



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2022/20

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2022/20* (the *Amending Instrument*).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. In response to Recommendation 4.8 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the Government implemented reforms to the *Corporations Act 2001* (Corporations Act) and *Corporations Regulations 2001* (Corporations Regulations) to make insurance claims handling and settling a financial service.
2. The *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* amends the Corporations Act so that insurers and certain other persons must obtain an Australian financial services (AFS) licence covering claims handling and settling services to provide these services.
3. Financial counselling agencies provide free and independent services to people in financial difficulty, which can include assisting their client to lodge or progress with an insurance claim. This could involve giving a recommendation as to whether to lodge a claim, assisting with lodging a claim, or giving an opinion as to the insurer's liability under the insurance product. Accordingly, this activity is captured by the definition of a 'claims handling and settling service' under section 766G of the Corporations Act as a financial service.
4. Financial counsellors that are members of particular bodies are exempted from the requirement to hold an AFS licence to provide a claims handling and settling service by operation of subregulation 7.1.04CAA(9) of the Corporations Regulations.
5. *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* provides relief to financial counselling agencies that provide financial counselling predominately for the purpose of assisting individuals or small businesses who are in financial difficulty to resolve their problems. The relief is from the requirement to hold an AFS licence when providing financial product advice as part of a financial counselling service.

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6. The relief applies only where all of the conditions in subsection 5(2) of *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* are satisfied. Paragraph 5(2)(e) provides one such condition is that the financial counselling agency (or its representatives) does not carry on or otherwise participate in a financial services business which involves the provision of a financial service, other than a financial service specified in subsection 5(1). A service specified in subsection 5(1) is an ‘exempt financial service’.
 7. As a claims handling and settling service is a financial service, financial counselling agencies which provide such services would be providing a financial service which is not an ‘exempt financial service’.

Purpose of the instrument

8. The purpose of the Amending Instrument is to amend *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* to ensure that the relief which financial counselling agencies rely upon is not disrupted by the claims handling law reforms.
9. The Amending Instrument specifies claims handling and settling services as an ‘exempt financial service’ for the purposes of paragraph 5(2)(e) of *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*. Consequently, a financial counselling agency can continue to provide claims handling and settling services without acting in a manner that would otherwise be inconsistent the conditions of the AFS licensing relief in relation to financial product advice.
10. The Amending Instrument does not have the effect of modifying the conditions of the exemption for financial counsellors from holding an AFS licence to provide a claims handling and settling service as set out in the Corporations Act and Corporations Regulations.
11. The Amending Instrument also updates the list of organisations within the definition of ‘financial counselling association’ to reflect changes in the sector.

Consultation

12. ASIC consulted with Financial Counselling Australia Ltd (FCA) before making the Amending Instrument.
13. ASIC considered and adopted the FCA’s recommendation to update the definition of ‘financial counselling association’ to reflect that:
 - a) Financial and Consumer Rights Council Inc changed its name to Financial Counselling Victoria Inc.;
 - b) Financial Counselling Tasmania changed its name to Financial Counsellors Association Tasmania Inc.; and
 - c) Money Workers Association of the Northern Territory Incorporated was deregistered on 20 September 2017.

Operation of the instrument

14. Section 1 of the Amending Instrument provides the title of the instrument is *ASIC Corporations (Amendment) Instrument 2022/20*.
15. Section 2 of the Amending Instrument provides the whole of the instrument commences the day after this instrument is registered.
16. Section 3 of the Amending Instrument provides that the instrument is made under paragraph 926A(2)(a) of the Corporations Act.
17. Section 4 of the Amending Instrument provides that the Amending Instrument amends an existing legislative instrument as set out in the Schedule.
18. Item 1 of the Schedule amends section 4 of *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* by replacing the definition of ‘financial counselling association’ with a revised list of current financial counselling associations.
19. Item 2 of the Schedule amends subparagraph 5(2)(e)(i) of *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* by adding a claims handling and settling service as an exempt financial service which a financial counselling agency can provide as part of the provision of a financial counselling service without needing to hold an AFS licence.

Legislative instrument and primary legislation

20. The subject matter and policy implemented by this instrument are appropriate to make under a legislative instrument rather than primary legislation. This is because the instrument provides relief for a relatively small subset of entities in circumstances where strict compliance with the primary legislation produces an unintended result.
21. The amendments are subject to the existing sunset date of its principal instrument, that is, the *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*. The existing sunset date as applied to the amendments is appropriate because the amendments are minor and technical and do not represent a policy change or an expansion of the previously available relief.
22. ASIC understands that the Government will consider making future amendments to the Corporations Act before the principal instrument ceases on 1 October 2027. Prior to the sunset date, ASIC and Treasury will review the instrument and consider options for amending, remaking or revoking it. This review will consider the merits of making amendments to the relevant enabling Act and Regulations to incorporate the relief given by the instrument.

Legislative authority

23. 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).

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24. The Amending Instrument amends *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*. Where an Act confers a power to make an instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions to amend the instrument: see subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Corporations Act).
25. The Amending Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

26. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Amendment) Instrument 2022/20

Overview

1. ASIC Corporations (Amendment) Instrument 2022/20 (the **Amending Instrument**) amends *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792* to provide that a claims handling and settling service is an exempted service. This means that financial counselling agencies can continue to provide claims handling and settling services to clients without acting in a manner that would otherwise be inconsistent the conditions of the existing relief from Australian financial services licensing which apply to financial counselling agencies.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This 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*.