



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Corporations and Financial
Services:

*Report on the 2015-2016 annual reports of bodies established
under the ASIC Act*

May 2018

Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2015-2016 annual reports of bodies established under the ASIC Act

Government's Response to Committee's Recommendations:

Recommendation 1

ASIC investigate the feasibility of establishing a searchable public register containing information on the applications or waivers for relief currently in effect as well as indicative information for consumers regarding how they might be affected.

The Government **notes** this recommendation.

ASIC legislative instruments, which grant relief to a class of persons in particular circumstances, are registered on the Federal Register of Legislation at www.legislation.gov.au, which is a whole of Australian Government searchable public register of legislation and legislative instruments. Each ASIC legislative instrument must be accompanied by an Explanatory Statement which is also included on that register.

ASIC publishes individual relief instruments in the ASIC Gazette, which is a specialised version of the Commonwealth Gazette. This is in line with general practice among government agencies.

In addition, ASIC publishes a regular report about the applications for relief that it receives and their outcomes. These reports provide an overview of situations where ASIC have exercised, or refused to exercise, its exemption and modification powers.

ASIC also generally grant relief based on policy positions on which they consult, and that it publishes in its regulatory guides. These guides are available on ASIC's website.

ASIC's individual relief decisions can be appealed to the Administrative Appeals Tribunal and, in the case of applications for relief from the takeovers provisions of the *Corporations Act 2001* (Corporations Act), the Takeovers Panel. ASIC's legislative instruments are subject to Parliamentary disallowance.

Given the existing transparency and accountability mechanisms around ASIC's exemption and modification powers, the Government does not believe that creating a searchable database of relief instruments would necessarily add significant value. This is partly because ASIC is of the view that it is unlikely that consumers or the general public would make widespread use of any such database. If a more searchable database is considered desirable it may be useful to find a whole-of-Government solution for all individual instruments or waivers issued by all agencies.

However, ASIC would be open to considering cost-effective ways to further improve the transparency and availability of its relief instruments. Technological developments may enable ASIC to do this in future.

In relation to the recommendation that there be a register of waivers that are "in effect", this may be challenging in practice because most ASIC individual instruments apply and are

limited on their face by reference to a specific event or transaction rather than having an expiry date.

ASIC also stresses that it usually will only grant relief in new policy applications where it considers that there is a net regulatory benefit, or any regulatory detriment is minimal and is outweighed by the commercial benefit. ASIC will also not generally offer relief to reverse the usual and intended effect of the Corporations Act or National Credit Act.

ASIC is unaware of significant consumer concerns about its use of relief powers.

Relief applications themselves could not be included in any searchable public register because they are subject to section 127 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), which obliges ASIC to keep them confidential.