



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809

This is the Explanatory Statement for *ASIC Corporations (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809* (the **Instrument**).

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

Summary

1. On 17 December 2020, the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* received royal assent and introduced a new disclosure obligation into Division 3A of Part 7.7 of the *Corporations Act 2001* (the **Corporations Act**) requiring Australian Financial Services (**AFS**) licensees (or their authorised representatives or another person acting on their behalf) that provide claims handling and settling services to give a Cash Settlement Fact Sheet (**CSFS**) in certain circumstances.
2. A CSFS must contain certain prescribed information, and must be given by an AFS licensee or their representative (the **providing entity**) to clients who are offered a cash payment to settle part or all of a general insurance claim (the **cash settlement offer**) when the client has a choice between a cash settlement and other settlement options. The CSFS must be given in writing to the client when the cash settlement offer is made.
3. There is also a requirement in the Corporations Act under subsection 1017F(2) for a responsible person to provide confirmation of a transaction (**confirmation of transaction**) that occurs while a holder holds a financial product. This means when there is a transaction such as handling a claim, insurers need to provide to the holder of an insurance policy with information that they reasonably believe the holder needs to understand the nature of the transaction.
4. Insurance policies are often held jointly by family members or third party beneficiaries who are family members of the holder or client (together, the **insured**). When an insurance claim is settled or offered to be settled for these insurance policies, the above obligations require a CSFS and confirmation of transaction (together, the **notifications**) to be provided to each insured under the policy. In certain circumstances, providing these notifications may create a risk that a person experiences family violence.

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5. The Instrument exempts the providing entity from the requirement to provide a CSFS under section 948C(1), and the responsible person from the requirement to provide a confirmation of a transaction under subsection 1017F(2), in respect of insurance products. The exemption applies where the providing entity reasonably believes giving the CSFS or the responsible person reasonably believes confirming the transaction (as the case may be) would pose an unacceptable risk of a person experiencing family violence. The exemption is subject to a condition to keep a written record of the reasons for their reasonable belief for three years.

Purpose of the instrument

6. The purpose of the Instrument is to reduce the risk of family violence in the claims handling and settlement process in circumstances where the notifications, including the information contained in the notifications, could facilitate family violence.
7. The obligation to give a CSFS at the time of the cash settlement offer and/or to provide a confirmation of transaction may have the potential to alert a perpetrator of family violence to a claim, and enable them to cause harm to the victim as a result. For example, the information in the notifications may be used to locate the victim, reject a cash settlement, divert the payment of the claim, or deny the insurer access to damaged property.
8. The Instrument seeks to balance the consumer protection objective of the CSFS obligation to ensure that insureds have sufficient information about a claim to make an informed decision about whether to accept it, and of the confirmation of transaction obligation to allow the insured to understand the nature of the claim, with concerns about harm that may arise in circumstances of family violence. The Instrument seeks to reduce the risk that compliance with these obligations could facilitate family violence.
9. In doing so, the Instrument uses a broad definition of family violence. The definition expressly includes broad definitions of economic abuse as well as emotional and psychological abuse. The definition is not intended to capture disputes which do not involve family violence.
10. Facilitating family violence in general insurance and life insurance claims handling and settling as a result of giving the notifications would be an adverse, unintended and unforeseen outcome of the CSFS and confirmation of transaction obligations.

Consultation

11. Before making this Instrument, ASIC undertook targeted consultation with a range of stakeholders from industry, the Government and consumer representative bodies on the proposed Instrument.

Operation of the instrument

12. Section 2 of the Instrument specifies that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.
13. Subsection 5(1) of the Instrument exempts providing entities from compliance with subsection 948C(1) of the Corporations Act to the extent it requires the providing entity to give a CSFS, provided certain circumstances are satisfied.
14. Subsection 5(2) of the Instrument limits the circumstances in which the exemption from giving the CSFS applies to those in which the providing entity reasonably believes the giving of the CSFS would pose an unacceptable risk of a person experiencing family violence.
15. Subsection 5(3) requires any providing entities intending to rely on the exemption to comply with the condition that the providing entity must keep a written record of the reasons for the reasonable belief referred to in subsection 5(2) for three years.
16. Subsection 6(1) of the Instrument exempts responsible persons from compliance with subsection 1017F(2) of the Corporations Act to the extent it requires the providing entity to provide a person who has acquired an insurance product as a retail client with confirmation of a transaction that occurs while the holder holds the product, other than disposal of all or part of the product, provided certain circumstances are satisfied.
17. Subsection 6(2) of the Instrument limits the circumstances in which the exemption from providing the confirmation of the transaction applies to those in which the responsible person reasonably believes the provision of the confirmation of the transaction would pose an unacceptable risk of a person experiencing family violence.
18. Subsection 6(3) requires any responsible persons intending to rely on the exemption to comply with the condition that the providing entity must keep a written record of the reasons for the reasonable belief referred to in subsection 6(2) for three years.

Legislative instrument and primary legislation

19. The subject matter and policy implemented by this Instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the instrument only affect a relatively small subset of consumers. The Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. The purpose of the CSFS and the transaction confirmation obligations are to enhance consumer protections and wellbeing, so disclosures which could lead to family violence are contrary to that intent. If the matters in the Instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This

would result in additional cost and unnecessary complexity for other users of the primary legislation.

20. ASIC understands that the Government will consider the merits of making future amendments to the primary legislation and regulations as part of the review process for the Instrument prior to its expiry date. This review will also consider whether it is appropriate to recommend to the government that the Instrument be incorporated into the primary legislation.

Duration of the instrument

21. The duration of the Instrument is 5 years. The Instrument will be repealed 5 years after the date it is made.
22. The 5-year duration of the Instrument is appropriate because the Instrument addresses anomalous or inconsistent outcomes that would be at odds with the intent of the primary legislation. The Instrument also provides relief where strict compliance leads to unintended results.

Legislative authority

23. The Instrument is made under subsections 951B(1) and 1020F(1) of the Corporations Act.
24. Subsection 951B(1) provides that ASIC may exempt a class of persons from specified provisions of Part 7.7 of the Corporations Act, and subsection 951B(3) provides an exemption may be subject to specified conditions.
25. Subsection 1020F(1) provides that ASIC may exempt a class of persons from specified provisions of Part 7.9 of the Corporations Act, and subsection 1020F(4) provides an exemption may be subject to specified conditions.
26. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

38. 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 (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809.

Overview

1. *ASIC Corporations (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809* exempts insurers obligated to provide a Cash Settlement Fact Sheet under section 948C(1) and a confirmation of a transaction under subsection 1017F(2) in respect of insurance products, in circumstances where the insurer reasonably believes there is an unacceptable risk of a person experiencing family violence. It is a condition of the instrument to keep a written record of the reasons for the reasonable belief for three years.

Assessment of human rights implications

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

Conclusion

3. The 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*.