ASIC
Australian Securities & Investments Commission

ASIC Corporations (Life Insurance Commissions) Instrument 2017/510

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 31 May 2017

Stephen Yen

Contents

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Life Insurance Commissions) Instrument 2017/510*.

2 Commencement

This instrument commences on 1 January 2018.

3 Authority

This instrument is made under subsections 963BA(2) and (4) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

client initiated increase means, in relation to a year in which a life risk insurance product is issued or is continued, a change to the terms and conditions of the product:

(a) that results from the holder of the product:

(i) exercising, in writing or by electronic means, an option given to the holder under the product; or

(ii) requesting or agreeing to, in writing or by electronic means, a change to the terms and conditions of the product; and

(b) that results in the policy cost payable for the product for the year being greater than the policy cost that would be payable if the change were not made; and

(c) that is any of the following:

(i) an increase in the level of cover provided to the person insured under the product, including:

(A) an increase in the sum insured under the product;

(B) an increase in the period during which a benefit is provided to the person insured under the product;

(ii) the addition of another type of cover under the product;

(iii) a change in the basis on which premiums are calculated under the product;

Note: For example, a change from stepped premiums to level premiums.

(iv) a decrease in a waiting period that applies in relation to cover provided under the product or a claim made under the product;

(v) in the case of a product that provides insurance against the insured person losing the ability to work in an occupation:

(A) a change in the type of occupation to which the insurance relates, other than a change that results from the insured person changing their occupation; or

Note: For example, a change from insurance that covered the insured person losing the ability to work in any occupation to insurance that covered the insured person losing the ability to work in a specified occupation.

(B) a change so that the amount payable to the insured person in the event of a claim does not depend on the income of the insured person at or about the time of the claim.

Note: For example, a change in the type of cover provided under an income protection policy from indemnity to agreed value.

policy cost has the same meaning as in section 960 of the Act.

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Part 2—Determination

5 Acceptable benefit ratio

(1) This section determines acceptable benefit ratios for benefits given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product for the purposes of subsection 963BA(2) of the Act.

Benefit given because of issue of product—60% cap

(2) An acceptable benefit ratio for a benefit given for the year in which the product is issued and that is not given because of a client initiated increase is 0.6.

Trailing benefits—20% cap

(3) An acceptable benefit ratio for a benefit given for a year during which the product is continued and that is not given because of a client initiated increase in that year or the previous year is 0.2.

Benefit given because of a client initiated increase in current year—60% cap

(4) An acceptable benefit ratio for a benefit that is given:

(a) for the year in which the product is issued or for a year during which the product is continued; and

(b) because of a client initiated increase in that year;

is the amount worked out using the following formula:

$$\frac{0.6 \times \text{days in year}}{\text{remaining days in year}}$$

where:

days in year means the number of days in the year.

remaining days in year means the number of days from the time of the client initiated increase until the end of the year.

Note 1: The ***benefit ratio*** for the benefit for the year is the ratio between the benefit and the part of the policy cost (***increased policy cost***) for the year that is payable because of the client initiated increase: subsection 963B(3A) of the Act. Where a client initiated increase occurs part way through a year, subsection (4) permits an upfront benefit of up to 60% of the increased policy cost (calculated over a 12 month period).

Note 2: For example, if there were a client initiated increase that resulted in an increase in the policy cost of $250 per year, but the client initiated increase occured 292 days into a year, the increase in the policy cost for that year would be $50 (since there would be 73 days remaining in the year): see subsection 963B(3B) of the Act. The acceptable benefit ratio applying in relation to the $50 increase would be (0.6 ×365)/73 = 3.0. Consequently, a benefit of up to $150 could be given in relation to the increase: see subsections 963B(3A) and 963BA(1) of the Act.

Benefit given because of a client initiated increase in the previous year—20% cap

(5) An acceptable benefit ratio for a benefit that is given:

(a) for a year during which the product is continued; and

(b) because of a client initiated increase in the previous year;

is the amount worked out using the following formula:

$$\frac{0.2 \times \text{relevant days in year}}{\text{days in year}}$$

where:

days in year means the number of days in the year.

relevant days in year means the number of days from 12 months after the client initiated increase until the end of the year.

Note: If a client initiated increase occurs part way through a year, subsection (5) allows a trailing benefit of up to 20% to be paid for the following year in relation to the period from the anniversary of the increase until the end of that following year. In subsequent years, subsection (3) allows a trailing benefit of up to 20% to be paid.

Note 1: The following are examples of how the value of the acceptable benefit ratio is worked out:

(a) A life risk insurance product is issued to the holder on 31 December 2020 with a policy cost for the year of $1,000. An acceptable benefit ratio for a benefit provided to a financial services licensee, or a representative of a licensee, for the initial 12 month period is 0.6: subsection (2). Accordingly, the benefit ratio requirement in subsection 963BA(1) of the Act will be satisfied for this period if the benefit provided to the licensee or representative for the period is no more than $600.

(b) The holder decides to continue the product into a second year and to increase the sum insured. The policy cost for the second year increases to $1,200, with $150 of the increase being because of the decision to increase the sum insured and the remaining $50 because of a CPI increase to the sum insured. The $150 is a client initiated increase and an acceptable benefit ratio of 0.6 applies for a benefit provided for the second year in relation to the $150 increase: subsection (4). Therefore, a benefit of up to $90 may be given in relation to this increase. An acceptable benefit ratio of 0.2 applies for a benefit provided for the second year in relation to the $1,050 balance of the policy cost: subsection (3). Therefore, a benefit of up to $210 may be given in relation to the $1050 balance of the policy cost. Accordingly, the maximum total benefit that may be given for the second year is $300.

Note 2: The examples in this section do not include GST. Depending on the circumstances, a commission given to a licensee or representative may or may not include GST. Where a commission includes a GST component, the GST component is not intended to be a benefit for the purposes of the conflicted remuneration provisions in Division 4 of Part 7.7A of the Act: see paragraph 1.29 of the Explanatory Memorandum to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016*.

6 Acceptable repayment

(1) This section applies in relation to a benefit:

(a) given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product for:

(i) the year (***first year***) in which the product is first issued to a retail client; or

(ii) the year (***second year***) immediately following the first year; and

(b) for which the obligation referred to in paragraph 963BA(3)(a) of the Act requires repayment of all or part of the benefit.

(2) This section determines amounts that are acceptable repayments for the purposes of paragraph 963BA(3)(b) of the Act.

Note: Where there is more than one reduction in policy cost during the first two years for a product or one or more reductions followed by the product being cancelled or not continued during the first two years, separate acceptable repayment amounts are determined in relation to each reduction, cancellation or non-continuation.

Acceptable repayment where trigger event in first year—100% clawback

(3) The amount worked out in accordance with subsection (4) is an acceptable repayment in relation to a benefit given for the first year in relation to circumstances where, in the first year:

(a) the life risk insurance product is cancelled or not continued; or

(b) the policy cost for the product for the first year is reduced.

Note 1: The circumstances in which the policy cost for the first year is reduced include circumstances in which the policy cost for the first year is increased and subsequently reduced (whether or not the reduced policy cost is less than the initial policy cost).

Note 2: Where there is a benefit (***issue benefit***) provided in relation to the issue of the product, a further benefit (***increase benefit***) provided because of a client initiated increase in the first year and a subsequent cancellation, non-continuation or reduction in the first year, subsections (3) to (5) will apply in relation to each of the issue benefit and the increase benefit.

(4) The amount of the acceptable repayment is:

(a) in the case of the product being cancelled or not continued—100% of the adjusted benefit; and

(b) in the case of a reduction in policy cost—the percentage of the adjusted benefit that is equal to the percentage by which the policy cost (determined immediately before and immediately after the reduction) has been reduced.

(5) In subsection (4), ***adjusted benefit*** means the benefit less the aggregate of any acceptable repayments in relation to the benefit resulting from any previous applications of subsection (3).

Note: Each application of subsection (3) gives rise to a separate acceptable repayment amount.

Acceptable repayment for first year client initiated increase where trigger event occurs in second year and within 12 months—100% clawback

(6) The amount worked out in accordance with subsection (7) is an acceptable repayment in relation to a benefit given for the first year because of a client initiated increase in relation to circumstances where, within the period of 12 months commencing on the date of the client initiated increase:

(a) the product is cancelled or not continued during the second year; or

(b) the product is continued for the second year at a reduced policy cost; or

(c) the policy cost for the product for the second year is reduced to an amount that is less than the policy cost (***initial second year policy cost***) for the product for the second year as determined at the start of the second year.

Note: The circumstances in which paragraph (c) applies include where the policy cost immediately before the reduction is less than the initial year policy cost and is then reduced further.

(7) The amount of the acceptable repayment is:

(a) in the case of the product being cancelled or not continued—100% of the adjusted benefit; and

(b) in the case of the product being continued for the second year at a reduced policy cost—the percentage of the adjusted benefit that is equal to the percentage by which the policy cost (determined immediately before and immediately after the reduction) has been reduced; and

(c) in the case of a reduction in policy cost referred to in paragraph (6)(c)—the percentage of the adjusted benefit that is equal to the percentage by which the policy cost (determined immediately after the reduction) has been reduced below the initial second year policy cost.

Note1: For example, for a benefit of $100 that was provided because of a client initiated increase, if the initial second year policy cost were $1,000 and the policy cost were reduced to $800, the amount of the acceptable repayment would be 20% of $100 = $20.

Note 2: Where there is a benefit (***issue benefit***) provided in relation to the issue of the product, a further benefit (***increase benefit***) provided because of a client initiated increase in the first year and the policy cost is then reduced in the second year and within 12 months of the client initiated increase, subsections (6) to (9) apply in relation to the increase benefit and subsections (10) to (13) in relation to the issue benefit.

(8) In subsection (7), ***adjusted benefit*** means the benefit less the aggregate of any acceptable repayments in relation to the benefit resulting from any previous applications of subsection (3).

(9) If there have been any previous applications of subsection (6) in relation to the benefit, the amount of the acceptable repayment determined under subsection (7) is reduced by the aggregate of the acceptable repayments resulting from the previous applications of subsection (6).

Note: Each application of subsection (6) gives rise to a separate acceptable repayment amount.

Acceptable repayment for other first year benefits where trigger event in second year—60% clawback

(10) The amount worked out in accordance with subsections (11) and (13) is an acceptable repayment in relation to a benefit given for the first year in relation to circumstances where:

(a) any of the following occur:

(i) the product is cancelled or not continued during the second year;

(ii) the product is continued for the second year at a reduced policy cost;

(iii) if the benefit was given because of a client initiated increase—there is a reduction in the policy cost 12 months after the date of the client initiated increase;

(iv) the policy cost for the product for the second year is reduced to an amount that is less than the policy cost (***initial second year policy cost***) for the product for the second year as determined at:

(A) if the benefit was not given because of a client initiated increase—the start of the second year; and

(B) if the benefit was given because of a client initiated increase—12 months after the date of the client initiated increase; and

(b) if the benefit was given because of a client initiated increase, the cancellation, non-continuation or reduction does not occur within the 12 month period commencing on the date of the client initiated increase.

(11) Subject to subsection (13), the amount of the acceptable repayment is:

(a) in the case of the product being cancelled or not continued—60% of the adjusted benefit; and

(b) in the case of a reduction in policy cost referred to in paragraph (10)(a)(ii) or (iii)—60% of the percentage of the adjusted benefit that is equal to the percentage by which the policy cost (determined immediately before and immediately after the reduction) has been reduced; and

(c) in the case of a reduction in policy cost referred to in paragraph (10)(a)(iv)—60% of the percentage of the adjusted benefit that is equal to the percentage by which the policy cost (determined immediately after the reduction) has been reduced below the initial second year policy cost.

(12) In subsection (11), ***adjusted benefit*** means the benefit less the aggregate of any acceptable repayments in relation to the benefit resulting from any previous applications of subsection (3) or (6).

(13) If there have been any previous applications of subsection (10) in relation to the benefit, the amount of the acceptable repayment determined under subsection (11) is reduced by the aggregate of the acceptable repayments resulting from the previous applications of subsection (10).

Note: Each application of subsection (10) gives rise to a separate acceptable repayment amount.

Acceptable repayment for second year client initiated increase where trigger event in second year—100% clawback

(14) An acceptable repayment in relation to a benefit given for the second year in relation to circumstances where:

(a) the benefit was given because of a client initiated increase in the second year; and

(b) the product is cancelled or not continued during the second year or the policy cost for the product for the second year is reduced to an amount that is less than the policy cost for the product for the second year as determined immediately after the client initiated increase;

is the amount worked out in accordance with subsections (15) and (16).

(15) Subject to subsection (16), the amount of the acceptable repayment is:

(a) in the case of the product being cancelled or not continued—100% of the benefit; and

(b) in the case of the policy cost for the second year (determined immediately after the reduction) being reduced below the policy cost for the second year (determined immediately before the client initiated increase)—100% of the benefit; and

(c) otherwise—the amount worked out using the following formula:

$$\frac{\text{benefit} \times \text{aggregate reduction}}{\text{new policy cost}}$$

where:

aggregate reduction is the amount by which the policy cost for the second year (determined immediately after the reduction) is less than the policy cost for the second year (determined immediately after the client initiated increase).

new policy cost means the part of the policy cost payable for the second year (determined immediately after the client initiated increase) that is payable because of the client initiated increase.

(16) If there have been any previous applications of subsection (14) in relation to the benefit, the amount of the acceptable repayment determined under subsection (15) is reduced by the aggregate of the acceptable repayments resulting from the previous applications of subsection (14).

Note: Each application of subsection (14) gives rise to a separate acceptable repayment amount.

Other second year benefits—no clawback

(17) An acceptable repayment in relation to a benefit given for the second year that was not given because of a client initiated increase in the second year is $0.

Calculating policy cost as at a particular time

(18) For the purposes of this section, in determining the policy cost for a product for the first year or the second year at a particular time, the policy cost for the year at that time is taken to be the amount that would have been the policy cost for the year if the product had been held on the terms and conditions applying at that time for the whole of the year.

Note: For example, if the policy cost for a product for the first year is $1,200 (payable in monthly instalments of $100) and the policy cost is then reduced after 6 months to $60 per month, the policy cost for the first year (determined immediately after the reduction) is taken to be $720 (based on 12 monthly instalments of $60).

Reductions in policy cost because of prescribed circumstances to be ignored

(19) In this section, in determining whether there has been a reduction in policy cost or the amount of a reduction in policy cost, any reduction because of circumstances prescribed for the purposes of subparagraph 963BA(3)(a)(ii) of the Act is to be ignored.

Products in force for exactly 12 months or 24 months

(20) For the purposes of this section, if a product is:

(a) in force for 12 months and then cancelled or not continued into a second year, the product is taken to be cancelled or not continued during the second year; or

Note: This means that subsections (6) to (13) (as applicable) will apply when determining an acceptable repayment in relation to the cancellation or non-continuation of the product.

(b) in force during the 12 month period commencing on the date of a client initiated increase and then cancelled or not continued, the product is taken to be cancelled or not continued on the day immediately following the end of that 12 month period; or

Note: This means that subsections (10) to (13) will apply when determining an acceptable repayment in relation to a benefit given because of the client initiated increase.

(c) in force for 24 months and then cancelled or not continued into a third year, the amount of the acceptable repayment in relation to the cancellation or non-continuation of the product is $0.

Note 1: The following is an example of how the amount of an acceptable repayment is worked out:

(a) A life risk insurance product is issued to the holder on 31 December 2020 with a policy cost of $1,000. The issuer provides a benefit of $600 to a financial services licensee in relation to the product.

(b) The holder decides to continue the product for a second year and to increase the sum insured. The policy cost for the second year increases to $1,200, with $150 of the increase being because of the decision to increase the sum insured (a client initiated increase) and the remaining $50 because of a CPI increase to the sum insured. This issuer provides a benefit of $300 to the financial services licensee in relation to the product for the second year, of which $90 is because of the increase in the sum insured, with the remaining $210 being ongoing commission in relation to the product.

(c) On 30 June 2022 the holder decides to reduce the sum insured. The holder also stops smoking. These changes reduce the policy cost by $100, with $60 of the decrease being because of the decision to reduce the sum insured and $40 of the decrease because of the decision to stop smoking.

(d) The acceptable repayment for the $210 benefit for the second year is $0 because this benefit did not result from a client initiated increase in the second year. The acceptable repayment for the $90 benefit for the second year is calculated as follows. The $40 decrease in the policy cost resulting from the decision to cease smoking is ignored because it is a prescribed circumstance for the purposes of subparagraph 963BA(3)(a)(ii) of the Act: see regulation 7.7A.12EC of the *Corporations Regulations 2001*. Therefore the acceptable repayment for the $90 benefit is calculated on the basis of a $60 reduction in the policy cost, giving an acceptable repayment of ($90 × $60) ÷ $150 = $36: see subsections (14) and (15).

(e) There is no acceptable repayment amount for the $600 benefit for the first year since the policy cost for the second year is greater than the policy cost for the first year. If the policy had been cancelled in the second year, the acceptable repayment for the $600 benefit would have been 60% of $600 = $360: see subsections (10) and (11).

Note 2: The examples in Note 1 do not include GST. Depending on the circumstances, a commission given to a licensee or representative may or may not include GST. Where a commission includes a GST component, the GST component is not intended to be a benefit for the purposes of the conflicted remuneration provisions in Division 4 of Part 7.7A of the Act: see paragraph 1.29 of the Explanatory Memorandum to the *Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016*.

Part 3—Transitional

7 Acceptable benefit ratio

(1) Despite subsection 5(2), for the purposes of subsection 963BA(2) of the Act, an acceptable benefit ratio for a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product:

(a) for the year in which the product is issued and that is not given because of a client initiated increase; and

(b) where the product is issued between 1 January 2018 and 31 December 2019;

is:

(c) where the product is issued between 1 January 2018 and 31 December 2018—the amount determined by subsection 5(2) as if the reference to "0.6" were a reference to "0.8"; and

(d) where the product is issued between 1 January 2019 and 31 December 2019—the amount determined by subsection 5(2) as if the reference to "0.6" were a reference to "0.7".

(2) Despite subsection 5(4), for the purposes of subsection 963BA(2) of the Act, an acceptable benefit ratio for a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product:

(a) for the year in which the product is issued or for a year during which the product is continued; and

(b) because of a client initiated increase which occurs:

(i) in that year; and

(ii) between 1 January 2018 and 31 December 2019;

is:

(c) for a client initiated increase which occurs between 1 January 2018 and 31 December 2018—the amount determined by subsection 5(4) as if the reference to "0.6" were a reference to "0.8"; and

(d) for a client initiated increase which occurs between 1 January 2019 and 31 December 2019—the amount determined by subsection 5(4) as if the reference to "0.6" were a reference to "0.7".