ASIC CORPORATIONS (LIFE INSURANCE COMMISSIONS) INSTRUMENT 2017/510

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (***ASIC***) makes ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 (the ***instrument***) under subsections 963BA(2) and (4) of the *Corporations Act 2001* (the ***Corporations Act***). Subsection 963BA(2) of the Corporations Act provides that ASIC may, by legislative instrument, determine an acceptable benefit ratio, or a way of working out an acceptable benefit ratio, for a benefit for a year. Subsection 963BA(4) of the Corporations Act provides that ASIC may, by legislative instrument, determine the amount, or a way of working out the amount, that is an acceptable repayment for the purposes of paragraph 963BA(3)(b) of the Corporations Act.

1. Background

In 2014 ASIC published Report 413 *Review of retail life insurance advice* (REP 413), which raised issues about the life insurance advice industry, including the correlation between poor advice and high commissions paid to advisers by life insurance companies. The Financial System Inquiry led by David Murray and an industry-commissioned report by John Trowbridge raised similar concerns about the industry. In response to these issues, the Government announced that it would support a reform package put forward by the industry to better align the interests of consumers and advisers . The final details of the industry reform package were announced by the Minister for Small Business and Assistant Treasurer on 6 November 2015 (see media release titled 'Government Announces Significant Improvements to Life Insurance Industry') .

The Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017 (***Life Insurance Remuneration Act***) gives effect to the industry reform package. It was passed by Parliament on 9 February 2017 and was assented to on 22 February 2017. It commences on 1 January 2018.

The Life Insurance Remuneration Act amends the Corporations Act to:

- remove the exemption from the ban on conflicted remuneration for commissions paid in relation to life insurance products issued after the commencement date;
- enable the regulations to prescribe circumstances in which commissions paid in relation to life insurance are (or are not) conflicted remuneration; and

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

- enable ASIC, through a legislative instrument, to permit commissions to be paid to financial services licensees and representatives of financial services licensees, if requirements are met relating to:
    - (*commission caps*) the maximum amount of commission (or a way of working out the maximum amount of commission) that can be paid for a year (s963BA(2) of the Corporations Act); and
    - (*clawback*) an amount, or way of working out an amount, that is an acceptable repayment of commission in the event that a life insurance policy is cancelled or not continued, or the policy cost is reduced in the first two years after the policy is issued (s963BA(4) of the Corporations Act).

The Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 (***the Life Insurance Remuneration Regulations***) were made on 9 March 2017. The Life Insurance Remuneration Regulations support the industry reform package by:

- prescribing circumstances where commissions paid in relation to life insurance products are considered to be conflicted remuneration (Regulation 7.7A.11B), and also circumstances when they are not considered to be conflicted remuneration (Regulation 7.7A.11C and 7.7A.11D);
- prescribing circumstances where clawback does not apply (Regulation 7.7A.12EB and 7.7A.12EC); and
- grandfathering benefits paid in relation to life risk insurance products issued after the commencement of the reforms (Regulation 7.7A.16H).

Note: While the Life Insurance Remuneration Act, Life Insurance Remuneration Regulations and the instrument refer to "benefits" that are paid in relation to life insurance products, we have used the term "commissions" to refer to "benefits" to help explain the operation of the instrument. We have also used the terms "commission cap" to refer to the maximum amount of commission payable, and "clawback" to refer to "acceptable repayment". "Acceptable benefit ratio" is maintained throughout this Explanatory Statement to mean the number to be used to work out the commission cap.

In 2021 ASIC will conduct a further review to consider whether the reforms have been successful in better aligning the interests of consumers and advisers.

2. Purpose of the instrument

The purpose of the Life Insurance Remumeration Act is to better align the interests of consumers and those providing life insurance advice. The Life Insurance Remuneration Act ensures that all life insurance distribution channels are treated equally under the law, and maintains the integrity of the reforms by providing a flexible mechanism for the Life Insurance Remuneration Regulations to address avoidance mechanisms in the future.

The purpose of the instrument is to give effect to the Life Insurance Remuneration Act and the industry reform package, by permitting commissions in relation to life risk insurance products to be paid to financial services licensees and representatives of financial services licensees, if requirements are met relating to commission caps and clawback.

Setting commission caps and requiring specific amounts to be clawed back in certain circumstances where a life insurance policy is cancelled or not continued, or the policy cost is reduced, is intended to reduce the incentives for advisers to provide advice to replace one product with another, where this is not in their client's best interests.

The transitional period in the instrument is intended to give industry time to change or update their systems and ensure a smooth transition to the new regime.

3. Operation of the instrument

The instrument sets out:

i. *commission caps* – the maximum amount (or a way of working out the maximum amount) of commission that can be paid for a year; and
ii. *clawback* – an amount, or a way of working out the amount, that is an acceptable repayment of commission in the event that a life insurance policy is cancelled or not continued, or the policy cost is reduced in the first two years after the policy is issued.

Part 1 of the instrument sets out the preliminary details of the instrument, such as the name, commencement date of 1 January 2018, and definitions.

Part 2 of the instrument sets out the detailed ways of working out the commission cap and clawback amounts to give effect to the Life Insurance Remuneration Act.

(i) Commission caps

Acceptable benefit ratio to calculate the commission cap

Section 5 of the instrument sets out the acceptable benefit ratios for commissions given to a financial services licensee or their representative in relation to a life risk insurance product. The acceptable benefit ratio is a number which is then multiplied by the policy cost to give the maximum amount of commission that can be paid (i.e. the commission cap).

Broadly, a commission cap of 60% of the first year's policy cost applies to commissions paid for the first year a life insurance policy is on issue. A commission cap of 20% applies in relation to trailing commissions for subsequent years. A commission cap of 60% applies to commissions paid in relation to increases in policy cost resulting from certain actions by the policy holder. Transitional provisions also apply. More detailed information on how the commission cap operates is set out below.

Commission given on issue of the policy

The commission cap for commission given for the year in which the product is issued is 60% of the policy cost for that year: s5(2).

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

The commission cap of 60% of the policy cost will commence on 1 January 2020, with a transitional period as follows (s7 of the instrument):

Date the product is issued	Commission cap
1 January 2018 – 31 December 2018	80% of the policy cost
1 January 2019 – 31 December 2019	70% of the policy cost

Trailing commissions in subsequent years of the life insurance policy will have a commission cap of 20% of the policy cost: s5(3).

Upfront commission given when there is a client initiated increase

The instrument also deals with commission caps in relation to certain increases (*client initiated increases*) in policy cost resulting from actions by the policy holder. The scope of what is covered by a client initiated increase is set out in the definition of that term in section 4 and includes matters such as the policy holder agreeing to an increase in the sum insured or that the premium basis should change from a stepped premium to a level premium. Many policies may be held without there being a client initiated increase, but the instrument sets out a formula for circumstances when such an increase does occur.

The general principle is that a commission cap of 60% of the policy cost will apply in relation to the increase in policy cost resulting from a client initiated increase, calculated over the 12 months after the client initiated increase. After that time, a trailing commission of 20% will apply in relation to the increase in policy cost.

The Corporations Act requires commission caps, benefit ratios and policy costs to relate to:

- the year in which the policy is issued; and
- each year during which the policy is continued: subsections 963B(3B), 963B(3C) and 963BA(1) of the Corporations Act.

Subsection 963BA(1) of the Corporations Act provides that the benefit ratio requirements for a year are satisfied for commission paid in relation to an increase in policy cost for that year if the ratio between the commission and the increase in policy cost for the year is less than the acceptable benefit ratio determined by ASIC. Where the client initiated increase occurs part way through a year, the effect of this is that only the increase in policy cost for the period from the time of the increase until the end of the year will be taken into account, rather than the increase in policy cost over a full 12 month period.

Accordingly, rather than simply providing that the acceptable benefit ratio in relation to a client initiated increase is 60%, subsection 5(4) provides that the acceptable benefit ratio is the amount worked out using the following formula:

$$\frac{0.6 \times \text{days in year}}{\text{remaining days in year}}.$$

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

The purpose of the formula is to address the possibility that a client initiated increase may occur part way through a year rather than on the first day of a year. The formula allows commission to be paid in relation to a client initiated increase that is equivalent to 60% of the increased policy cost, calculated over a 12 month period (rather than over the period from the time of the increase until the end of the year).

For example, if a client initiated increase occurred half way through a year, this would give an acceptable benefit ratio in relation to the increase of (0.6 x 365)/ 182.5 = 1.2 (using the formula in s5(4)(b)). The increased policy cost for the year only applies in relation to the six month period from the time of the client initiated increase until the end of the year. Applying the higher acceptable benefit ratio to the increased policy cost over this six month period allows a commission to be paid of up to 60% of the increased policy cost, calculated over a 12 month period.

To work out the increase in the policy cost for the year if the client initiated increase occurs part way through the year, the total annual increase in the policy cost is multiplied by the number of days remaining in the year over the number of days in a year. For example, in Note 2 under subsection 5(4) of the instrument, the example provides for an increase to the policy cost of $250 per year. However, because the increase occurred 292 days into the year, the increase in policy cost for the year in which the increase occurred would only apply from the time of the increase until the end of the year (i.e 73 days). That is:

$$\frac{\$250 \text{ (total annual client initiated increase) x } 73 \text{ (remaining days in the year)}}{365 \text{ (number of days in the year)}}$$

$$= \$50.$$

The formula in subsection 5(4) provides that the acceptable benefit ratio in relation to the increase would be given by:

$$\frac{0.6 \times 365 \text{ (days in year)}}{73 \text{ (remaining days in year)}}$$

$$= 3.0$$

The maximum commission payable in relation to the increase for the year in which the increase occurred would be the acceptable benefit ratio (3.0) multiplied by the increased policy cost for the year ($50) = $150: see subsections 963B(3B), 963B(3C) and 963BA(1) of the Corporations Act. This is equivalent to 60% of the annual $250 increase in policy cost resulting from the client initiated increase.

The commission can be paid in full or by instalment as long as, consistent with the Life Insurance Remuneration Act, it is a commission for the year in which the increase occurred. For example, if an obligation to pay a commission was incurred at the time of the increase, with the commission to be paid by instalments, the commission would be a commission for the year in which the increase occurred despite being paid by instalments.

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Trailing commission given when there is a client initated increase

Subsection 5(5) determines the commission cap where the client initiated increase occurred in the previous year, so the 20% cap applies to the client initiated increase commencing 12 months after the time of the client initiated increase. The trailing commission is calculated from the 12 month anniversary of the policy increase (and not from the anniversary of the issue of the policy) because the 60 % commission cap for the client initiated increase applies to the 12 month period from the date of the client initiated increase.

The example in Note 2 to subsection 5(4) deals with an annual client initiated increase of $250 which occurs 292 days into a year. The example shows the calculation for working out the maximum commission that could be payable in relation to the increase for that year, namely $150. If the policy continued for a further year, the trailing commission formula in subsection 5(5) would apply as follows for that year:

$$\frac{0.2 \times 73 \text{ (relevant days in year)}}{365} = 0.04$$

Assuming that there was no increase in policy cost for that year, a trailing commission of up to 0.04 x $250 = $10 could be paid in relation to the part of the policy cost that related to the client initiated increase: subsection 963BA(1) of the Corporations Act. A further trailing commission of up to 20% of the remaining policy cost could also be paid in relation to the policy: subsection 5(3).

(ii) Acceptable repayment (clawback)

Section 6 deals with clawback of commissions where the policy is cancelled or not continued, or the policy cost is reduced. It sets out how much of the commission should be clawed back when:

- a policy is cancelled or is not continued (other than when a claim is made or in certain circumstances prescribed by Reg 7.7A.12EB of the Regulation, such as death or self-harm or an administrative error); or
- the policy cost of the product during a year, or across two years, is reduced, (other than in certain circumstances prescribed by Reg 7.7A.12EC of the Regulation, such as an agreed reduction in risk, or a rebate has been paid).

Broadly, if a policy is cancelled or not continued in the first year of a policy, 100% of the commission will be clawed back. If a policy is cancelled or not continued in the second year of a policy, 60% of the commission will be clawed back. More detail on how clawback applies when there has been a reduction in the policy cost, as well as when there has been a client initiated increase, is set out below.

Policy cancellation in the first year

The general rule is that 100% of the commission is to be clawed back by the life insurer when, within the first year, the policy is cancelled or not continued (except for those circumstances prescribed by the Regulations): s6(3)(a). If, however, the policy is in force for 12 months, and then cancelled or not continued into a second year, the second year clawback provisions will apply (i.e. the clawback rate is 60% of the first year commission, rather than 100% of the first year commission): s6(20)(a).

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

If an amount has already been clawed back due to a reduction of the policy cost, the commission is adjusted by subtracting the clawed back amount from the commission before clawing back 100% of the "adjusted" commission: s6(4)(a).

Policy cancellation in the second year

The general rule is where the policy is cancelled or not continued during the second year, 60% of the commission given for the first year is clawed back: s6(10).

For example, if the policy terminates on the first day of the second year of the policy, 60% of the first year commission is required to be clawed back. However, if the policy is in force for 24 months, and then cancelled or not continued into a third year, there will be no clawback: s6(20)(b).

If an amount has already been clawed back due to a reduction of the policy cost, the commission is adjusted by subtracting the clawed back amount from the commission before clawing back 60% of the "adjusted" commission: s6(11)(a).

> Note: A different rule applies in relation to a benefit given for a client initiated increase benefit in the first year and within 12 months, and for reductions in policy cost: s6(6)-(9) (see below).

Reduction in policy cost in first and second years

Where the policy cost for the first year is reduced, the clawback amount is the percentage of the commission that is equal to the percentage by which the policy cost has been reduced. That is, if the policy cost is reduced by X% in the first year of the policy, the clawback amount will be X% of the first year's commission: s6(3)(b). A similar rule applies for a reduction in the policy cost during the second year: s6(10)(a)(iv) – if the policy cost is reduced by X%, X% of 60% of the first year’s commission will be clawed back.

Policy continued in second year at a reduced policy cost

Where the policy is continued into a second year at a reduced policy cost (i.e. the policy cost at the beginning of the second year is less than the policy cost at the end of the first year), the clawback amount is 60% of the percentage of the commission that is equal to the percentage by which the policy cost has been reduced. That is, if the policy continues in the second year at a reduced policy cost by X%, the clawback amount will be 60% of X% of the first year's commission: s6(10)(a)(ii) and s6(11)(b).

Policy cancellation in second year and within 12 months after a first year client initiated increase

The clawback amount for commissions provided for client initiated increases occurring in the first year where the product is subsequently cancelled or not continued during the second year and within 12 months of the increase is 100% of the commission from the client initiated increase: s6(6)–s6(9).

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Policy is continued for the second year at a reduced policy cost and within 12 months after a first year client initiated increase

Where there has been a client initiated increase in the first year, and the policy continues into the second year at a reduced policy cost (i.e. the policy cost at the beginning of the second year is less than the policy cost at the end of the first year), the clawback amount is the percentage of the commission that is equal to the percentage by which the policy cost has been reduced: s6(6)(b) and (7)(b).

For example, if there is a client initiated increase from $800 to $1,000 in the first year, there is a commission of $120 from that client initiated increase in the first year (using the acceptable benefit ratio in s5(4)(b) of the instrument). If the policy cost for the second year decreased from $1,000 in the first year to $800 at the start of the second year, the percentage of the reduction in policy cost is 20%. The clawback amount on the client initiated increase would be the percentage of the reduction multiplied by the commission amount i.e. 20% of $120 = $24.

Reduction in policy cost in second year and within 12 months after a first year client initiated increase

Where there has been a client initiated increase in the first year, and the policy cost for the product for the second year is reduced below the initial second year policy cost, the clawback amount is the percentage of the commission that is equal to the percentage by which the policy cost has been reduced: s6(6)(c). This will be similar to the example given for s6(6)(b) above, but is intended to cover situations where the reduction in the policy cost occurs partway through the year. For example, the second year policy cost begins at $1,000, then partway through the second year reduces to $800. The clawback amount will be the percentage of the reduction (20%) multiplied by the commission amount from the first year client initiated increase.

Policy cancellation in second year that occurs more than 12 months after a first year client initiated increase

The clawback amount for commissions provided from client initiated increases occurring in the first year where the product is subsequently cancelled or not continued during the second year and occurring more than 12 months after the increase is 60% of the commission from the client initiated increase: s6(10)(a)– (13).

Reduction in policy cost in second year that occurs more than 12 months after a first year client initiated increase

Where there has been a client initiated increase in the first year, and the policy cost has been reduced in the second year more than 12 months after the client initiated increase, the clawback amount is 60% of X% of the commission from the client initiated increase, where X% is the percentage by which the policy cost has been reduced: s6(10)(a)(iv)–(13). Where the reduction in policy cost is at 12 months after the client initiated increase, the clawback amount is similarly 60% of X% of the commission from the client initiated increase: s6(10)(a)(iii).

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Policy cancellation or reduction in the second year where there has been a client initiated increase in the second year

Where a commission is given for the second year from a client initiated increase in the second year and the product is cancelled or not continued during the second year, the clawback amount is 100% of the commission from the client initiated incease: subsections 6(14) and (15).

Where a commission is given for the second year from a client initiated increase in the second year and the policy cost for the second year (determined immediately after the reduction) is reduced below the policy cost for the second year (determined immediately before the client initiated increase), the clawback amount is 100% of the commission from the client initiated increase.

Subsection 6(15) provides that if:

- the policy is cancelled or not continued, the acceptable repayment is 100% of the commission from the client initiated increase;
- the policy cost for the second year is reduced below the policy cost for the second year (determined immediately before the client initiated increase), the acceptable repayment is 100% of the commission from the client initiated increase; and
- in any other event (e.g. if the policy cost for the second year is reduced but is still more than the policy cost for the second year (determined immediately before the client initiated increase)), the clawback amount is worked out using the formula:

$$\frac{\text{benefit x aggregate reduction}}{\text{new policy cost}}$$

For example, if the policy cost for the second year began at $1,100, then increased to $1,200 due to a client initiated increase, the maximum commission from the client initiated increase would be $60 (i.e. $100 x 60%). If a $60 commission were paid and the policy cost then reduced in the second year to $1,000 (i.e. below the policy cost for the second year, the clawback amount would be 100% of the commission from the client initiated increase i.e. $60 would be clawed back. If, however, the policy cost reduced in the second year to $1,150 (i.e. less than the increased amount, but more than the policy cost before the client initiated increase), the clawback amount would be:

$$\frac{\$60 \text{ x } (\$1{,}200\text{-}\$1{,}150)}{\$100} = \$30$$

The instrument notes that each application of subsection 6(14) gives rise to a separate clawback amount. This means that where there have been two commissions (e.g. from the issue of the product and from a client initiated increase), a particular trigger event can result in separate clawback amounts being calculated for each commission.

Other clawback provisions

There is no clawback of the 20% trail commission paid in the second year of a policy if the policy is cancelled or not continued in the second year: s6(17).

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Subection 6(18) provides a way of working out the policy cost for the first year or the second year at a particular time where there has been a decrease or an increase of the policy cost part way through the year.

Subection 6(19) provides that any reductions in policy cost because of prescribed circumstances for the purposes of the amendments made by the Life Insurance Remuneration Act are to be ignored. For example, if the policy cost was reduced because a policy holder stopped smoking (Reg 7.7A.12EC), that reduction is not to be counted for the purposes of clawback.

Subsection 6(20) clarifies the clawback arrangements when a policy ends at the end of 12 months, or 24 months, and does not continue into the following year. If a policy is in force for 12 months, but does not continue into a second year, the second year clawback arrangements will apply (i.e. 60% of the first year's commission). If a policy is in force for 24 months, but does not continue into a third year, no clawback will apply. The same applies when a policy has a client initiated increase during the year i.e. if the policy is in force 12 months after the client initiated increase and then cancelled or not continued, the policy is taken to be cancelled or not continued on the day after the end of the 12 months.

Table setting out the clawback amounts for each trigger event in the instrument

Commission type	**Trigger event**	**Clawback amount**
Any first year commission	Policy cancelled or not continued in the first year: s6(3)(a)	100% of the commission: s6(4)(a)
Any first year commission	Policy cost for the product reduced for the first year: s6(3)(b)	A percentage of the commission that is equal to the percentage by which the policy cost has been reduced: s6(4)(b). E.g. if the policy cost were reduced by 20% in the first year, 20% of the commission would be clawed back.
Any first year commission	Product cancelled or not continued in the second year: s6(10)(a)(i)	60% of the commission: s6(11)(a)
Any first year commission	Product continued into the second year at a reduced policy cost: s6(10)(a)(ii)	60% of the percentage of the commission that is equal to the percentage by which the policy cost has been reduced: s6(11)(b)
Any first year commission	Policy cost for the product reduced in the second year below the initial second year policy cost (where there has not been a client initiated increase): s6(10)(a)(iv)	60% of the percentage of the commission that is equal to the percentage by which the policy cost has been reduced: s6(11)(c)
Commission given for the first year because of a client initiated increase	Product cancelled or not continued in the second year and within 12 months	100% of the commission from the client initiated increase: s6(7)(a)

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

	of the client initiated increase: s6(6)(a)	
Commission given for the first year because of a client initiated increase	Product is continued for the second year at a reduced policy cost: s6(6)(b)	A percentage of the commission from the client initiated increase that is equal to the percentage by which the policy cost has been reduced: s6(7)(b)
Commission given for the first year because of a client initiated increase	Policy cost for the product for the second year is reduced to less than the policy cost at the start of the second year and within 12 months of the client initiated increase: s6(6)(c)	A percentage of the commission from the client initiated increase that is equal to the percentage by which the policy cost has been reduced below the initial second year policy cost: s6(7)(c)
Commission given for the first year because of a client initiated increase	Policy cancelled or not continued in the second year and more than 12 months after the client initiated increase: s6(10)(a)(i)	60% of the commission from the client initiated increase: s6(11)(a)
Commission given for the first year because of a client initiated increase	Policy cost for the product is reduced 12 months after the client initiated increase: s6(10)(a)(iii)	60% of the percentage of the commission from the client initiated increase that is equal to the percentage by which the policy cost has been reduced: s6(11)(b)
Commission given for the first year because of a client initiated increase	Policy cost for the product for the second year is reduced more than 12 months after the client initiated increase to an amount that is less than the policy cost for the product for the second year: s6(10)(a)(iv)	60% of the percentage of the commission from the client initiated increase that is equal to the percentage by which the policy cost has been reduced below the initial second year policy cost: s6(11)(c)
Commission given for the second year because of a client initiated increase in the second year	Policy cancelled or not continued in the second year: s6(14)(a)–(b)	100% of the commission from the client initiated increase in the second year: s6(15)(a)
Commission given for the second year because of a client initiated increase in the second year	Policy cost for the product for the second year is reduced to less than the policy cost immediately after the client initiated increase: s6(14)(a)-(b)	100% of the commission from the client initiated increase if the reduced policy cost is less than the policy cost immediately before the client initiated increase: s6(15)(b); or use the formula in s6(15)(c) in any other circumstances to work out the acceptable repayment.
Commission given for the second year (not due to a client initiated increase) (i.e. trail commission)	N/A	$0: s6(17)

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Note: If an amount has already been clawed back from the commission, the clawback amount is taken from the remaining commission amount.

4. Consultation

ASIC consulted publicly on the proposals to set a maximum level of commission for advice on life insurance, and the acceptable repayment amounts in the event of a policy cancellation or not continuing. ASIC also consulted on proposals to collect data for the purposes of informing a post-implementation review of the reforms to establish whether the reforms have been successful.

ASIC issued Consultation Paper 245 *Retail life insurance advice reforms* (***CP 245***) on 15 December 2015 and comments were due on 29 January 2016. ASIC received 15 submissions, including from industry associations and AFS licensees relating specifically to these proposals. Details of the non-confidential submissions received are available on ASIC's website at www.asic.gov.au.

ASIC continued to engage with respondents to CP 245 and other stakeholders after the close of the consultation period to finalise the instrument, including consulting with the Financial Services Council, the Association of Financial Advisers, and the Financial Planning Association.

In preparing its proposals for the Life Insurance Remuneration Act, the Government self-certified that it had undertaken a process and analysis that was equivalent to a Regulation Impact Statement (RIS). Given the Government already analysed the regulatory impact of setting commission caps and clawback, ASIC was not required to complete a separate RIS for the instrument.

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Life Insurance Commissions) Instrument 2017/510
This legislative 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*.

Overview
ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 (the ***instrument***) is made under subsections 963BA(2) and (4) of the *Corporations Act 2001* (the ***Corporations Act***). Subsection 963BA(2) of the Corporations Act provides that ASIC may, by legislative instrument, determine an acceptable benefit ratio, or a way of working out an acceptable benefit ratio, for a benefit for a year. The acceptable benefit ratio provides a cap on the amount of benefits (e.g. commission) that may be paid in relation to a life insurance policy. Subsection 963BA(4) of the Corporations Act provides that ASIC may, by legislative instrument, determine the amount, or a way of working out the amount, that is an acceptable repayment for the purposes of paragraph 963BA(3)(b) of the Corporations Act. The amount of an acceptable repayment is the minimum amount of commission that must be repaid in the event that a life insurance policy is cancelled or not continued, or the policy cost reduced, within 2 years after the issue of the policy (clawback).

ASIC has made the instrument to give effect to the regulatory regime resulting from amendments made to the Corporations Act by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*. The amendments to the Corporations Act:

- set limits on the amount of benefits (e.g. commissions) to be paid by reference to the amount determined by ASIC to be an acceptable benefit ratio; and
- specify the amount of benefits to be repaid if the policy is cancelled or not continued, or the policy cost is reduced, by reference to the amount determined by ASIC to be an acceptable repayment.

Setting limits on the acceptable benefit ratio and requiring specific amounts to be repaid in certain circumstances where the policy is cancelled or not continued, or the policy cost is reduced, is intended to reduce the incentives for advisers to provide advice to replace one product with another, where this is not in their client's best interests.

Human rights implications
This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion
This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Authorised Version Explanatory Statement registered 01/06/2017 to F2017L00636