
EXPLANATORY STATEMENT for
ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* (**the New Instrument**) under paragraph 926A(2)(a) of the *Corporations Act 2001* (**Corporations Act**).

Paragraph 926A(2)(a) provides that ASIC may exempt a person or class of persons from Part 7.6 of the Corporations Act (other than Divisions 4 and 8 of that Part).

1. Background

Financial counselling agencies provide free and independent services to people in financial difficulty. In providing this assistance, a financial counsellor and their client may discuss matters relating to particular financial products.

When discussing particular financial products with their clients, financial counsellors may provide financial product advice if the client receives recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the client in making a decision about a financial product or class of financial product: see s766B of the Corporations Act. The advice may be personal advice in some circumstances: see s766B(3).

In 2003, ASIC issued ASIC Class Order [CO 03/1063] to provide relief for financial counselling agencies from the requirement to hold an Australian financial services (AFS) licence when providing financial product advice as part of their financial counselling service. The exemption is available where advice relates to deposit, non-cash payments, insurance, retirement savings account product or superannuation products (or where the advice is to dispose of a security, an interest in a managed investment scheme or a government-issued debenture, stock or bond).

Without the relief in [CO 03/1063] a financial counsellor who provides clients with financial product advice will be subject to the AFS licensing, conduct and disclosure obligations in Ch

7 of the Corporations Act. Depending on the nature of the advice, this could include the personal advice requirements in Div 3 of Pt 7.7 of the Corporations Act.

[CO 03/1063] was made because it was considered that full compliance with Ch 7 of the Corporations Act in relation to certain kinds of advice may be unduly burdensome and could affect the ongoing viability of some financial counselling agencies. The conditions associated with [CO 03/1063] are intended to minimise the risk of consumer detriment and ensure that advice provided under the exemption is free and independent.

There have been changes in the industry since [CO 03/1063] was made. These include Standards for agencies employing financial counsellors and National standards for membership and accreditation. These standards include continuing professional development and supervision requirements.

Under the *Legislation Act 2003*, instrument such as [CO 03/1063] automatically cease to have effect, or ‘sunset’ after 10 years. [CO 03/1063] was due to sunset on 1 October 2017.

2. Purpose of the instruments

The purpose of the New Instrument is to continue the relief given in [CO 03/1063] beyond its sunset date of 1 October 2017 with current drafting practice and without any significant changes.

In continuing the relief, financial counselling associations will remain exempt from the requirement to hold an AFS licence when providing advice on particular financial products.

The limited circumstances in which the exemption applies ensures clients can have a high degree of confidence that when their financial counsellors provide them with advice, they do so free from any conflicts of interest, and with an acceptable level of skills, knowledge and professionalism.

3. Operation of the instruments

Subsection 5(1) provides that financial counselling agencies are exempt from the requirement to hold an AFS licence covering the provision of financial product advice:

- in relation to deposit products, facilities for making non-cash payments, insurance products, Retirement Savings Account products and superannuation products; and
- that a client should or may dispose of a security, a financial product relating to managed investment schemes or a debenture, stock or bond issued by a government.

Subsection 5(2) sets out when the exemption is available. In order for the exemption to apply:

- the advice must be provided as part of a financial counselling service;

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- no fees or charges may be payable by or on behalf of the client in relation to any aspect of the financial counselling service (other than any fees or charges payable by the Commonwealth, a State or a Territory); and
 - no remuneration is payable to, or for the benefit of, the financial counselling agency, its representatives or associates by any person in relation to any action by or on behalf of the client.

In order for the exemption to apply, the relevant financial counselling agency must take reasonable steps to ensure that persons providing financial services on their behalf:

- are eligible to be a member of a financial counselling association listed in the Instrument; and
- have undertaken appropriate training to ensure they have adequate skills and knowledge to satisfactorily provide the financial services and the broader financial counselling services.

Additionally, the financial counselling agency and its representatives must not otherwise provide financial services (other than those covered by the exemption).

4. Consultation

ASIC consulted publicly on its proposal to remake the exemption in [CO 03/1063] via [Consultation Paper 282 Remaking ASIC class orders on financial counselling licensing relief](#). ASIC received 10 responses that supported our proposal to remake the exemption.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792

ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 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 (Financial Counselling Agencies) Instrument 2017/792 provides that, in some circumstances, financial counselling agencies do not require an Australian financial services licence to provide certain types of advice in the context of financial counselling services.

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.

Australian Securities and Investments Commission