



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Design and Distribution Obligations—Reissued Life Policies Class Exemption) Instrument 2023/183

This is the Explanatory Statement for *ASIC Corporations (Design and Distribution Obligations—Reissued Life Policies Class Exemption) Instrument 2023/183*

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

Summary

1. In April 2019, the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* introduced design and distribution obligations (**DDO**) to Chapter 7 of the *Corporations Act 2001* (the **Act**). DDO imposes additional obligations on issuers and distributors and applies to financial products issued on or after 5 October 2021.
2. As a financial product, life policies are subject to DDO. A feature of some life policies is the option for the policy holder to request a change to their policy, for example to reinstate a policy after it has lapsed due to non-payment of premium. This can sometimes be implemented by a variation to the policy, however depending on the terms of the life policy and the insurer's administration systems this may result in the issue of a new financial product. This would require the issuer or distributor to comply with DDO, even if the product was originally issued before 5 October 2021.
3. This instrument provides an exemption for issuers of life policies from compliance with DDO for certain transactions where life policies originally issued before the commencement of DDO:
 - a. Are reissued on the same terms and conditions, without additional underwriting or individual loadings, except where changes are in accordance with the terms of the existing policy and are required to give effect to the reissue; and
 - b. Are at the request of the policy holder except where the change is to correct an administrative error.
4. The exemption also applies to life policies issued after commencement of DDO for certain administrative transactions:

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- a. to correct an administrative error; or
 - b. to reinstate a lapsed policy after it lapses due to non-payment of premiums.

Purpose of the instrument

5. The purpose of the Instrument is to facilitate the conditional reissue of life policies by exempting issuers from DDO requirements in certain situations.
6. The policy intent of DDO is to improve consumer outcomes and require financial service providers to have a consumer-centric approach to designing and distributing financial products. DDO imposes additional obligations on issuers and applies to financial products issued after 5 October 2021.
7. Life policies are intended to be held over a long period and many existing policies have been issued before the commencement of DDO. Some life policies contain terms which give the policy holder the option to request administrative transactions which make changes to their policy. There are also situations where the policy holder or the issuer would want to reissue the policy to correct errors such as typographical errors or to reinstate a policy that lapsed due to non-payment of premiums.
8. Depending on an issuer's administrative systems these reissuing transactions may require the issue of a new financial product rather than just a variation to the existing policy. This would require the issuer to comply with DDO requirements to reissue the policy even if it was originally issued before the commencement of DDO. This would impose a cost on the issuer if they accepted the reissue request or could cause consumer detriment if they refused the request.
9. The Instrument seeks to allow for the reissue of life policies originally issued before 5 October 2021 without enlivening the DDO obligations. The policy holder would be able to have their requests accepted and have the benefit of the transaction provided for in their contract. It also allows for the correction of administrative errors and reinstatement of lapsed policies for non-payment of premiums which have little risk of regulatory detriment while providing a benefit for policy holders.

Consultation

10. ASIC undertook a targeted consultation with a wide range of stakeholders including industry, consumer representative bodies and Treasury. The stakeholders were consulted on the scope of the proposed relief, including the circumstances in which the relief would apply and any conditions the relief should be subject to.

Operation of the instrument

11. Section 2 of the Instrument specifies that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.

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12. Sections 5 and 6 of the Instrument exempts reissued life policies from Part 7.8A of the Act provided certain conditions are satisfied. Section 5 applies if the policy or policies that the reissued policy replaces (the *previous policy*) is originally issued before the commencement of DDO on 5 October 2021. Section 6 applies if the previous policy is originally issued after the commencement of DDO on 5 October 2021.
 13. Paragraphs 5(1)(b) and 6(1)(b) of the Instrument requires the reissued policy to be issued at the request of the owner of the previous policy, except to correct an administrative error. It also requires the owner of the previous policy and the reissued policy to be the same.
 14. Paragraphs 5(1)(c) and 6(1)(c) of the Instrument requires the reissued policy to be on the same terms and conditions as the previous policy, apart from the changes that are necessary to give effect to the transaction. The reissued policy cannot have additional underwriting or individual loadings.
 15. Paragraphs 5(1)(d)(i) – (vii) of the Instrument lists the transactions for which the reissued policy is exempt when the previous policy is originally issued **before** the commencement of DDO on 5 October 2021.
 16. Paragraphs 6(1)(d)(i) – (ii) of the Instrument lists the transactions for which the reissued policy is exempt when the previous policy is originally issued **after** the commencement of DDO on 5 October 2021.

Legislative instrument and primary legislation

17. 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 life insurance policies. The instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. The DDO legislation was not generally intended to apply to financial products issued before its commencement. 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.
18. 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.

Duration of the instrument

19. The duration of the Instrument is 5 years. The Instrument will be repealed 5 years after the date it is made.
20. The five-year duration of the Instrument is appropriate because the Instrument provides relief where compliance leads to unintended results. It also 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

21. This Instrument is made under paragraph 994L(2)(b) of the *Corporations Act 2001*.
22. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

23. 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 (Design and Distribution Obligations—Reissued Life Policies Class Exemption) Instrument 2023/183

Overview

1. *ASIC Corporations (Design and Distribution Obligations—Reissued Life Policies Class Exemption) Instrument 2023/183* exempts insurers from complying with the design and distribution obligations contained in Part 7.8A for the reissue of certain life policies when certain conditions are met.

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*.