



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/883

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/883* (the *instrument*).

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

Summary

1. This instrument amends *ASIC Corporations (Cash Settlement Fact Sheet) Instrument 2022/59* (**principal legislative instrument**) to extend the operation of the conditional relief for a further 5 years and to amend the exemption period that allows a providing entity to give emergency payments to consumers in certain circumstances without first giving them a Cash Settlement Fact Sheet (*CSFS*) from 14 days to 42 days after the insurable event.

Purpose of the instrument

2. The principal legislative instrument exempts a providing entity from complying with subsection 948C(1) of the Corporations Act 2001 (**the Act**) to the extent it requires the providing entity to give a CSFS at the time specified in section 948D of the Act.
3. The obligation to provide a written CSFS at the time of the cash settlement offer could sometimes create a delay in the claims handling process, leading to a risk of poor consumer outcomes when insureds need a quick, small-moderate cash payout in urgent or emergency situations (for example, after a fire, flood, or break in and the insured needs funds to purchase essentials such as clothing or food).
4. Impeding such timely provision of urgently needed cash payments to insureds would likely be an adverse, unintended and unforeseen outcome of the CSFS obligation.
5. While the principal legislative instrument has the effect of exempting providing entities from the requirement in subsection 948C(1) of the Act to the extent it requires the providing entity to give the CSFS *when* the cash settlement offer is made in accordance with section 948D, it does not have the effect of removing the obligation to give a CSFS altogether. The conditions set out in the principal legislative instrument ensure that the policy intent of the CSFS obligation is still

met by confining the exemption to limited circumstances and requiring providing entities to meet certain conditions, such as verbally giving the insured information prescribed by section 948F(1).

6. The principal legislative instrument previously required that the verbal cash settlement offer is made within 14 days of the insurable event that gave rise to the claim.
7. To enable more consumers to benefit from the timely payment of a small-moderate cash payout immediately after an insurable event, the instrument extends the exemption period in the principal legislative instrument from 14 days to 42 days. The instrument also extends the operation of the relief for a period of a further 5 years, until the start of 1 April 2030.

Consultation

8. Before making this instrument, ASIC undertook targeted consultation with a range of stakeholders from industry, the Government and consumer representative bodies on the operation of the principal legislative instrument as well as the continued need for relief. Feedback was received from industry, the Government and consumer representative bodies.
9. All stakeholders who provided feedback were supportive of or did not oppose the continuation of the relief provided by the principal legislative instrument. Both industry and consumer representative bodies noted that the exemption period for a claim to be lodged was too restrictive. The instrument addresses this feedback by extending the exemption period from 14 days of the insurable event to 42 days of the insurable event.
10. The industry body also suggested replacing some of the timeframes in the conditions imposed in the principal legislative instrument with references to business days due to difficulties with compliance where the timeframe includes weekends or public holidays. The instrument does not adopt this suggestion, noting that the current conditions require the providing entity to take all reasonable steps to comply with those timeframes, which remains appropriate.

Operation of the instrument

11. The instrument amends paragraph 5(2)(b) of the principal legislative instrument. The effect of this amendment is to extend the operation of the relief given by the principal legislative instrument so that it can apply to a verbal cash settlement offer made to the insured no later than 42 days after the insurable event the subject of the claim. The instrument also extends the operation of the relief for a period of a further 5 years.
12. The instrument will take effect from the day after it is registered on the Federal Register of Legislation up to the start of 1 April 2030.
13. This relief remains subject to all the requirements in the principal legislative instrument.

Legislative instrument and primary legislation

14. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the effect of the instrument is to extend the operation of the principal legislative instrument.

Duration of the instrument

15. The instrument extends the operation of the principal legislative instrument up to the start of 1 April 2030.
16. The operation of the relief has been extended for a period of a further 5 years rather than incorporated into primary legislation to enable ASIC and the Government to monitor the effectiveness of the relief noting the amendment made by this instrument.
17. Prior to 1 April 2030 ASIC will consider whether the primary legislative instrument should be continued, amended, remade or repealed.
18. The instrument commences on the day after it is registered on the Federal Register of Legislation. It will be repealed under section 48A of the Legislation Act 2003.

Legislative authority

19. The instrument is made under subsection 951B(1) of the Corporations Act.
20. 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.
21. Subsection 33(3) of the *Acts Interpretation Act 1901* states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument.
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 (Amendment) Instrument 2024/883

Overview

1. The purpose of the instrument is to amend *ASIC Corporations (Cash Settlement Fact Sheet) Instrument 2022/59* (the principal legislative instrument). The principal legislative instrument allows providing entities that provide claims handling and settling services to give a Cash Settlement Fact Sheet to insureds after a verbal cash settlement offer has occurred, in circumstances where the insured is in immediate need of financial assistance and the cash payment does not exceed \$5,000. Certain conditions attach to this relief to ensure that insureds are still given sufficient information about whether to accept a cash settlement offer from an insurer.
2. To enable more consumers to benefit from the timely payment of a small-moderate cash payout immediately after an insurable event, the instrument extends the exemption period in the principal legislative instrument from 14 days to 42 days and extends the operation of the relief for a period of a further 5 years.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. 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*.