



**ASIC**  
Australian Securities &  
Investments Commission

## ***ASIC Corporations (Amendment) Instrument 2021/116***

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2021/116*.

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

### **Summary**

1. The *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* (**Instrument 2020/787**) provides exemptions to responsible entities of litigation funding schemes from certain provisions in Chapter 5C and Chapter 7 of the *Corporations Act 2001* (**Act**).
2. Instrument 2020/787 was due to sunset on 1 October 2030, in accordance with the default sunset arrangements for legislative instruments provided for under the *Legislation Act 2003*.
3. The instrument amends Instrument 2020/787 to provide for a sunset date of 22 August 2025.

### **Purpose of the instrument**

4. The purpose of the instrument is to reduce the term of Instrument 2020/787 to five years, having regard to:
  - (a) concerns raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation as to the sunset date for Instrument 2020/787; and
  - (b) potential impact on the matters addressed by Instrument 2020/787 from the recommendations in the recent report of the Parliamentary Joint Committee on Corporations and Financial Services inquiry into litigation funding and the regulation of the class action industry.

### **Consultation**

5. ASIC has consulted with the Department of the Treasury regarding the effect of the instrument. ASIC did not undertake wider consultation with respect to the instrument as it is machinery in nature.

### **Operation of the instrument**

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6. The instrument amends Instrument 2020/787 by inserting a new section 2A after section 2. New section 2A of Instrument 2020/787 provides that Instrument 2020/787 will cease to apply on 22 August 2025.
  7. The instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Legislative authority**

8. Subsections 601QA(1), 926A(2) and 1020F(1) of the Act provide the legislative authority for Instrument 2020/787.
9. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), 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.
10. The instrument is a disallowable legislative instrument.

### **Regulation Impact Statement**

11. As the instrument does not alter the content of the relief provided for under Instrument 2020/787, ASIC considers that a Regulation Impact Statement is not required.

### **Statement of Compatibility with Human Rights**

12. 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 2021/116***

#### Overview

1. The legislative instrument amends the *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* to provide for a sunset date of 22 August 2025.

#### Assessment of human rights implications

2. The instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

3. 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*.