



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### ***ASIC Corporations (31-day Term Deposits) Instrument 2025/172 and ASIC Corporations (Repeal) Instrument 2025/182***

This is the Explanatory Statement for *ASIC Corporations (31-day Notice Term Deposits) Instrument 2025/172* and *ASIC Corporations (Repeal) Instrument 2025/182*.

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

#### **Summary**

1. *ASIC Corporations (31-day Notice Term Deposits) Instrument 2025/172* (Instrument 2025/172) provides concessional regulatory treatment for term deposits of up to five years that are only breakable on 31 days' notice by including them within the definition of 'basic deposit product' in section 9 of the *Corporations Act 2001* (the Act). It also clarifies that such term deposits meet the definition of 'basic banking product' in section 9 of the Act for the purposes of Parts 7.6 and 7.8A of the Act. Instrument 2025/172 continues the effect of the concessional treatment in ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits*.
2. [CO 14/1262], as originally made in 2014 and subsequently amended, will sunset under section 50 of the *Legislation Act 2003* on 1 April 2025.
3. *ASIC Corporations (Repeal) Instrument 2025/182* repeals [CO 14/1262].

#### **Purpose of the instruments**

4. Instrument 2025/172 provides Authorised Deposit-taking Institutions (ADIs) with certainty that 31-day notice term deposits of up to five years will be treated as basic deposit products under the Act.
5. Instrument 2025/182 repeals [CO 14/1262].

#### ***Reasons for making [CO 14/1262]***

6. ASIC first made [CO 14/1262] in 2014 to give concessional regulatory treatment to 31-day notice term deposits of up to 5 years' duration. This was initially for an interim period of 18 months to give the Government the opportunity to consider legislative reform. ASIC extended the concessional

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regulatory treatment under [CO 14/1262] for subsequent additional periods until 31 March 2025.

7. Some ADIs are subject to a 'liquidity coverage ratio' (LCR) requirement. The Australian Prudential Regulation Authority has, since 1 January 2015, applied an LCR under *Prudential Standard APS 210 Liquidity* (APS 210). The current version of APS 210 is made under Banking (prudential standard) determination No. 13 of 2022 and commenced on 1 January 2023. The objective of the LCR is to ensure that an ADI maintains an adequate level of unencumbered high-quality liquid assets (HQLA) that can be converted into cash to meet the ADI's liquidity needs for a 30-day period under a severe liquidity stress scenario. ADIs must maintain a stock of qualifying HQLA to cover total net cash outflows over the next 30 days.
8. When calculating total net cash outflows, term deposits with a residual maturity or withdrawal notice period of more than 30 days will be excluded from LCR calculations if the depositor has no legal right to withdraw deposits within 30 days of the LCR or if early withdrawal results in a significant penalty that is materially greater than the loss of interest on the deposit. Because term deposits are excluded from an ADI's cash outflows if the depositor has no legal right to withdraw the deposit within 30 days, a 31-day notice period requirement for early withdrawal will allow ADIs to exclude those term deposits when determining their cash outflows under the LCR.
9. For a deposit product to meet the definition of 'basic deposit product' in section 9 of the Act, it must satisfy the conditions set out in that definition. A term deposit of up to five years may be considered a basic deposit product if early withdrawal by the depositor is permitted. Under the definition in section 9, a depositor may make an early withdrawal without prior notice to the ADI, except that:
  - (a) an ADI may require prior notice for withdrawal from a term deposit of up to two years;
  - (b) for credit unions, credit societies, credit co-operatives and building societies, a notice requirement of not more than seven days may be required for term deposits of between two and five years; and
  - (c) the ADI may impose a reduction in the return generated for the depositor if the depositor withdraws the funds early.
10. The definition of basic deposit product makes a distinction between term deposits of up to two years and term deposits of between two and five years, in relation to notice period requirements for early withdrawals by depositors. The distinction is:
  - (a) Term deposits of up to two years may qualify as basic deposit products if early withdrawal of funds is permitted (whether or not subject to a notice period requirement).

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- (b) Term deposits of between two and five years may qualify as basic deposit products if early withdrawal of funds is permitted without prior notice (with the exception of the special provision under subregulation 1.0.02AA for credit unions, credit societies, credit co-operatives and building societies).
11. While the definition of basic deposit product in section 9 of the Act allows notice periods for early withdrawal from term deposits of up to two years, it does not state what a permissible notice period would be. It is unclear what duration would be consistent with the characterisation of a term deposit of up to two years as a basic deposit product. ASIC's view is that a notice period of 31 days for early withdrawal is unlikely to be consistent with the characterisation of a term deposit of up to two years as a basic deposit product and, accordingly, these term deposits would be unlikely to meet the definition of basic deposit product.
12. On this basis, without relief, 31-day notice term deposits of up to five years would not be 'basic deposit products' and would be subject to more onerous regulatory requirements under the Act, including:
- (a) a higher level of training standards at the Tier 1 level for persons advising on term deposits under ASIC Regulatory Guide 146 *Licensing: Training of financial product advisers*; and
- (b) more prescriptive disclosure obligations, including obligations to provide a Product Disclosure Statement in a recommendation, issue or sale situation and a Statement of Advice when advisers provide personal advice to clients.

*Reasons for remaking the relief in Instrument 2025/172*

13. ASIC has reviewed the operation of [CO 14/1262] and, subject to minor amendments, has assessed it as operating efficiently and effectively. ASIC has also assessed that ADIs still rely on the relief. Accordingly, ASIC is remaking the relief in [CO 14/1262], with minor amendments (detailed below), by making Instrument 2025/172.

*Balancing consumer protection and regulatory burden*

14. Instrument 2025/172 balances consumer protection objectives against regulatory burden and compliance costs on ADIs by imposing conditions on the relief that address the greater risks posed to consumers by 31-day notice term deposits.
15. ASIC considers there is a risk that consumers may acquire a 31-day notice term deposit product without being aware of the 31-day notice period or understanding its effect. The 'dual pricing rollover risk' (namely, the risk that consumers may passively allow term deposits to roll over from a high interest rate to a much lower interest rate), combined with the 31-day notice period (during which the consumer will be unable to exit the product), poses a greater risk to consumers than term deposits that do not have such a notice period.

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16. Instrument 2025/172 allows ADIs to roll over deposited funds into a new term deposit where the depositor has given consent. However, it balances this with requirements on ADIs to give depositor warnings and information about the rollover (including the potential for the funds to roll over into a new product with a lower interest rate) and the existence and effect of the 31-day notice period. Instrument 2025/172 imposes a requirement on ADIs to give depositors a 7-day grace period, once the funds have rolled over, during which the depositor may withdraw or transfer their funds from the new term deposit.
  17. In recognition of the regulatory burden in meeting the requirements of the relief, Instrument 2025/172 provides flexibility to ADIs in how they communicate their depositor warnings and information to depositors. Instrument 2025/172 also introduces a 'reasonable steps' test to assist ADIs in providing the required warnings and information within the required time frames. This flexibility is balanced against ensuring consumer protection and information transparency by the inclusion of important features throughout the conditions of the relief. These features are detailed below.

#### *Financial Adviser Register*

18. The Financial Adviser Register (FAR) is a public register of all natural persons providing personal advice on more complex products (such as superannuation, shares, managed investment schemes and life insurance) to retail clients.
19. Financial advisers who provide advice only on simpler products (for example, motor vehicle insurance or basic deposit products) are not required to be listed on the FAR. These individuals (such as bank counter staff and insurance call centre staff) are not generally perceived by consumers as financial advisers.
20. Section 910A of the Act defines 'relevant financial product' for the purpose of defining the scope of the FAR. 'Relevant financial product' means all financial products except for those specified in the definition. A 'basic banking product' is one such specified exception.
21. 'Basic banking product' has the meaning given by section 9 of the Act, which refers to the definition in 961F of the Act, which forms part of Part 7.7A of the Act. The definition of 'basic banking product' includes, among other things, a 'basic deposit product'.
22. Instrument 2025/172 notionally modifies the definition of a 'basic deposit product' so that 31-day notice term deposits of up to five years are basic deposit products for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8A and 7.9 of the Act. However, it does not have effect for the purposes of Part 7.7A of the Act. Paragraph 5(b) of Instrument 2025/172 extends the modified definition of basic deposit product for the purposes of the definition of basic banking product in section 9 of the Act as it applies to Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8A and 7.9 of the Act.
23. Paragraph 5(b) of Instrument 2025/172 therefore provides certainty that an individual will not be a relevant provider merely because they are authorised to provide personal advice on a 31-day notice term deposit. That is because

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paragraph 5(b) confirms that such a product is a basic banking product for the purposes of the FAR provisions.

## **Operation of the instrument**

### *Definition of basic deposit product*

24. Instrument 2025/172 operates in relation to ‘affected term deposits’. ‘Affected term deposit’ is defined in section 4 of Instrument 2025/172 in a similar way to ‘basic deposit product’ in section 9 of the Act, except that the definition of affected term deposit:
  - (a) will only apply where there is a minimum period (of up to 5 years) before which funds cannot be withdrawn or transferred without a reduction in the return generated for the depositor; and
  - (b) will not apply to products where the condition in paragraph (d) of the definition of ‘basic deposit product’ applies and is satisfied.
25. Section 5 of Instrument 2025/172 modifies the definition of ‘basic deposit product’ for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8A and 7.9 of the Act. The effect is that an affected term deposit will be a basic deposit product if the funds are able to be withdrawn or transferred without a notice period or with a notice period that does not exceed 31 days from the first business day after the notice is given.

### *Exemption of 31-day notice term deposits from the scope of the FAR*

26. As mentioned in paragraph 22 above, the effect of paragraph 5(b) of Instrument 2025/172 is to ensure that the modified definition of ‘basic deposit product’ in Instrument 2025/172 carries through to the definition of ‘basic banking product’ for the purposes of Part 7.6 of the Act. This will ensure that an individual who is authorised to provide personal advice about a 31-day notice term deposit is not required to be registered on the FAR.

### *Design and distribution obligations*

27. Paragraph 5(b) of Instrument 2025/172 ensures that the modified definition of basic deposit product carries through to the definition of basic banking product for the purposes of the design and distribution obligations provisions Part 7.8A of the Act.

### *Term deposit offer information*

28. Section 6 of Instrument 2025/172 inserts a new subsection 1012D(7AB) into the Act. The subsection provides that, at or before the time an ADI offers to issue an affected term deposit, the ADI must disclose information to the depositor as prescribed by new subsection 1012D(7AB) (as inserted by section 6 of Instrument 2025/172):

### *Depositor warning in relation to rollover of term deposit*

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29. Section 6 of Instrument 2025/172 inserts a new subsection 1012D(7AE) into the Act. The subsection provides that the ADI must, if the depositor consents to the term deposit rolling over at maturity:
- (a) give a grace period of at least seven days from maturity, during which the depositor can withdraw or transfer funds without incurring a fee or a reduction in the return generated;
  - (b) give the depositor either:
    - (i) a ‘pre-maturity notice’ and ‘post-maturity notice’; or
    - (ii) a ‘combined maturity notice’containing information as prescribed by new subsections 1012D(7AG), (7AH) and (7AI) of the Act respectively (as inserted by section 6 of Instrument 2025/172).
30. The ADI may elect which out of the two-notice (pre- and post-maturity notices) or combined notice process to adhere to in complying with the terms of the relief.
31. In acknowledgement that it may not in every case be reasonably within the control of the ADI to provide the prescribed notices to the depositor within the prescribed timeframes, Instrument 2025/172 introduces a requirement that the ADI take reasonable steps to ensure that the notices are given to the depositor within those timeframes (see new paragraphs 1012D(7AF)(a), (b) and (c) of the Act, as inserted by section 6 of Instrument 2025/172). For example, if an ADI is giving the post-maturity notice via ordinary post and, due to postage delivery timeframes or delays, the notice is not received by the depositor within the prescribed timeframe, the ADI is likely to have taken ‘reasonable steps’ if the ADI has posted out the notice to the depositor within the prescribed timeframe.

*Information and notices – requirements for wording, presentation and giving*

32. Section 6 of Instrument 2025/172 inserts new subsection 1012D(7AJ) of the Act, which prescribes how the information and notices must be given. Subparagraph 1012D(7AJ)(b)(iii) introduces an ability for the ADI to make the information or notice available to the depositor by a ‘nominated electronic means’, which is defined in *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647*.

**Consultation**

33. ASIC consulted publicly on its proposal to remake the relief in [CO 14/1262] with minor amendments. On 10 December 2024, ASIC issued a news item summarising our proposal to remake the relief and our proposed amendments, seeking submissions. ASIC received four submissions (including three non-confidential submissions), which were generally supportive of the proposals. Submissions also called for greater facilitation of electronic communication of notices required under the relief.

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34. ASIC also provided an initial draft version of Instrument 2025/172 to a targeted set of stakeholders (those who had made a submission to the public consultation) for their feedback. ASIC incorporated some minor additional changes to the draft Instrument 2025/172 as a result.

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

35. The subject matter and policy implemented by Instrument 2025/172 is more appropriate for a legislative instrument than primary legislation because it provides relief where strict compliance with the primary legislation produces anomalous outcomes that would be inconsistent with the intent of the primary law. If the matters in Instrument 2025/172 were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
36. It will be a matter for the Government and for Parliament to consider whether the Act or Corporations Regulations 2001 may need to be amended in the future to include the substance of Instrument 2025/172 in legislation.

### **Duration of Instrument 2025/172**

37. The duration of Instrument 2025/172 is 5 years. This period is appropriate to provide certainty for industry while the Government decides whether to amend the primary legislation.

### **Legislative authority**

38. Both Instrument 2025/172 and Instrument 2025/182 are made under paragraphs 926A(2)(c), 951B(1)(c), 994L(2)(c) and 1020F(1)(c) of the Act.
39. Paragraph 926A(2)(c) provides that ASIC may declare that Part 7.6 (other than Divisions 4 and 8) applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
40. Paragraph 951B(1)(c) provides that ASIC may declare that Part 7.7 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
41. Paragraph 994L(2)(c) provides that ASIC may declare that Part 7.8A of the Act applies in relation to a specified class or persons or a specified class of financial products as if specified provisions were omitted, modified or varied as specified in the declaration.
42. Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

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43. The instruments are disallowable legislative instruments.

**Statement of Compatibility with Human Rights**

44. 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 (31-day Term Deposits) Instrument 2025/172 and ASIC Corporations (Repeal) Instrument 2025/182***

#### Overview

1. *ASIC Corporations (31-day Term Deposits) Instrument 2025/172* (Instrument 2025/172) provides conditional relief to allow term deposits of up to five years that are only breakable on 31 days' notice to be given concessional regulatory treatment by including them within the definition of 'basic deposit product' in section 9 of the *Corporations Act 2001* (the Act). It also clarifies that such term deposits meet the definition of 'basic banking product' in section 961F of the Act for the purposes of Parts 7.6 and 7.8A of the Act. It preserves the effect of the relief in ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits*, which has a sunset date of 1 April 2025.
2. The relief in Instrument 2025/172 is conditional upon Authorised Deposit-taking Institutions giving depositor warnings in relation to the offer of the term deposit and upon maturity of the term deposit.
3. *ASIC Corporations (Repeal) Instrument 2025/182* (Instrument 2025/182) repeals [CO 14/1262].

#### Assessment of human rights implications

2. Neither Instrument 2025/172 nor Instrument 2025/182 engages any of the applicable rights or freedoms.

#### Conclusion

3. Both Instrument 2025/172 and Instrument 2025/182 are 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*.