sought to apply for a financial product on the client's behalf.
 7. This outcome was not consistent with the policy intent of the DBFO Act, which included reducing regulatory burden on providers of financial product advice. It also limited the flexibility that providing entities had to otherwise disclose information required in an FSG.
 8. As such, the purpose of the Amendment Instrument is to enable website disclosure information to be made available for dealing in a financial product where the purpose of the dealing is to implement financial product advice that the providing entity provided to that client.
 9. The other conditions that apply to website disclosure information have not changed. For example, the website disclosure information must be readily accessible on the providing entity's website (section 943K) and kept up to date (section 943L).

Consultation

10. ASIC has consulted with Treasury on a confidential basis. Both Treasury and Government support the Amendment Instrument. Wider consultation was not considered necessary given the purpose of the amendments is to ensure website disclosure information is operating consistent with the intended policy.
11. ASIC has engaged with the Office of Impact Analysis (ref OIA24 -08457), who determined that a detailed Impact Assessment was not required.

Operation of the instrument

12. Section 2 of the Amendment Instrument provides that it commences on the day after it is registered on the Federal Register of Legislation.
13. Section 3 of the Amendment Instrument provides that the instrument is made under section 951B of the Corporations Act.
14. Section 4 of the Amendment Instrument has the effect that the Principal Instrument is amended or repealed as set out in Schedule 1 to the Amendment Instrument.
15. Item 1 of Schedule 1 amends the Principal Instrument to insert section 6 which modifies subsection 941C(5A) of the Corporations Act by omitting paragraph 941C(5A)(a) and substituting in new paragraph 941C(5A)(a). The effect of new paragraph 941C(5A)(a) is that dealing in a financial product for the purpose of implementing financial product advice that the providing entity provided to the client is added to financial product advice as a financial service that may be supported by website disclosure information rather than the giving of an FSG.

Legislative instrument and primary legislation

16. The subject matter and policy implemented by the Amendment Instrument are more appropriate for a legislative instrument, rather than primary legislation because the matters contained in the instrument are:
 - (a) a specific amendment designed to ensure that the application of primary legislation applies in a way consistent with the intended policy; and
 - (b) made on an interim basis ahead of the Government considering potential future legislative changes to the primary legislation or regulations to give effect to the intended policy.
17. It will be a matter for the Government and for Parliament as to when the primary law or regulations may be amended in future to include the relief in the Amendment Instrument.

Duration of the instrument

18. The Amendment Instrument will be repealed in accordance with Division 1 of Part 3 of Chapter 3 of the *Legislation Act 2003 (Legislation Act)*. The amendments made by the Amendment Instrument will have effect until the Primary Instrument is repealed on 1 October 2025.

Legislative authority

19. The Amendment Instrument is made under section 951B of the Corporations Act.
20. 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.
21. The Amendment Instrument is a disallowable legislative instrument under the Legislation Act.

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 2024/809

Overview

1. The *ASIC Corporations (Amendment) Instrument 2024/809* amends *ASIC Corporations (Financial Services Guides) Instrument 2015/541* to insert section 6 that modifies subsection 941C(5A) of the *Corporations Act 2001* to permit providing entities to make available website disclosure information if dealing in a financial product for the purpose of implementing financial product advice that the providing entity provided to a client.

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*.