



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Incidental Retail Cover) Instrument 2022/716

This is the Explanatory Statement for *ASIC Corporations (Incidental Retail cover) Instrument 2022/716* (the **Instrument**).

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

Summary

1. *ASIC Corporations (Incidental Retail Cover) Instrument 2022/716* (**the Instrument**) exempts insurers and brokers from certain retail client obligations in Chapter 7 of the *Corporations Act 2001* (Cth) for ‘incidental retail cover’ provided in business insurance contracts. Incidental retail cover refers to retail insurance cover provided to a business that forms a minor, incidental, and inseparable part of an otherwise wholesale insurance product.
2. The Instrument modifies the Corporations Act such that an incidental retail product will be deemed to be provided to a person as a wholesale client for Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8, 7.8A and 7.9.

Purpose of the instrument

3. The purpose of the Instrument is to exempt general insurers and insurance brokers from certain retail client obligations under Chapter 7 of the Corporations Act in limited circumstances where a bundled general insurance contract includes incidental retail cover, by permitting the insurer or broker to treat the client as a wholesale client.
4. The Instrument will create certainty for industry that particular retail client obligations do not apply to incidental retail cover. There is public benefit in doing so, given the costs involved with compliance may impact the commercial viability of incidental retail cover. Providing relief reduces disproportionately burdensome regulatory requirements in relation to incidental retail cover and facilitates the cover continuing to be available to businesses and third-party beneficiaries.
5. The Instrument’s definition for ‘incidental product’ is targeted to ensure the relief is only available in relation to retail cover that is genuinely incidental to wholesale cover.

Consultation

6. Before making this Instrument, ASIC undertook targeted consultation with a range of stakeholders from industry, Treasury and consumer representative bodies on the need for relief.
7. These stakeholders were also consulted on the scope of the proposed relief, including the limited circumstances in which the relief would apply and any conditions the relief should be subject to.

Operation of the instrument

9. Section 2 of the Instrument provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation. Section 6 of the Instrument provides that the instrument will be repealed after a period of 3 years.
10. Paragraphs 5(a) to (c) of the Instrument modify section 761G of the Corporations Act such that an ‘incidental product’ will be deemed to be provided to a person as a wholesale client for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8, 7.8A and 7.9 of the Corporations Act.
11. In particular, paragraph 5(c) of the Instrument defines an ‘incidental product’ narrowly and limits the relief to instances where particular circumstances are met.

These circumstances are:

- (a) the incidental product is provided under a bundled insurance contract that includes another general insurance product that is provided to the person as a wholesale client (*wholesale product*);
 - (b) the incidental product is incidental to the wholesale product;
 - (c) the incidental product is included in the contract of insurance without a separate decision or election made in relation to the incidental product;
 - (d) the issuer of the incidental product and of the wholesale product does not offer the incidental product as a standalone product on the same terms; and
 - (e) no separate premium is payable by the person who acquires the wholesale product for the inclusion of the incidental product in the contract of insurance.
12. For the avoidance of doubt, the first limb of the definition does not preclude the Instrument from applying when there are more than two general insurance products in the bundled insurance contract.
 13. The second limb of the definition requires the general insurance product to be incidental to a wholesale product individually and not in combination where there is more than one wholesale product. Incidental takes its ordinary meaning

of being in subordinate conjunction with a wholesale product. If the general insurance product is in a standalone section of a package cover, it is less likely to be incidental to a wholesale product.

14. The third limb of the definition would likely not apply to retail cover offered as an optional extra since the insured would make a separate decision or election to acquire that cover. The third limb does not preclude the Instrument from applying when a nomination has been made by the client in relation to an incidental product that is included in the bundled insurance contract. For example, the Instrument may apply when a wholesale fleet cover for heavy vehicles also includes incidental retail cover for smaller vehicles which fall under the definition of motor vehicle in regulation 7.1.11 of the *Corporations Regulations 2001* and the client nominates a smaller vehicle (or vehicles) to be covered.
15. The fourth limb of the definition requires that the incidental product cannot be purchased separately as a standalone type of insurance cover on the same terms.
16. The fifth limb of the definition precludes the Instrument from applying where a separate premium is charged for the incidental product.

Legislative instrument and primary legislation

17. The subject matter and policy implemented by this Instrument is appropriate for a legislative instrument because:
 - (a) the relief instrument utilises powers given by Parliament to ASIC that allow ASIC to exempt a class of persons from the operation of part of the Act to provide a tailored and flexible regulatory environment that is fit for purpose for certain financial products; and
 - (b) the matters contained in the instrument are a specific amendment designed to ensure the application of primary legislation remained flexible to adapt to market developments. The instrument applies in a way consistent with the intended policy and the enabling provisions in the primary legislation.
18. Prior to the repeal of the Instrument, ASIC will undertake a review of the Instrument and consult with Treasury on options for amending, remaking or repealing the Instrument.
19. The 3-year duration of the Instrument is appropriate because it gives ASIC and Treasury time to consider the merits of incorporating the relief into the primary legislation and, if required, make recommendations for the Government to consider amendments to the primary law or regulations.

Legislative authority

20. This Instrument is made under paragraphs 926A(2)(c), 951B(1)(c), 992B(1)(c), 994L(2)(c) and 1020F(1)(c) of the *Corporations Act 2001*.
21. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

22. 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 (Incidental Retail Cover) Instrument 2022/716

Overview

1. *ASIC Corporations (Incidental Retail Cover) Instrument 2022/716* exempts insurers and brokers from retail client obligations under Chapter 7 of the Corporations Act in limited circumstances where a bundled general insurance contract includes incidental retail cover by permitting the insurer or broker to treat the client as a wholesale client. It is a condition of the instrument that no separate premium be payable for the incidental retail cover.

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*.