



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Confirming Transactions---Recurring Insurance Benefit Payments) 2023/438

This is the Explanatory Statement for *ASIC Corporations (Confirming Transactions---Recurring Insurance Benefit Payments) 2023/438* (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 The *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* repealed regulation 7.9.62(4)(f) of the *Corporations Regulations 2001*, which exempted the acceptance or settlement of a claim under an insurance product from the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 the holder of an insurance policy information that they reasonably believe the holder needs to understand the nature of the transaction.
3. The Instrument exempts a responsible person (which includes, but is not limited to, life insurers as the issuers and/or sellers of life insurance products and general insurers as the issuers and/or sellers of general insurance products) from having to comply with subsection 1017F(5) of the *Corporations Act* for a transaction that is a payment under a recurring benefit claim, defined in the Instrument as ‘a claim under a life policy or a general insurance product for benefit payments (other than a claim for a single lump sum payment) where the holder is unable to work because of illness, injury or unemployment’. The exemption applies to such transactions where, before the payment occurs, the responsible person has provided confirmation of the transaction to the holder in the form of a statement that: covers future payments under the recurring benefit claim for a period of no more than six months; is provided in accordance with subsection 1017F(6) of the *Corporations Act*; and contains the information

required by subsections 1017F(7) and (8) of the Corporations Act in relation to the payment and each other payment covered by the statement.

Purpose of the instrument

4. The purpose of the Instrument is to reduce regulatory burden by providing an exemption from the requirement to give confirmation of the transaction after the recurring benefit claim payment transaction has occurred, where confirmation has already been given in the form of a statement that complies with the requirements of the Instrument.
5. The Instrument recognises that there is benefit to consumers in providing confirmation of the transaction before the recurring benefit claim payment is made, rather than after it, to allow beneficiaries to plan their finances more effectively. Sending confirmation of transactions both before and after the recurring benefit claim payment would result in duplicate correspondence and potential frustration or confusion for consumers.

Consultation

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

Operation of the instrument

7. Section 2 of the Instrument specifies that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.
8. Section 5 of the Instrument exempts responsible persons from compliance with subsection 1017F(5) of the Corporations Act, provided certain circumstances apply.
9. Paragraphs 5(a)-(c) of the Instrument limit the circumstances in which the exemption applies to payments under a recurring benefit claim where, before the payments occur, the responsible person has provided confirmation of the transactions to the holder in the form of a statement that: covers future payments under the recurring benefit claim for a period of no more than six months; is provided in accordance with subsection 1017F(6) of the Corporations Act; and contains the information required by subsections 1017F(7) and (8) of the Corporations Act in relation to the payment and each other payment covered by the statement.

Legislative instrument and primary legislation

10. 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 customers and financial services providers.

-
11. 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

12. The Instrument will be repealed at the start of 1 July 2028.
13. 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

14. The Instrument is made under paragraph 1020F(1)(a) of the Corporations Act.
15. Paragraph 1020F(1)(a) of the Corporations Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Corporations Act.

Statement of Compatibility with Human Rights

16. 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---Recurring Insurance Benefit Payments) 2023/438

Overview

1. *ASIC Corporations (Confirming Transactions---Recurring Insurance Benefit Payments) 2023/438* exempts responsible persons obligated to provide a holder with confirmation of a transaction as soon as is reasonably practicable after the transaction occurs under subsection 1017F(5) of the *Corporations Act 2001* (the **Corporations Act**) in respect of life insurance and general insurance products, in circumstances where the transactions are payments under a recurring benefit claim and where, before the payments occur, the responsible person has provided confirmation of the transactions to the holder in the form of a statement that: covers future payments under the recurring benefit claim for a period of no more than six months, is provided in accordance with subsection 1017F(6) of the *Corporations Act*, and contains the information required by subsections 1017F(7) and (8) of the *Corporations Act* in relation to the payment and each other payment covered by the statement.

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*.