



# Ministerial Powers (ASIC) Delegations 2021

made under the *Business Names Registration Act 2011*, *Corporations Act 2001*, *Life Insurance Act 1995*, and the *Mutual Assistance in Business Regulation Act 1992*.

## Compilation No. 2

**Compilation date:** 1 July 2023

**Includes amendments up to:** *Ministerial Powers (ASIC) Amendment Delegations 2023*

Prepared by The Treasury

# About this compilation

## **This compilation**

This is a compilation of the *Ministerial Powers (ASIC) Delegations 2021* that shows the text of the law as amended and in force on 1 July 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

## **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

## **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

## **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

## **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part 1—Preliminary**

### **1 Name**

This instrument is the *Ministerial Powers (ASIC) Delegations 2021*.

### **3 Authority**

This instrument is made under the following:

- (a) the *Business Names Registration Act 2011*; and
- (b) the *Corporations Act 2001*; and
- (c) the *Life Insurance Act 1995*; and
- (c) the *Mutual Assistance in Business Regulation Act 1992*.

### **5 Definitions**

Note: Paragraph 13(1)(b) of the *Legislation Act 2003* has the effect that expressions have the same meaning in this instrument as in the *Business Names Registration Act 2011*, *Corporations Act 2001* and *Mutual Assistance in Business Regulation Act 1992* as appropriate and as in force from time to time.

In this instrument:

**ASIC** means the Australian Securities and Investments Commission.

**ATO** means the Australian Taxation Office.

**member**, in relation to ASIC, has the same meaning as in section 9 of the *Australian Securities and Investments Commission Act 2001*.

**senior staff member** has the same meaning as in the *Australian Securities and Investments Commission Act 2001*.

**staff member** has the same meaning as in the *Australian Securities and Investments Commission Act 2001*.

Section 6

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## Part 2—Delegations under the Business Names Registration Act

### 6 Delegation of the Minister's functions and powers

- (1) Under subsection 80(1) of the *Business Names Registration Act 2011*, the Minister's functions and powers under subsections 27(2), 28(2) and 32(3) of that Act are delegated to the persons holding, occupying or performing the duties of each of the following offices and positions in ASIC:
- (a) a member of ASIC;
  - (b) a senior staff member who is:
    - (i) an Executive Director;
    - (ii) a Senior Executive Leader;
    - (iii) a Senior Executive Specialist.

Note: Subsections 27(2), 28(2) and 32(3) are prescribed by section 13 of the *Business Names Registration Regulations 2011*.

- (2) Under subsection 80(1) of the *Business Names Registration Act 2011*, the Minister's functions and powers under subsections 27(2), 28(2) and 32(3) of that Act are delegated to senior staff members holding, occupying or performing the duties of each of the following offices and positions in the ATO whose services are being made available to assist ASIC in connection with the performance or exercise of ASIC's functions and powers:
- (a) the Deputy Registrar;
  - (b) a Deputy Commissioner;
  - (c) an Assistant Commissioner.

### 7 Direction to the delegate

For the purposes of subsection 80(2) of *Business Names Registration Act 2011*, a person delegated a function or power under section 6 of this instrument, must have regard to the *Guidelines for Ministerial Consent to Business Names under the Business Names Registration Act 2011* (July 2015), as published on the ASIC website, when exercising the power or function.

## Part 3—Delegations under the Corporations Act

### 8 Delegation of the Minister's powers under Chapter 7

(1) Under subsection 1101J(1) of the *Corporations Act 2001*, each of the Minister's powers under a provision of the *Corporations Act 2001* specified in an item of the following table is delegated to the persons holding, occupying or performing the duties of each of the following offices and positions in ASIC:

- (a) a member of ASIC;
- (b) a senior staff member.

Item	Provisions of the <i>Corporations Act 2001</i>	Description of the function or power
<b><i>Licensed markets</i></b>		
1	section 791C	Issue/revoke/vary an exemption from all or specified provisions of Part 7.2 of the Corporations Act
2	section 792F	Direct audit of annual report
3	section 792H	Approve change of country by foreign licensee
4	section 793E	Disallow changes to operating rules
5	section 794A	Issue/vary/revoke directions
6	section 794B	Require a special report including an audited special report
7	section 795B	Issue domestic and overseas licence
8	section 795C	Gazette the licence
9	section 796A	Impose/vary/revoke conditions on licence
10	section 797A	Vary licence to take into account name change
11	section 797B	Immediately suspend or cancel licence
12	section 797C	Suspend or cancel licence following hearing and report
13	section 797D	Effect of suspension
14	section 797E	Vary or revoke suspension
15	section 797F	Publication of notice of suspension or cancellation
16	section 798M	Issue/revoke/vary exemption from all or specified provisions of Part 7.2A of the Corporations Act
<b><i>Licensed CS facilities</i></b>		
17	section 820C	Issue/revoke/vary exemption from all or specified provisions of Part 7.3 of the Corporations Act
18	section 821E	Direct audit of annual report
19	section 821F	Approve change of country by foreign licensee
20	section 822E	Disallow changes to operating rules
21	section 823A	Issue/vary/revoke directions
22	section 823B	Require a special report including an audited special report
23	section 824B	Issue domestic and overseas licence
24	section 824C	Gazette the licence
25	section 825A	Impose/vary/revoke conditions on licence

Section 9

Item	Provisions of the <i>Corporations Act 2001</i>	Description of the function or power
26	section 826A	Vary licence
27	section 826B	Immediately suspend or cancel licence
28	section 826C	Suspend or cancel licence following hearing and report
29	section 826D	Effect of suspension
30	section 826E	Vary or revoke suspension
31	section 826F	Publication of notice of licence suspension or cancellation
<b><i>Compensation regimes for financial markets</i></b>		
32	section 881D	Consider whether market will be covered by Division 4 of Part 7.5 of the Corporations Act
33	section 882A	Approve compensation arrangements with grant of licence
34	section 882B	Approve compensation arrangements after licence is granted
35	section 882C	Revoke an approval of compensation arrangements
36	section 882D	Issue directions to licensee
37	section 884B	Disallow changes to compensation rules
38	section 884C	Approve changes to compensation arrangements
39	section 885B	Requirements for compensation arrangements to be adequate
40	section 885C	Adequacy of compensation arrangements – losses to be covered
41	section 885J	Adequacy of compensation arrangements - other matters to be taken into account
42	section 890H	Disallow changes to the operating rules of the Securities Exchanges Guarantee Corporation
43	section 892K	Request a risk assessment report
44	section 893B	Issue/revoke exemption from all or specified provisions of Part 7.5 (compensation regimes) and vary/revoke an exemption

Note: The description of a function or power in the table are to assist readers only. They are not intended to affect the interpretation nor limit the function or power referred to in the table.

**9 Delegation of the Minister’s powers relating to names**

- (1) Under subsection 1345A(1A) of the *Corporations Act 2001*, the Minister’s functions or powers under subsections 147(2), 601DC(2) and 1213B(6) of that Act are delegated to the persons holding, occupying or performing the duties of each of the following offices and positions in ASIC:
  - (a) a member of ASIC;
  - (b) a senior staff member who is:
    - (i) an Executive Director;
    - (ii) a Senior Executive Leader;
    - (iii) a Senior Executive Specialist.
- (2) Under subsection 1345(1A) of the *Corporation Act 2001*, the Minister’s functions and powers under subsections 147(2), 601DC(2) and 1213B(6) of that Act are delegated to the senior staff members holding, occupying or performing the duties of each of the following offices and positions in the ATO whose



services are being made available to assist ASIC in connection with the performance or exercise of ASIC's functions and powers:

- (a) the Deputy Registrar;
- (b) a Deputy Commissioner;
- (c) an Assistant Commissioner.

- (3) All previous delegations made under subsection 1345A(1A) of the *Corporations Act 2001* are revoked.

## **10 Directions to the delegate**

- (1) A person delegated a function or power under section 8 of this instrument must have regard to the *Guidelines for the Exercise of Powers Delegated to ASIC under Chapter 7 of the Corporations Act 2001* (April 2019), as published on the Department of the Treasury's website, when exercising the power or function.
- (2) For the purposes of subsection 1345A(2) of *Corporations Act 2001*, a person delegated a function or power under section 9 of this instrument must have regard to the *Guidelines for Ministerial Consent to Body Corporate Names under the Corporations Act 2001* (January 2008), as published on the Department of the Treasury's website, when exercising the power or function.

## **Part 4—Delegations under the Mutual Assistance in Business Regulation Act**

### **11 Delegation of the Minister’s powers and functions**

Under subsection 22(2) of the *Mutual Assistance in Business Regulation Act 1992*, the Minister’s powers and functions under sections 7, 8 and 9 of that Act are delegated to the persons holding, occupying or performing the duties of each of the following offices and positions in ASIC:

- (a) a member of ASIC;
- (b) a Special Counsel in Legal Services;
- (c) the Senior Executive Leader, Misconduct and Breach Reporting (position number 15,403);
- (d) the Senior Executive Leader, Investigation and Enforcement, Enforcement and Compliance (position number 17,777);
- (e) the Senior Executive Leader, Market Supervision (position number 4644);
- (f) the Senior Executive Specialist, International (position number 17,834);
- (g) the Senior Executive Leader, Intelligence and International (position number 17,832).

## **Part 5—Delegations under the *Life Insurance Act 1995***

### **12 Delegation of the Minister’s powers and functions**

Under subsection 216(14B) of the *Life Insurance Act 1995*, the Minister’s powers and functions under section 216 of that Act are delegated to the persons holding, occupying or performing the duties of each of the following offices and positions in ASIC:

- (a) a member of ASIC;
- (b) a staff member.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

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## Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s)
C[x] = Compilation No. x	/sub-subparagraph(s)
Ch = Chapter(s)	pres = present
def = definition(s)	prev = previous
Dict = Dictionary	(prev...) = previously
disallowed = disallowed by Parliament	Pt = Part(s)
Div = Division(s)	r = regulation(s)/rule(s)
ed = editorial change	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislation	rep = repealed
gaz = gazette	rs = repealed and substituted
LA = <i>Legislation Act 2003</i>	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
ad = added or inserted	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced
	o = order(s)

## Endnotes

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### Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Ministerial Powers (ASIC) Delegations 2021</i>	14 April 2021 (F2021N00070)	15 April 2021	—
<i>Ministerial Powers (ASIC) Amendment Delegations 2022</i>	17 June 2022 (F2022N00136)	18 June 2022	—
<i>Ministerial Powers (ASIC) Amendment Delegations 2023</i>	22 June 2023 (F2023N00177)	1 July 2023	—

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
section 2	rep LA s 48D
section 3	rs F2022N00136
section 4	rep LA s48C
section 11	rs F2023N00177
Part 5	ad F2022N00136
Schedule 1	rep LA s48C