



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 144

Giving a PDS in telephone sales of general insurance products

October 2010

About this paper

This consultation paper:

- sets out relief we are considering to change the time when a general insurer or its authorised representatives must give a Product Disclosure Statement (PDS) if a quote is given to a retail client for a general insurance product during a telephone call. A quote may be an invitation to apply for a particular general insurance product and therefore an offer to issue that product; and
- seeks the views of consumers, product issuers and financial services professionals.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 28 October 2010 and is based on the Corporations Act as at 28 October 2010.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on giving PDSs where invitations to apply for general insurance products are made to retail clients in the course of telephone calls. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 9 December 2010 to:

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What will happen next?

Stage 1	28 October 2010	ASIC consultation paper released
Stage 2	9 December 2010	Comments due on the consultation paper
	December 2010– January 2011	Drafting of class order (if any)
Stage 3	January 2011	Class order released (if any)

A Current disclosure requirements and ASIC proposals

Key points

We have received submissions from the general insurance industry that the requirement to give a Product Disclosure Statement (PDS) at or before the time of making an invitation to apply for the issue of a financial product is not appropriate where:

- a retail client is given an invitation to apply for the issue of a general insurance product in the form of a quote for the premium payable on a particular general insurance product; and
- the quote is given during a telephone call (see paragraphs 1–16).

We propose to give further consideration to use of our discretionary powers to facilitate the making of quotes to retail clients during telephone calls, and seek submissions on whether:

- the current PDS requirements result in significant commercial difficulties for general insurers marketing their products to retail clients in a cost-effective way; and
- consumer detriment would be likely to result from this change to the time for giving a PDS (see paragraphs 17–25).

Background

What is the problem?

- 1 We have received submissions from the general insurance industry that the requirement in s1012B(3) of the *Corporations Act 2001* (Corporations Act)—to give a PDS at or before the time an offer to issue a general insurance product is made to a retail client—prevents general insurers and their authorised representatives from providing quotes for the premium payable on a particular general insurance product during telephone calls. A quote may be an invitation to apply for a particular general insurance product, and so an ‘offer to issue’ that product: s1010C(2)(a).
- 2 It has been submitted that s1012B(3) limits the ability of general insurers to market their products to retail clients in an efficient and cost-effective way.
- 3 From submissions received, we understand that in the course of marketing their products general insurers may provide quotes for the premium payable on particular general insurance products, based on details of the individual client.

- 4 We understand that provision of a quote is considered useful by general insurers, because the detailed information about the individual retail client and the information about the cost of the particular general insurance product enable both the insurer and the client to identify particular products that may be appropriate for the client.
- 5 The provision of a quote in the context of telephone marketing can therefore help to reduce:
- (a) the costs for general insurers in providing product disclosure information, and making subsequent telephone calls, about products that are not relevant to particular clients; and
 - (b) the inconvenience for retail clients receiving further information and calls about products that are not of interest.
- 6 In the context of contact with retail clients through telephone calls, we understand from industry submissions that there may be practical difficulties in giving a PDS at the required time that effectively prevent the provision of quotes in a cost-effective way.
- 7 We understand from industry submissions that compliance with the requirement to give a PDS at the time when a quote is given would generally be a problem in the context of unsolicited telephone calls (such as calls made in direct marketing campaigns). Quotes may also be useful in the course of other telephone calls (e.g. during calls made by a retail client to enquire about available insurance cover).
- 8 The relief proposed in this consultation paper is limited to offers of general insurance products. While these products carry certain risks they:
- (a) are relatively straightforward;
 - (b) do not have an investment component;
 - (c) are usually subject to standard terms and conditions; and
 - (d) are of limited life, often 12 months.

Are the costs and inconvenience of compliance significant?

- 9 We note that general insurers are currently able to provide quotes in the course of their marketing campaigns in compliance with the PDS requirements. The PDS requirements prevent general insurers from providing quotes only in the course of the initial telephone contact with retail clients.
- 10 For example, a general insurer may:
- (a) during initial telephone contact, either:

- (i) provide general information only about available general insurance products to identify products that are potentially of interest to the retail client, which does not amount to an offer to issue; or
 - (ii) ask the client to provide detailed information that the insurer may use to prepare a quote; and
- (b) after that telephone call:
- (i) send out PDSs for relevant products; and
 - (ii) either send out a written quote prepared using the information provided during the initial call, or make a subsequent call to obtain detailed information and provide a quote.

11 We understand from industry submissions that these alternatives may involve some additional costs for general insurers (e.g. costs of making additional telephone calls and providing more disclosure documents than are necessary), and inconvenience to retail clients due to delays.

12 However, we also note that some of these costs and inconveniences may be reduced by general insurers using (with the consent of the retail client) electronic communications, such as email, for providing required disclosure.

Regulatory benefits of compliance with the current requirements

13 The broad policy objective of the point of sale disclosure obligations is to 'provide consumers with sufficient information to make informed decisions in relation to the acquisition of financial products, including the ability to compare a range of products': Revised Explanatory Memorandum to the Financial Service Reform Bill 2001, paragraph 14.18.

14 This objective is generally achieved by requiring that a retail client be given a PDS at the earliest possible time in the process of offering and issuing a financial product. For an invitation to a retail client to apply for the issue of a financial product, the time for giving a PDS is at or before the time when the invitation is made.

15 It has been submitted that, where the retail client must receive the PDS for a general insurance product referred to in a quote before the client is able to make an application for the product, the broad policy objective of the PDS provisions would be met, and the client would not be subject to any significant disadvantage.

16 A retail client that receives an invitation to apply for the issue of a financial product is not bound by any legal obligation to acquire that financial product. However, the client may choose to act on the invitation by applying for the product. In the case of a quote for a particular general insurance product, the client may choose to:

- (a) act on the quote by applying for the product on the terms of the quote (i.e. on the basis of the same information that was provided to obtain the quote);
- (b) apply for a general insurance product in different terms;
- (c) apply for a general insurance product from a different insurer; or
- (d) not apply for a general insurance product at all.

The information contained in the PDS will be useful for the retail client when they are making this decision.

Our proposals

- 17 We do not currently have sufficient information about whether limitations on the ability to provide a quote in a telephone call is a widespread problem in practice for the general insurance industry that would warrant either class order relief or law reform.
- 18 It has been submitted that we should consider relief that:
- (a) allows a general insurer and its authorised representatives to provide a quote for a particular general insurance product during a telephone call without giving a PDS; and
 - (b) requires the general insurer and its authorised representatives to give a PDS for that product before the retail client applies for the issue of that product.
- 19 To assist our consideration of whether class order relief would be warranted, we seek submissions on whether:
- (a) the current PDS requirements result in significant commercial difficulties for general insurers marketing their products to retail clients in an efficient and cost-effective way; and
 - (b) consumer detriment would be likely to result from this change to the time for giving a PDS.
- 20 Section B of this paper outlines in more detail the relief, and requirements on relief, that we propose to consider, subject to submissions received on the need for any relief.

Existing concessions in the Corporations Act for telephone marketing and sale of general insurance products

- 21 Under s1012G (as modified by reg 7.9.15H of the Corporations Regulations 2001), a regulated person does not need to give a PDS for certain financial

products at or before the time it would otherwise be required (e.g. at or before the time of the offer to issue) if:

- (a) the client expressly instructs that the financial product be issued immediately or by a specified time; and
- (b) it is not reasonably practicable to comply with the client's instructions and give the client the PDS at or before the time it would otherwise be required.

22 This provision only applies to financial products for which an application form is not required under s1016A (which would require the giving of a PDS in any case) and to which s1019B (cooling-off period) will apply if the client enters a legal obligation to acquire the financial product. Currently this provision covers risk insurance products.

23 This concession was provided to 'facilitate phone issues of risk insurance products': Revised Explanatory Memorandum to the Financial Services Reform Bill 2001, paragraph 14.55.

24 This concession does not limit the requirement in s992A(3)(c) to give a PDS before a retail client becomes bound to acquire an insurance policy, where the offer to issue the policy is made in the course of, or because of, an unsolicited telephone call. That requirement is a condition on an exception to the prohibition on hawking financial products, and is separate to the ordinary PDS requirements in Pt 7.9 of the Corporations Act that are subject to s1012G.

25 For the avoidance of doubt about the time for giving a PDS where an offer is made in the course of an unsolicited telephone call, we consider that any relief should be subject to a limitation that ensures that the additional protection afforded to retail clients by s992A(3)(c) is not undermined.

Your feedback

A1Q1 How do insurers currently market general insurance products using telephone calls?

A1Q2 In your experience, in what ways do general insurers currently use quotes in the process of marketing and issuing general insurance products? Please give details.

A1Q3 Do you think that the alternatives available to general insurers to provide quotes in a way that complies with the PDS requirements involve significant costs or inconvenience for general insurers or consumers? Please give details.

A1Q4 Do you think that the costs and inconvenience of compliance with the requirement to give a PDS at or before the time when a quote is given are sufficiently significant to warrant the granting of relief? If not, why not?

- A1Q5 Do you think that changing the time for giving a PDS—to allow provision of a quote without giving a PDS until after the initial telephone call, but before the client applies for the issue of the quoted policy—would result in significant consumer detriment? If you do, please give details.
- A1Q6 Do you think that similar issues and arguments apply to invitations to apply for general insurance products that are made in the course of other types of non face-to-face contact? If yes, please give reasons.
- A1Q7 Do you think that similar issues and arguments apply to the making of invitations to apply for other types of risk insurance products? If yes, please give reasons.

B Consideration of relief to change the time for giving a PDS

Key points

We are considering whether it would be appropriate to give class order relief to:

- allow some quotes for general insurance products to be provided during telephone calls without giving a PDS at or before the time when a quote is provided (see proposal B1(a) and paragraph 26); and
- require a general insurer or its authorised representatives who provides a quote without giving a PDS to instead give the retail client certain information before and at the time of making the invitation, and to give the PDS before the client applies for the issue of the general insurance product that is the subject of the quote (see proposal B1(b) and paragraph 26).

We think that any relief should impose additional disclosure requirements to ensure that retail clients who receive an invitation without receiving a PDS understand the nature of the invitation and that they have not applied for or acquired, and are not bound by a legal obligation to acquire, a general insurance product: see proposal B2 and paragraphs 27–31.

Relief from PDS requirements

Proposal

- B1** We are considering whether it is appropriate to give class order relief to enable a general insurer or its authorised representatives to make an invitation to a retail client to apply for a general insurance product by giving a quote for the premium payable on a particular product during a telephone call, by:
- (a) allowing the general insurer or authorised representative to give a quote to a retail client during a telephone call without giving a PDS, if it is not reasonably practicable to give the PDS at or before the time when the invitation is given; and
 - (b) requiring the general insurer or authorised representative to instead:
 - (i) give the client the PDS as soon as practicable and, in any event, before the client applies for the issue of the general insurance product that is the subject of the quote; and
 - (ii) provide the information specified in proposal B2.

Your feedback

- B1Q1 Would relief of this kind be likely to result in significant compliance cost savings? Please give details, including figures.
- B1Q2 Would relief of this kind be likely to result in additional consumer risks or costs? Please give details, including figures and reasons.
- B1Q3 Do you think it is appropriate to limit any relief to PDSs for general insurance products? If not, why not?
- B1Q4 Do you think that the time for giving the PDS under any relief should be earlier than we propose? Please give details and reasons.
- B1Q5 Do you think that the time for giving the PDS under any relief should be later than we propose? Please give details and reasons.

Rationale

26 We are considering whether class order relief would be warranted on the following grounds.

- (a) In the case of an invitation to apply for a general insurance product (in the form of a quote) that is made during a telephone call, it may not be reasonably practicable to give a PDS at or before the time the quote is provided.
- (b) The costs and inconvenience—for both the general insurer and the retail client—of complying with the requirement to give a PDS at or before the time when the quote is provided are significant and affect the ability of general insurers to market their products in a cost-effective way.
- (c) The provision of a quote during a telephone call may be useful to the client in deciding whether they are interested in receiving a PDS for the general insurance product and comparing it with other general insurance products. Delays in provision of a quote may involve inconvenience for the retail client.
- (d) The retail client will have an opportunity to use the PDS received after the quote, but before the client applies, to make an informed decision about whether to apply for the general insurance product.

Additional disclosure requirements and other limitations**Proposal**

- B2** If relief of the kind outlined in Proposal B1 were given, we propose to apply the requirements in Table 1.

Table 1: Proposed relief requirements

Additional disclosure requirements and other limitations under proposed relief	
1	<p>The general insurer or authorised representative orally communicates the following information to the retail client before the retail client is asked to provide information and details to enable the provision of an invitation in the form of a quote for the premium payable on a particular general insurance product:</p> <ul style="list-style-type: none"> • the name and contact details of the issuer of the general insurance product; • in the case of an unsolicited telephone call, that the client will be asked to provide some detailed personal information for the purpose of preparing the quote, and the client can choose not to obtain a quote at the time of the telephone call and instead request that a PDS be given to them; • that by providing the information and details requested and receiving the quote, the client will not apply for or become bound by a legal obligation to acquire the general insurance product specified in the quote; • that a PDS will be given to the client and the client should consider the information in the PDS before deciding whether to apply for the general insurance product referred to in the invitation; and • unless the general insurer also offers an interim contract of insurance during the telephone call, that by providing the information and details requested and receiving the quote, the client will not apply for or be issued with an interim contract of insurance
2	<p>At the same time the PDS for the general insurance product is given to the retail client, the general insurer or authorised representative gives the following information to the client in writing:</p> <ul style="list-style-type: none"> • the quote; • a statement that by providing the information and details requested and receiving the quote, the client has not applied for or become bound by a legal obligation to acquire that general insurance product; and • unless the general insurer also offered an interim contract of insurance during the telephone call and the client accepted the interim insurance cover, a statement that by providing the information and details requested and receiving the quote, the client has not applied for or been issued with an interim contract of insurance.
3	<p>The requirement to give the client a PDS as soon as practicable after the invitation is made—and, in any event, before the client applies for the insurance policy that is the subject of the quote—is not subject to s1012G (as modified by reg 7.9.15H). In the context of an invitation given in the course of, or because of, an unsolicited telephone call, this requirement is for the avoidance of doubt.</p>
4	<p>The general insurer must not issue the insurance policy that is the subject of the quote unless the retail client takes positive steps to apply for the issue of that policy (e.g. completing a written application form or making a telephone call to the general insurer).</p>

Your feedback

B2Q1 Do you agree with these requirements? If not, why not?

B2Q2 Would these requirements result in practical problems or additional compliance costs? Please give details, including figures and reasons.

B2Q3 Do you think any additional requirements would be necessary or appropriate for the protection of consumers? Please give details.

Rationale

- 27 Our regulatory experience is that some consumers who are contacted through unsolicited telephone calls are likely to have a level of confusion about the transactions they are being asked to consider, and the legal effect of their dealings in that unsolicited contact.
- 28 We are concerned that, if relief were granted, there may be a risk that some retail clients could be confused about the nature of the quote and the invitation. In particular, there may be a risk that some retail clients:
- (a) might not understand before starting the quote process that preparation of the quote will require provision by them of some detailed personal information. We think that the client should be made aware of the types of information that they will be asked to provide, and advised that they have an option of requesting that a PDS for the general insurance product be given to them without a quote being provided;
 - (b) might think that by providing the detailed information required for the quote, and receiving the quote, they have applied for a general insurance product. The information that the client is asked to provide for the purpose of preparing the quote is likely to be similar to the information sought in an application for that product. We think that the client should be expressly advised that they have not made, or started, an application by requesting the quote and that they should consider the information in the PDS before they make an application;
 - (c) might think that by providing the detailed information required for the quote, and receiving the quote, they are under a legal obligation to apply for and acquire the general insurance product. The general insurer or its authorised representatives may make further telephone calls to offer to issue the general insurance product specified in the quote. We think that the client should be expressly advised that they are not under any legal obligation to apply for and acquire that product;
 - (d) might think that by receiving the quote they have acquired an interim contract of insurance. While a general insurer may choose to separately offer to issue an interim contract of insurance, the quote will not of itself provide interim insurance cover. Unless the general insurer or authorised representative in fact offers an interim contract of insurance during the telephone call, we think that the client should be expressly advised that by merely receiving the quote they have not acquired an interim contract of insurance.
- 29 If relief were granted, there may be a greater risk of the retail client who receives the quote being subject to pressure during the initial telephone call to apply for the general insurance product and to instruct immediate issue of that product for the purpose of s1012G (as modified by reg 7.9.15H). We think that the further extension of time in which to give a PDS under s1012G

should not be available to the general insurer and its authorised representatives.

- 30 We are also concerned that, if relief were granted, general insurers may include terms in a quote that seek to rely on inertia of the client and enable a failure to respond following provision of the written quote to be treated as an application for the issue of the general insurance contract specified in the quote. We think that a requirement for the client to take positive steps to apply for a general insurance product will ensure that the client may be issued with the general insurance product only if the client makes a decision to apply for and acquire that product. Examples of positive steps are completing a written application form or making a telephone call.
- 31 The proposed requirements aim to address these risks and provide additional protection to retail clients who receive an invitation in the form of a quote in the course of a telephone call without first receiving a PDS.

What alternatives will we consider?

- 32 We will consider whether it is appropriate not to grant any relief. We expect that if this option were taken, general insurers would be able to continue current business practices that comply with the requirement to give a PDS at or before the time when an invitation is made (e.g. by providing the quote orally in a subsequent telephone call or in writing at the same time a PDS is given).
- 33 We will consider whether it would be appropriate to grant relief only on a case-by-case basis.
- 34 We will consider whether the issues raised in this paper would more appropriately be dealt with by the government as law reform.

C Regulatory and financial impact

35 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. We will seek to ensure that any proposals resulting from this consultation strike an appropriate balance between:

- (a) facilitating business activity; and
- (b) ensuring that retail clients are afforded the protections and benefits that are intended by Parliament to flow from the provision of point of sale disclosure.

36 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR);
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

37 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

38 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
authorised representative (of a general insurer)	A person authorised in accordance with s916A or 916B to provide financial services on behalf of the general insurer
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
general insurance product	Has the meaning given in s761A
general insurer	A person that is authorised as a general insurer by the Australian Prudential Regulation Authority under s12 of the <i>Insurance Act 1973</i>
offer to issue	Has the meaning given in s1010C
PDS	Product Disclosure Statement.
Product Disclosure Statement	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act <p>Note: See s761A for the exact definition.</p>
quote	Details of the premium that may be payable for the proposed insurance cover based on information provided by the retail client.
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
risk insurance product	Has the meaning given in s761A
s1012B(3) (for example)	A section of the Corporations Act (in this example numbered 1012B(3)), unless otherwise specified