



ASIC

Australian Securities & Investments Commission

REPORT 258

Response to submissions on CP 144 Giving a PDS in telephone sales of general insurance products

October 2011

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 144 *Giving a PDS in telephone sales of general insurance products* (CP 144) and details our responses to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy.

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A Overview/Consultation process

- 1 In Consultation Paper 144 *Giving a PDS in telephone sales of general insurance products* (CP 144), we consulted on proposals to use our discretionary powers to facilitate the provision of quotes for the premium payable on a particular general insurance product to retail clients by general insurers during telephone calls. These proposals were developed as a result of considering submissions from members of the general insurance industry, which suggested that the existing provision of the *Corporations Act 2001* (Corporations Act) may not operate appropriately.
- 2 In CP 144, we proposed class order relief to change the time for giving a Product Disclosure Statement (PDS) from at the time of giving the quote to before the client applies for the general insurance product, and a number of disclosure requirements and limitations on any relief to minimise risks to retail clients.
- 3 As we did not 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, we sought feedback 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 the proposed change in time for giving a PDS.
- 4 We also sought feedback on the disclosure requirements and limitations on relief that were proposed, and in particular whether those requirements and limitations would:
 - (a) result in practical problems or additional compliance costs for the general insurance industry; and
 - (b) be necessary or appropriate for the protection of consumers.
- 5 This report highlights the key issues that arose out of the submissions received to CP 144 and our responses to those issues.
- 6 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 144. We have limited this report to the key issues.
- 7 For a list of the non-confidential respondents to CP 144, see the appendix. Copies of the submissions are on the ASIC website at www.asic.gov.au/cp under CP 144.

Responses to consultation

- 8 We received seven written responses to CP 144, including from industry bodies, licensees involved in the general insurance industry and consumer representative groups. We also met with four consumer representative groups who provided comments on the proposals in CP 144. We are grateful to respondents for taking the time to provide ASIC with their comments.
- 9 The majority of submissions were not supportive of the type of relief proposed in CP 144.
- 10 In general, the main issues raised by respondents from the general insurance industry related to whether:
- (a) existing provisions in the Corporations Act already enable general insurers to give quotes for the premium payable on general insurance products to retail clients during telephone calls, other than unsolicited telephone calls, without a PDS being given until a later time;
 - (b) the proposed relief would effectively address the difficulties that currently prevent general insurers from giving quotes during unsolicited telephone calls; and
 - (c) the proposed relief would impose requirements that are more onerous than those that apply under the existing provisions of the Corporations Act.
- 11 In general, the submissions from consumer representative groups raised issues about whether:
- (a) facilitating the provision of quotes in unsolicited telephone calls may result in risks to retail consumers, in particular those with lower levels of financial literacy; and
 - (b) those risks can be fully addressed by the disclosure requirements and limitations that were proposed.

B Current industry practice

Key points

Most of the responses indicated that clients who purchase general insurance products are price conscious and it is common practice for clients to 'shop around' between insurers. While quotes are frequently provided in solicited telephone calls, there is not a widespread practice of giving quotes in unsolicited telephone calls.

Quotes that are given may be either 'indicative quotes' or 'full quotes'. Full quotes may constitute an offer to issue the general insurance products specified in the quote.

Most of the respondents indicated that general insurers do not currently give PDSs when a quote is given during a telephone call, because they consider that legislative concessions already apply to this requirement.

Some responses indicated that quotes for general insurance products may also be given to consumers by insurance brokers as an offer to issue the general insurance product that is made on behalf of the general insurer.

- 12 In CP 144, we sought feedback on how general insurers currently market general insurance products using telephone calls, and how quotes are used in the process of marketing and issuing general insurance.

Current use of quotes by general insurers

Types of telephone calls in which quotes are provided

- 13 Most of the respondents from the general insurance industry either indicated that they do not use unsolicited telephone calls to market general insurance products, and therefore do not provide quotes in unsolicited telephone calls, or did not directly comment on the unsolicited telephone call situation.
- 14 One respondent noted that they make offers of general insurance products that use quotes during outbound telephone calls to clients who have previously given consent to the call being made. This respondent obtains the client's consent to subsequent calls and offers, and information about the client's renewal date on their existing insurance cover, through a variety of marketing activities, including competitions and advertising.
- 15 Quotes are frequently given during inbound telephone calls from clients. Most of the respondents from the general insurance industry indicated that clients who are considering acquiring general insurance products are

generally price conscious and that a significant proportion of clients ‘shop around’ between general insurers to obtain the best possible price as quickly as possible.

Types of quotes that are used

- 16 From descriptions provided by the respondents from the general insurance industry, it appears that general insurers may provide either:
- (a) ‘indicative quotes’ or ‘quick quotes’—which involve the insurer asking the client a number of questions to establish whether the client is eligible for the product and core underwriting questions to produce an indication of the premium that would be payable. The client is advised that the final premium amount calculated after considering all of the underwriting questions may be different; or
 - (b) ‘full quotes’—which involve the insurer asking all of the underwriting questions and providing to the client a final premium amount. The quote can be accepted by the client, in that:
 - (i) the client may act on the quote by applying for the general insurance product on the basis of the information provided to obtain the quote; and
 - (ii) if the client applies for the general insurance product on the basis of that information, the premium amount that is charged will be the premium amount that has been quoted.
- 17 It appears that the practice of general insurers providing quotes to clients differs. Some insurers provide indicative quotes, and only provide a full quote if the client expresses an interest in purchasing the general insurance product after receiving the indicative quote. Other insurers only provide full quotes.
- 18 Most of the respondents from the general insurance industry contended that an indicative quote does not constitute an ‘offer to issue’, because the provision of an indicative quote is merely conveying the approximate price of the product, and more information would be needed before an offer to issue could be made.

Current practice for providing a PDS

- 19 Most of the respondents from the general insurance industry noted that after receiving a full quote the client may choose to:
- (a) apply for and acquire the general insurance product immediately;
 - (b) immediately decline to apply for the general insurance product at all; or
 - (c) not proceed to apply for the general insurance product immediately, but have the option of doing so at a later time.

- 20 In the situation where the client is given the option of applying for the general insurance product at a later time, the general insurer provides the client with a unique quote number which the client may submit at a later time to allow them to apply for the general insurance product without having to repeat the information previously provided. The client is advised that the quote expires in a set period of time.
- 21 It was contended that a quote could be provided in each of these situations without the general insurer being required to give a PDS at the time of giving the quote because the general insurer can rely on either:
- (a) s1012G of the Corporations Act, which extends the time for giving a PDS for a risk insurance product to after the issue of the product if the client expressly instructs that they require the product to be issued immediately or within a specified time, and it would not be reasonably practicable to comply with the ordinary requirement to give a PDS while complying with that instruction; or
 - (b) s1012D(9J) of the Corporations Act, which relieves the insurer of the requirement to give a PDS at all if the client immediately declines the offer and no financial product is issued as a result of the offer.
- 22 Most of the respondents from the general insurance industry indicated that the current view in the general insurance industry is that the PDS requirements are not triggered where a full quote is given and the client does not proceed to apply for the general insurance product immediately but has the option of doing so at a later time.
- 23 Some of the respondents from the general insurance industry also said that general insurers are required by the National Privacy Principles to give the client the opportunity to deal with the insurer on an anonymous basis until the provision of personal details is necessary. This means that at the time that a quote is given, the insurer may not know the identity of the client, and so it would not be possible to give a PDS unless specifically requested by the client.

ASIC's response

We consider that full quotes may be an invitation to the client to apply for the product specified in the quote, and so an 'offer to issue' that product, which triggers the obligation in s1012B of the Corporations Act to give a PDS. However, we agree with the industry view that indicative quotes are not an invitation to apply for the product specified in the quote, and so do not trigger these requirements.

We do not agree with the industry view that the obligation to give a PDS does not apply where the client is given a full quote and the client is given the option of applying for the product specified in the quote at a later time. We think that, in this situation, the

existing legislative concessions in s1012G and s1012D(9J) of the Corporations Act may not apply, and so a PDS would need to be given at or before the time that the quote is given.

Provision of quotes by intermediaries

- 24 Two respondents from the general insurance industry noted that quotes for general insurance products may also be given on behalf of general insurers by intermediaries, including insurance brokers and general insurance distributors. Intermediaries may give quotes that are offers to issue general insurance products if the intermediary has been authorised to make an offer on behalf of the general insurer. Intermediaries may also offer to arrange for the issue of a general insurance product for which they have provided a quote. Intermediaries who give quotes may therefore be required to give the client a PDS for the general insurance product at the time of the offer to issue, or the offer to arrange for the issue of, a general insurance product.

ASIC's response

An intermediary that is authorised by a general insurer to make an offer to issue the general insurance product on behalf of the general insurer may, in giving a full quote, make an offer to issue the general insurance product specified in the quote on behalf of the insurer and an offer to arrange for the issue of that product. They would therefore be required to give a PDS under s1012B of the Corporations Act. An intermediary may give a full quote as:

- a representative of the general insurer—for example, a general insurance distributor; or
- an authorised representative of the general insurer—for example, a licensed insurance broker that acts under a binder given by the general insurer (an agreement that allows the broker to offer to issue general insurance products on the insurer's behalf) and who has been authorised by the general insurer as an authorised representative (see s916E of the Corporations Act); or
- a licensee—for example, a licensed insurance broker that makes offers to issue general insurance products on behalf of the general insurer under its own AFS licence.

An intermediary that is not authorised by a general insurer to make offers to issue general insurance products on their behalf would generally only be able to give an 'indicative quote'. In general, we do not think that giving an indicative quote will constitute an offer to issue a general insurance product that could trigger the requirement to give a PDS under s1012B of the Corporations Act.

An intermediary that is not authorised by a general insurer to make offers to issue general insurance products on their behalf

may, after giving an indicative quote, also make an offer to arrange for the issue of a general insurance product. However, we consider that such offers would generally be made separately after giving the quote, and the intermediary may be able to rely on the existing 'time critical' concessions in s941D (for the giving of a Financial Services Guide) and s1012G (for the giving of a PDS) in relation to this conduct.

We also note that the giving of a quote will generally not constitute financial product advice (see s766B(6) of the Corporations Act), and so the intermediary's conduct would not trigger the requirement to give a PDS in a 'recommendation situation' under s1012A of the Corporations Act.

C Relief to allow provision of full quotes in solicited telephone calls

Key points

Participants in the general insurance industry submitted that if ASIC is of the view that the existing legislative concessions do not cover the current industry practice of giving full quotes in solicited telephone calls without providing a PDS, relief should be considered to allow the continuation of that practice. We consider that it is appropriate to give some relief to address practical difficulties in giving a PDS at or before the time a full quote is given during a solicited telephone call.

It is not clear from the responses that there is a widespread practice of giving quotes for life risk insurance products. We consider that relief should not be extended to cover these products.

Some responses submitted that relief should be extended to cover intermediaries that can make an offer to issue a general insurance product on behalf of a general insurer. We consider that relief should cover these intermediaries, regardless of whether they engage in conduct as an authorised representative of the general insurer or under their own AFS licence.

Relief to enable provision of full quotes in solicited telephone calls

Responses to relief proposal in CP 144

- 25 We consider that the current industry practice of not giving a PDS at the time of giving a quote may not be fully covered by the existing legislative concessions in s1012D(9J) and s1012G of the Corporations Act.
- 26 Some respondents from the general insurance industry submitted that, if ASIC formed this view, it would be appropriate for ASIC to use its discretionary powers to allow the continuation of the current industry practice.
- 27 These respondents submitted that:
- (a) it was intended by Parliament that s1012G facilitate the sale of risk insurance products during telephone calls. Parliament recognised that the statutory cooling-off period for these products provided sufficient opportunity for the client to consider information in the PDS for the product and make an informed decision about acquiring the product. Industry's understanding is that this provision was intended to cover the provision of quotes in telephone calls;

- (b) requiring the provision of a PDS before a quote could be given would prevent clients from obtaining quotes in a timely way, and discourage clients from 'shopping around' for general insurance products;
- (c) additional disclosure requirements of the kind proposed in CP 144 would increase the length of telephone calls, which would involve additional costs to general insurers and inconvenience clients;
- (d) clients that are shopping around for general insurance products are unlikely to be confused about the nature of a quote or think that they have any obligation to proceed to acquire the quoted product. Additional disclosure about these matters would not be necessary to reduce risks for clients; and
- (e) a requirement to give a PDS before the client is able to make an application for a general insurance product may undermine the right of the client to deal with a general insurer on an anonymous basis before making any application (which is the current industry practice based on the National Privacy Principles).

28 The responses from consumer representative groups acknowledged that the provision of full quotes can be useful to consumers because full quotes convey final cost information that is useful in comparing general insurance products.

29 However, consumer representative groups expressed concerns that in relation to the sale of general insurance products over the telephone, some consumers with lower levels of financial literacy and/or consumers from culturally and linguistically diverse backgrounds with less familiarity with general insurance products may:

- (a) misunderstand key terms of a general insurance product that are only explained verbally; and
- (b) be placed at greater risk of unintentionally breaching their duty of disclosure.

These risks were considered to be of greater concern in an unsolicited sales environment.

ASIC's response

For quotes made in the course of solicited telephone calls, we are not proceeding with the relief proposal described in CP 144.

However, we consider that the provision of full quotes is of benefit to consumers and that it is appropriate for ASIC to use its discretionary powers to enable the provision of full quotes during solicited telephone calls.

Additional consultation on form of relief

- 30 Following the consultation process for CP 144, we engaged in further discussions with the general insurance industry and consumer representative groups who had made submissions in response to CP 144, regarding the appropriate form and terms of relief to enable the provision of quotes that constitute offers to issue general insurance products during solicited telephone calls.
- 31 The general insurance industry expressed concern about unnecessary costs resulting from the giving of a PDS to clients who do not want, and are unlikely to read, the PDS. The general insurance industry strongly opposed any relief that would delay the time for giving a PDS, but continue to require provision of a PDS to all clients that request a full quote.
- 32 Consumer representative groups expressed concerns about the complexity of PDSs for general insurance products, and noted that more significant changes are needed to the disclosure regime for general insurance products. These groups supported the imposition of additional requirements for disclosure of significant exclusions to insurance cover under general insurance products.

ASIC's response

We will use our discretionary powers to address the practical difficulties of giving a PDS during a telephone call by allowing full quotes to be given by a regulated person during some telephone calls without a PDS being given at or before the time that the quote is given. Our relief will apply where an offer is made during a telephone call, by or at the same time as giving a quote requested by the client. It will not apply for an unsolicited telephone call to the client.

Under our relief, the regulated person must orally communicate the following information to the client:

- if the insurance cover under the general insurance product is subject to exclusions and limitations, that:
 - this is so; and
 - information about the exclusions and limitations is contained in a PDS for the general insurance product; and
- that the level of cover under the general insurance product may be different to that under general insurance products available from other general insurers.

Our relief does not prescribe particular words that must be used by regulated persons when providing this information to the client.

Under our relief, the regulated person must also ask the client whether the client would like a PDS to be given at, or as soon as practicable after, the time at which the offer is made. If the client

does not want a PDS to be given, our relief gives an exemption from the PDS requirement; if the client does want a PDS to be given, our relief delays the time for giving the PDS until as soon as practicable after the telephone call.

If, after receiving the quote, the client applies for the product specified in the quote, or the product is issued to the client, the regulated person will need to give the PDS to the client as required under the existing provisions of the Corporations Act.

When the regulated person gives the PDS, they must give it in a way that is permitted under the Corporations Act, which may include delivery of the PDS in an electronic form.

We note that the Government is considering the imposition of additional requirements for provision of a Key Facts Statement about home building and home content insurance policies (as discussed in Treasury's consultation paper *Reforming flood insurance: Clearing the waters*, issued in April 2011). We intend to review the form and conditions of our relief following the implementation of Key Fact Statement requirements.

Extension of relief to other persons and financial products

- 33 In CP 144, we sought submissions on whether there are difficulties in giving quotes for other types of risk insurance products and whether any relief should be extended to those products.
- 34 One respondent noted that s1012G of the Corporations Act applies to all risk insurance products, and that it would be consistent with this concession to also extend any relief to life risk insurance products. However, most respondents did not comment on whether any relief should be extended to life risk insurance products, and two respondents from the general insurance industry indicated that they are not aware of quoting practices being widely used for life risk insurance products.
- 35 Two respondents from the general insurance industry also requested that we consider extension of any relief to intermediaries, such as insurance brokers.

ASIC's response

We consider that, in the absence of a clear indication that quoting practices are widely used for life risk insurance products, our relief should be limited to the provision of quotes for general insurance products.

We consider that it would be appropriate for the relief to cover an intermediary of a general insurer that is authorised to make offers to issue general insurance products on behalf of the general insurer, regardless of whether the intermediary does so as an authorised representative or under its own AFS licence.

D Treatment of quotes in unsolicited telephone calls

Key points

The majority of responses indicate that there is not a widespread practice of giving quotes in unsolicited telephone calls, and that the main restriction on doing so is the requirement in the anti-hawking provisions to give a PDS before the client becomes bound to acquire the product. The responses indicated that relief to change the time for giving a PDS would not significantly reduce the practical difficulties of giving quotes in unsolicited telephone calls unless it also changed the requirement in the anti-hawking provisions.

Responses from consumer representative groups opposed any proposals that would encourage greater use of unsolicited telephone calls to market general insurance products.

We have not given any relief for quotes given in unsolicited telephone calls.

No change to the current legislative provisions

- 36 Some of the respondents from the general insurance industry indicated that quotes are not widely used in unsolicited telephone calls because the requirement in the anti-hawking provisions to give a PDS before the client becomes bound to acquire a financial product (see s992A(3)(c) of the Corporations Act) is onerous and impacts on the cost effectiveness of marketing general insurance products in this way.
- 37 These respondents also indicated that the relief proposed in CP 144 would not significantly reduce the practical difficulties in giving quotes in unsolicited telephone calls, because the time for giving the PDS under the proposed relief would be at an earlier time than is required by the anti-hawking provisions.
- 38 Two respondents from the general insurance industry supported relief that would improve the cost-effectiveness of using quotes in unsolicited telephone calls to market general insurance products. However, these responses did not appear to consider that the change to the time for giving a PDS that was proposed in CP 144 would significantly improve the cost-effectiveness of marketing. One response from a general insurer noted that:
- (a) its systems currently ensure that a PDS is provided with the policy schedule after the issue of a general insurance product; and

- (b) a requirement to give a PDS earlier than this would involve either duplicated disclosure or system changes, which would reduce any cost-savings intended to be provided by the relief.

39 Consumer representative groups expressed concerns that the proposals would encourage greater use of unsolicited telephone calls to market general insurance products.

40 The consumer representative groups disagreed with the proposition contained in CP 144 that general insurance products are 'relatively straightforward products' for consumers. They submitted that general insurance products contain complex exclusions that are not easy for consumers to understand, particularly in an unsolicited sales environment.

41 Regarding provision of quotes in unsolicited telephone calls, consumer representative groups expressed strong concerns that some consumers with lower levels of financial literacy and/or from culturally and linguistically diverse backgrounds with less familiarity with general insurance products may:

- (a) misunderstand key terms of a general insurance product that are only explained verbally; and
- (b) be placed at greater risk of unintentionally breaching their duty of disclosure.

42 The consumer representative groups also expressed a view that, in an unsolicited telephone call context, some consumers may misunderstand the nature of a quote provided by a general insurer. Subsequent to being provided with detailed information for the purposes of a quote, some consumers may interpret the given quote as a bill, or may assume that they have entered into a contract with the insurer and are under a legal obligation to acquire the general insurance product that is subject to the quote.

43 These respondents considered that, if any relief were to be granted (which was opposed), additional requirements and limitations of the kind proposed by ASIC in Proposal B2 in CP 144 would be necessary to limit the risk of significant consumer detriment.

ASIC's response

We consider that relief to facilitate the provision of quotes in unsolicited telephone calls may not be warranted because:

- the responses received from participants in the general insurance industry suggest that a change to the time for giving a PDS would not significantly reduce the difficulty in giving quotes in unsolicited telephone calls, unless it removed the requirement in s992A(3)(c) of the Corporations Act; and

- we consider the protections contained in the anti-hawking provisions to be important protections for consumers. As noted in CP 144, we do not intend to give relief that undermines the additional protections afforded retail clients by the requirement in s992A(3)(c) of the Corporations Act to give the retail client a PDS before the client becomes bound to acquire the financial product that is the subject of the offer.

Appendix: List of non-confidential respondents

- Brotherhood of St Laurence
 - Insurance Council of Australia
 - National Insurance Brokers Association
 - QBE Insurance (Australia) Limited
 - Suncorp-Metway Ltd
 - Westpac Banking Corporation
 - Consolidated response from:
 - Footscray Legal Service
 - Legal Aid NSW
 - Insurance Legal Service
 - National Information Centre on Retirement Investments
 - Legal Aid Queensland
 - Consumer Credit Legal Centre NSW
 - Consumer Action Law Centre
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