



ASIC
Australian Securities &
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**Australian Securities
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Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet

By email: helpdesk-OBPR@pmc.gov.au

Your reference: ID 21-01020

29 March 2022

Dear Mr Lange

ASIC Corporations (Repeal and Transitional) Instrument 2017/186 (ASIC Instrument 2017/186)

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding [ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186 \(Instrument\)](#), which, as per the *Legislation Act 2003*, has been scheduled to sunset on 1 April 2022.

In March 2002, the Australian Securities and Investments Commission (**ASIC**) issued [Class Order \[CO 02/273\] Business introduction or matching services](#). The Instrument repealed [CO 02/273] but had preserved its effect until 23 March 2019. [ASIC Corporations \(Amendment\) Instrument 2019/216](#) preserves the relief provided by [\[CO 02/273\]](#) until 1 April 2022. This extension was to allow ASIC to review and consult on the policy settings in the original [\[CO 02/273\]](#) and assess the impact of the crowd-sourced funding (**CSF**) regime on the relief.

The Instrument provides relief to persons who are involved in a business introduction service from the fundraising (Parts 6D.2 and 6D.3 of the *Corporations Act 2001* (the **Act**)), debenture (Parts 2L.1 to 2L.5 of the Act), financial product disclosure (Part 7.9 of the Act) and the anti-hawking and advertising requirements (section 992A(1) of the Act). A business introduction service connects potential investors and issuers or sellers by circulating information about small to medium enterprise (**SME**) investment opportunities.

It has been decided by ASIC that:

1. on 1 April 2022, the relief in the Instrument will be extended until 1 October 2022, subject to an additional requirement that:

- a. the relief applies if a person who is relying on the relief on 31 March 2022 provides notice to ASIC by 2 May 2022 (known as the **Continuing Reliance Notice**) if they want to continue relying on the relief after this date; and
 - b. from 1 April 2022, the relief applies if persons who were not relying on the relief on 31 March 2022 have given ASIC notice (known as the **Opt-In Notice**). The relief does not take effect until the Opt-In Notice is given to ASIC; and
2. on 1 October 2022, ASIC will confer relief that replaces [\[CO 02/273\]](#) to:
- a. provide that the relief for the offer, issue or recommendation of interests in a managed investment scheme (**scheme interests**) will continue until 1 April 2025, subject to the notification requirement above;
 - b. provide that the relief for the offer, issue or recommendation of Chapter 6D securities (including Chapter 2L debentures) will expire on 1 October 2022; and
 - c. clarify that the design and distribution obligations (**DDOs**) in Part 7.8A of the Act apply to persons who rely on the relief where they would need to presently comply with the obligations under Part 7.8A of the Act.

ASIC certifies the Instrument is operating effectively and efficiently and therefore a *Regulation Impact Statement* is not required for this Instrument to be remade.

This assessment has been informed by a consultation process during the period from 25 January 2022 to 15 February 2022, with additional submissions received up to 21 February 2022. ASIC consulted publicly through [Consultation Paper 357](#) *Remaking relief for business introduction services: ASIC Instrument 2017/186 (CP 357)* and received feedback from various stakeholders, including existing business introduction service operators, the Law Council of Australia and a CSF intermediary.

I enclose a copy of CP 357 and a draft feedback report on CP 357 for your consideration.

The feedback from industry stakeholders confirmed that the Instrument has been operating efficiently and effectively. This feedback also broadly supports ASIC remaking the Instrument based on the approach that ASIC has decided on.

The regulatory burden to business, community organisations or individuals of the instrument being remade has been assessed using the Australian Government's *Regulatory Burden Measurement framework*. I summarise our assessment below.

Sunsetting Chapter 6D securities (including Chapter 2L debentures)

Chapter 6D securities (including Chapter 2L debentures) relief will be allowed to expire, given that the CSF regime already facilitates fundraising by SMEs with more effective investor protections.

ASIC's proposal to allow the Chapter 6D securities (including Chapter 2L debentures) relief to expire received two submissions from entities who operate business introduction services. These entities objected to our proposal based on the perception that the CSF regime has more onerous regulatory requirements (which reflect the increased investor protections under the CSF regime) than relying on the business introduction service relief.

Based on the feedback ASIC has received through public consultation, ASIC considers that sunsetting the Chapter 6D securities (including Chapter 2L debentures) relief will have a minor regulatory impact. This is principally because:

- there appears to be minimal reliance on the relief, with the two respondents to CP 357 that offer business introduction services having only raised a total of approximately \$5.3 million for a small number of companies over the 20-year life of the relief; and
- SMEs can continue to engage in small-scale public fundraising through the CSF regime. This regime also reduces the requirements for public fundraising while also maintaining appropriate investor protection measures.

Further, sunsetting the Chapter 6D securities (including Chapter 2L debentures) relief does not change anything that would have happened, had ASIC done nothing and allowed the relief to lapse on 1 April 2022. Given this, sunsetting the Chapter 6D (including Chapter 2L debentures) relief does not change the status quo.

While persons who rely on the Chapter 6D securities (including Chapter 2L debentures) relief may transition into the CSF regime, ASIC will not introduce any new obligations that mandate this transition, nor any other obligations as part of allowing the relief to expire. Given this, no new regulatory costs are imposed through the expiry of the Chapter 6D securities (including Chapter 2L debentures) relief.

Overall, ASIC considers that given the impact of the CSF regime, allowing the Chapter 6D securities (including Chapter 2L debentures) relief to sunset will ensure that the relief will continue to operate effectively and efficiently.

Design and distribution obligations

The DDO regime came into force on 5 October 2021, after the Instrument was made. The relief will seek to avoid any confusion about whether DDOs apply to persons who rely on the relief.

From 1 October 2022, the relief will clarify that the DDOs apply to persons who rely on the relief where they would need to presently comply with the obligations under Part 7.8A of the Act.

No new costs would be imposed through this measure, as it merely clarifies the operation of the new DDO regime and ensures that the relief will operate effectively and efficiently.

Notification requirement

ASIC estimates that a Continuing Reliance Notice or Opt-In Notice will take roughly an hour or less to complete and will involve a one-off cost of roughly \$50, assuming a rate of \$50 per hour for a person to complete the notification.

Table 1 below sets out the regulatory burden estimate if ASIC were to introduce the notification requirement on 1 April 2022. It would represent an approximate change of \$12,850 over a three-year period. This is the estimated cost to the entire industry.

Table 1: Regulatory costs for notification requirement over a three-year period

Sector	Change in costs
Business	\$12,850
Community organisations	\$0
Individuals	\$0
Total change in costs	\$12,850

This regulatory burden estimate assumes a maximum of 257 notifications being made between 1 April 2022 and 1 April 2025 (noting that existing users of the relief have until 2 May 2022 to notify ASIC), with 207 notifications from existing persons who rely on the relief and 50 notifications from new entrants. These numbers are based on the limited data that ASIC has received under the requirement for a business introduction service operator to give ASIC details of any publication made through a business introduction service.

The notification requirement will supply ASIC with important data about the use of the relief in industry. This data will play an important role for Government to determine whether to make the relief permanent via primary law upon its expiry on 1 April 2025. ASIC finds this requirement is fit for purpose and will ensure the relief continues to operate efficiently and effectively.

I acknowledge that OBPR will publish this letter for transparency purposes.

Yours sincerely



Kate Metz
Senior Executive Leader – Investment Managers
Australian Securities and Investments Commission