



**ASIC**

Australian Securities & Investments Commission

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# **ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751**

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## **About this compilation**

### **Compilation No. 1**

This is a compilation of *ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751* as in force on 6 December 2018. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751*.

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2), 951B(1) and 992B(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*authorised representative* has the meaning given by section 761A of the Act.

*control* has the meaning given by section 50AA of the Act.

*custodial or depository service* has the meaning given by section 766E of the Act.

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

*employee* includes independent contractor.

*financial product advice* has the meaning given by section 766B of the Act.

*group purchasing body* means a body that arranges for the issue of a risk management product or for a person to be covered by an existing risk management product.

*group purchase payment* means a payment made by a person to the group purchasing body under an arrangement whereby the body will make a payment to the issuer of the risk management product for or under the product that will enable the person to be covered by the product and either:

- (a) the product is to be issued to that person; or
- (b) when the product is held by the group purchasing body, the cover is to apply by extension to that person as a named individual under the terms of the product (including any

schedule to the product) for an additional payment made to the issuer of the risk management product.

**incidental provider:** a group purchasing body that operates a risk management scheme, or that provides financial services in relation to risk management products, is an **incidental provider** if the body:

- (a) provides financial services only incidentally to another relationship with the persons who will be covered by the risk management products to which the financial services or the risk management scheme relates; and
- (b) does not carry on any business in order to make monetary payments to members.

**issue** and **issuer** have the meanings given by section 761E of the Act.

**limited licensee** has the meaning given by subsection 989B(4) of the Act (as modified by regulation 7.8.12A of the *Corporations Regulations 2001*).

**member**, in relation to a group purchasing body, means:

- (a) where the body is a company—a member of that company; and
- (b) otherwise—a person who is treated as a member of the body under its constituent documents and has agreed to be a member of the body.

**multinational pooling arrangement** means an arrangement under which life, total and permanent disability or income protection insurance is to be issued that:

- (a) is substantially arranged between bodies that are incorporated or formed outside this jurisdiction and where the majority of the persons who are covered by the insurance are situated outside this jurisdiction; and
- (b) covers employees of, or persons contracted to provide services to, the group purchasing body or another entity that controls the body or that is controlled by the body; and
- (c) provides for payments to be received by the group purchasing body based on claims experience for all those covered by the insurance under the arrangement.

**risk management product** means a financial product of the kind referred to in paragraphs 764A(1)(d), (e) or (f) or paragraph 763A(1)(b) of the Act other than a general insurance product that a financial services licensee must not deal in because of section 985D of the Act.

**risk management scheme** means a managed investment scheme under which:

- (a) monies are contributed and are pooled or used in a common enterprise to confer any of the following benefits on the persons contributing:
  - (i) lower costs to secure cover, or the securing of cover on more favourable terms, under a risk management product issued by a person who is not, and is not associated with, the group purchasing body operating the scheme;
  - (ii) the availability of cover, which would not otherwise be available, under such a risk management product; and
- (b) the persons contributing do not have any entitlement to receive any distributions of scheme property other than any of the following:
  - (i) payments that are directly attributable to the cover provided by the risk management product;
  - (ii) payments received from the product issuer or any financial services licensee or their associates for arranging for the persons to be covered by the product.

**scheme property**, in relation to a risk management scheme, means:

- (a) contributions of money or money's worth to the scheme; and
- (b) money borrowed or raised by the group purchasing body for the purposes of the scheme; and
- (c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and
- (d) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b) or (c).

**standard licensee** means a financial services licensee that is not a limited licensee.

## Part 2—Exemptions

### 5 Risk management scheme exemptions

#### *Exemptions*

- (1) A group purchasing body does not have to comply with subsection 601ED(5) of the Act in relation to the operation of a risk management scheme.
- (2) A group purchasing body does not have to comply with subsection 911A(1) of the Act for the provision of the following financial services:
  - (a) dealing in a risk management product or an interest in a risk management scheme operated by the body;
  - (b) providing a custodial or depository service by holding a risk management product on trust for or on behalf of another person;
  - (c) providing financial product advice in relation to a risk management product or an interest in a risk management scheme operated by the body, to the extent that that advice is provided as a result of the body giving information or statements under paragraph 6(e).

Note: *ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115* provides relief from subsection 911B(1) of the Act to a person who provides financial services on behalf of a person who does not need a financial services licence because of an exemption under section 926A of the Act.

- (3) A group purchasing body that is a financial services licensee or an authorised representative of a financial services licensee does not have to comply with Divisions 2, 3 and 4 of Part 7.7 or Divisions 2, 3, 5 and 6 of Part 7.8 of the Act in relation to the financial services referred to in subsection (2).

#### *Where the exemptions apply*

- (4) A group purchasing body that is a standard licensee or an authorised representative of a standard licensee may rely on the exemptions in subsections (1) to (3) only if:
  - (a) the only persons who will be covered by the risk management product or issued an interest in the risk management scheme are officers or employees of the body or their relatives; and
  - (b) either:
    - (i) the body is an incidental provider; or
    - (ii) the body meets the requirements of subsection (6).

- (5) A group purchasing body that is not a standard licensee or an authorised representative of a standard licensee may rely on the exemptions in subsections (1) to (3) only if:
- (a) the body does not carry on a business of issuing risk management products other than interests in a risk management scheme; and
  - (b) the body does not provide any financial product advice in relation to a risk management product other than financial product advice covered by paragraph (2)(c); and
  - (c) either:
    - (i) the body is an incidental provider; or
    - (ii) the body meets the requirements of subsection (6).
- (6) A body meets the requirements of this subsection if:
- (a) it does not receive any payments, remuneration or other benefits for the provision of financial services relating to the risk management product or an interest in the risk management scheme, except for the following:
    - (i) a payment from a person (***covered person***) who is covered by the risk management product where:
      - (A) the amount of the payment is separately identified (in dollars from any other amounts payable by the person to the body to become or remain a member of the body) in a written request for payment or written statement of the amount payable given by the body to the person; and
      - (B) an equivalent amount is to be paid by the body to the product issuer;
    - (ii) payments from a member of the body or a covered person to cover the costs reasonably incurred by the body for providing financial services relating to the risk management product or an interest in the risk management scheme;
    - (iii) rebates for which the body has an obligation to promptly pay an equivalent amount to covered persons (other than covered persons who are the body or its associates);
    - (iv) payments under a multinational pooling arrangement; and
  - (b) where the body is not a standard licensee or an authorised representative of a standard licensee—the body is not an associate of:

- (i) any person who carries on a business of issuing risk management products (other than interests in a risk management scheme); or
- (ii) a financial services licensee (other than a limited licensee), or any authorised representative of such a licensee, who deals in or provides financial product advice about a risk management product;

ignoring any association under the terms of a multinational pooling arrangement.

## 6 Conditions

A group purchasing body that relies on the exemption in subsection 5(1) must:

- (a) ensure that the making of a group purchase payment by a person to the body:
  - (i) where the product is to be issued to the person—is a discharge, as between the person and the issuer of the risk management product, of any liability of the person in respect of the product to the extent of the payment; or
  - (ii) where the product has been or is to be issued to the body—is a discharge, as between the person and the issuer of the risk management product, of any liability of the body in respect of the product in relation to the person to the extent of the payment; and

Note 1: This condition is based on section 985B of the Act. The body could, for example, meet this condition by appropriate contractual/agency arrangements with the product issuer.

Note 2: This condition does not require an arrangement that affects the rights of the issuer of the risk management product to recover the payment from the body.

- (b) take reasonable steps to promptly bring to the attention of each person to whom the body provides financial services relating to the risk management product and who may reasonably believe they will be covered by the product, if:
  - (i) it is not reasonable to expect that the cover will apply for the period represented to the person; or
  - (ii) the product is, or is likely to be, cancelled or not renewed,unless either:
  - (iii) the risk management product has been issued to the person and the terms of the product require the product issuer to give the person notice, before cancellation or non-renewal of the product, that the product will be cancelled or not renewed; or



- (iv) substantially similar cover applies or will apply for the period (or remainder of the period) represented to the person; and
- (c) enter an obligation under which the body is liable to compensate any person who suffers loss or damage as a result of the body failing to comply with paragraph (b);

Note: This obligation may be created in any way, provided it is capable of being enforced. It may, for example, be created by the terms of a contract or by deed poll.

- (d) establish a facility by which each person to whom the body provides financial services relating to the risk management product and who may reasonably believe they will be covered by the product may, by taking reasonable steps, verify with the product issuer or a financial services licensee or an authorised representative acting on behalf of the issuer or licensee, without charge, that the product has been issued to the person or the body and remains current; and
- (e) take reasonable steps to give, as soon as practicable after the body has reason to believe that the financial services to which the risk management product relates will be provided to a person (and, if the person may elect whether to be covered, before the election is made), the following information and statements in writing to the person:
  - (i) factual information about the nature of the cover provided by the product, including the period for which the cover will apply, and the role of the body in providing the financial services to which the product relates;
  - (ii) a statement that the body will ensure that a person who requests a copy of the terms and conditions of the product will receive, without charge, a copy within a reasonable time after the request;
  - (iii) information about any amount payable by the person to obtain the cover under the product (if the amount can be separately identified in dollars from any other amounts payable by the person to the body);
  - (iv) if the body will receive payments (*rebates*) from the product issuer or any financial services licensee or their associates to arrange for the issue of the risk management product or for a person to be covered by an existing risk management product, the amounts (if any) that will be paid to the person to be covered by the product from those rebates or, if the amounts cannot be ascertained, information about how the amounts will be determined;
  - (v) if the body is neither a financial services licensee nor the authorised representative of such a licensee—a statement that the body does not hold an Australian financial services licence and that the person should consider obtaining their own financial product advice about the product;

- (vi) if the body is a limited licensee or an authorised representative of a limited licensee—a statement that the body’s financial services licence, or the licence under which they are an authorised representative, does not authorise them to provide financial services in relation to a group purchasing scheme or risk management product, and that the person should consider obtaining their own financial product advice about the product;
- (vii) information about the obligation described in paragraph (c) and the facility described in paragraph (d).

## **7 Exclusion from relying on this instrument**

A group purchasing body cannot rely on the exemptions in section 5 if ASIC has given a notice to the body, stating that the body cannot rely on this instrument, and ASIC has not withdrawn the notice. The notice may be given by sending it to the body’s address last known to ASIC.

## **8 Application of relief to non-incorporated group purchasing bodies**

This instrument applies to a group purchasing body that is not incorporated, with the following changes:

- (a) the exemptions in section 5 may be relied on by an office bearer or employee of the body authorised by the body to do so;
- (b) a condition that would be imposed on the body is imposed instead on each office bearer of the body but may be discharged by any of them or by an employee of the body;
- (c) a notice referred to in section 7 that is required to be sent to the address of the body may instead be sent to the address of an office bearer or employee of the body and has effect in relation to the body and in relation to each office bearer and employee of the body.

## **9 Application for review by Administrative Appeals Tribunal of decisions made under section 7**

- (1) An affected person in relation to a group purchasing body may make an application to the Tribunal for review of a decision made by ASIC to give a notice under section 7 in relation to the body.
- (2) If:
  - (a) an affected person in relation to a group purchasing body makes an application to ASIC for ASIC to withdraw a notice given under section 7 in relation to the body; and
  - (b) ASIC makes a decision not to withdraw the notice;

an affected person in relation to the body may make an application to the Tribunal for review of the decision.

- (3) If ASIC makes a decision to which subsection (1) or (2) applies, ASIC must take such steps as are reasonable in the circumstances to give the group purchasing body notice in writing or otherwise of:
- (a) if subsection (2) applies—the making of the decision; and

Note: In the case of a decision to which subsection (1) applies, notice of the decision will be given by the giving of the notice referred to in section 7.

- (b) in any case—the right of an affected person to have the decision reviewed by the Tribunal.

The notice may be given by sending it to the body's address last known to ASIC, provided that if the group purchasing body is not incorporated, the notice may instead be sent to the address of an office bearer or employee of the body.

- (4) A failure by ASIC to comply with this section does not affect the validity of the decision.
- (5) In this section, ***affected person*** in relation to a group purchasing body and a decision means:
- (a) if the group purchasing body is incorporated—the body; and
- (b) otherwise—the body and each officer bearer and employee of the body whose interests are affected by the decision.

## Endnotes

### Endnote 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2018/751	18/9/2018 ( <i>see</i> F2018L01313)	25/9/2018	
2018/1098	5/12/2018 ( <i>see</i> F2018L01667)	6/12/2018	-

### Endnote 2—Amendment history

ad. = added or inserted   am. = amended   LA = *Legislation Act 2003*   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 4	am. 2018/1098
Section 9	ad. 2018/1098