



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Confirming Transactions – Deceased Life Insurance Policyholder) 2023/437

This is the Explanatory Statement for *ASIC Corporations (Confirming Transactions – Deceased Life Insurance Policyholder) 2023/437* (the **Instrument**).

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

Summary

1. The *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* repealed regulation 7.9.62(4)(f) of the *Corporations Regulations 2001* (the **Corporations Regulations**), which exempted the acceptance or settlement of a claim under an insurance product from the requirement to confirm transactions in section 1017F of the *Corporations Act 2001* (the **Corporations Act**). Accordingly, the requirements in section 1017F of the *Corporations Act* now apply to insurers admitting and settling claims.
2. Under section 1017F of the *Corporations Act*, confirmation of transactions must be provided to the holder of the insurance product, after the transaction occurs, and must include information allowing the holder to understand the nature of the transaction. This means insurers need to provide to the holder of an insurance policy information that they reasonably believe the holder needs to understand the nature of the transaction.
3. The Instrument modifies the application of section 1017F of the *Corporations Act* such that where a third party payee (which may include a third party beneficiary or a person to whom the sum of money is required to be paid under the policy) claims under a life insurance policy and the policyholder is deceased (and the life insurance policy has no joint holder/other owner), the insurer does not have to give confirmation of the transaction to the policyholder. Further, in such circumstances, the obligation in section 1017F of the *Corporations Act* is to be alternatively met by giving the confirmation of the transaction to the third party payee.

Purpose of the instrument

4. The purpose of the Instrument is to provide legal certainty that confirmation of transactions is not required to be given to the life insurance policyholder if the

policyholder is deceased, and avoid any perceived impediment to insurers giving confirmation of transactions to third party beneficiaries making claims on the deceased policyholder's life insurance policy.

5. The Instrument recognises that under section 1017F:
 - a. where a holder of a life insurance policy and a claimant are different persons; and
 - b. where the holder of the life insurance policy is deceased and a third party payee makes a claim under the life insurance policy,

it is possible that confirmation of the transaction may not have to be given to anyone at all where no new life insurance policyholder is instated or where ownership of the life insurance policy is not transferred.

6. Third party payees receiving payments under a life insurance policy may reasonably expect to receive information confirming the transaction/s. The Instrument aims to prevent poor consumer outcomes if confirmation of transactions was not provided to a third party payee, simply because they were not the life insurance policyholder.

Consultation

7. Before making the Instrument, ASIC undertook targeted consultation with the Financial Services Council, the Council of Australia Life Insurers and a range of consumer representative bodies on the proposed Instrument.

Operation of the instrument

8. Section 2 of the Instrument specifies that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.
9. Subsection 5(1) of the Instrument provides that Part 7.9 of the Corporations Act applies in relation to a financial product that is a relevant life policy as if section 1017F of the Corporations Act were modified or varied such that where a third party payee claims under a life insurance policy and the policyholder is deceased (and the life insurance policy has no joint holder/other owner), the insurer does not have to give confirmation of the transaction to the policyholder. Further, in such circumstances, the obligation in section 1017F of the Corporations Act is to be alternatively met by giving confirmation of the transaction to the third party payee making the claim.
10. Subsection 5(2) of the Instrument provides that Part 7.9 of the Corporations Act applies in relation to a financial product that is a relevant life policy as if subregulation 7.9.63G(2) of the Corporations Regulations were modified or varied by, after "holder", inserting "or third party payee".

Legislative instrument and primary legislation

11. The subject matter and policy implemented by the 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 and financial services providers. The Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result.
12. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

Duration of the instrument

13. The Instrument will be repealed at the start of 1 July 2028.
14. The 5-year duration of the Instrument is appropriate to allow the Government time to consider whether to incorporate the relief into the primary law.

Legislative authority

15. The Instrument is made under paragraph 1020F(1)(c) of the Corporations Act.
16. Paragraph 1020F(1)(c) of the Corporations Act provides that ASIC may declare that Part 7.9 of the Corporations Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified, or varied as specified in the declaration.

Statement of Compatibility with Human Rights

17. 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 (Confirming Transactions – Deceased Life Insurance Policyholder) 2023/437

Overview

1. *ASIC Corporations (Confirming Transactions – Deceased Life Insurance Policyholder) 2023/437* provides that Part 7.9 of the *Corporations Act 2001* (the **Corporations Act**) applies in relation to a financial product that is a relevant life policy as if section 1017F of the *Corporations Act* were modified or varied such that where a third party payee claims under a life insurance policy and the policyholder is deceased (and the life insurance policy has no joint holder/other owner), the insurer does not have to give confirmation of the transaction to the policyholder. Further, in such circumstances, the obligation in section 1017F is to be alternatively met by giving confirmation of the transaction to the third party payee making the claim.

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*.