



ASIC
Australian Securities &
Investments Commission

REPORT 640

Response to submissions on CP 317 Unsolicited telephone sales of direct life insurance and consumer credit insurance

December 2019

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 317](#) *Unsolicited telephone sales of direct life insurance and consumer credit insurance* (CP 317) 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. Please see [Regulatory Guide 38](#) *The hawking provisions* (RG 38).

Contents

A	Overview and consultation process	4
	Ban on unsolicited telephone sales of direct life insurance and CCI	4
	Consultation process	4
	Responses to consultation.....	5
B	Response to submissions on CP 317	6
	Consumer experiences	6
	Behaviour captured by ‘unsolicited’ telephone contact	8
	Whether the ban could inadvertently cause consumer harm	9
	Provision of personal advice.....	9
	Whether other products or communication channels should be included in the ban.....	11
	Likely effects on compliance costs, competition and other impacts	12
C	Other issues	13
	Commencement date	13
	Guidance.....	13
	Appendix: List of non-confidential respondents	14

A Overview and consultation process

Ban on unsolicited telephone sales of direct life insurance and CCI

- 1 ASIC has decided to ban unsolicited telephone sales of direct life insurance and consumer credit insurance (CCI) when general advice or no advice is given. To achieve this, we are using the modification power in s992B(1) of the *Corporations Act 2001* (Corporations Act), so that the prohibition on hawking in s992A(3) will apply to direct life insurance and CCI sold without personal advice, with no exemptions.
- 2 Insurance plays a critical role in helping consumers manage unexpected events and protect themselves and their families against financial difficulties.
- 3 However, recent ASIC reviews have found that outcomes for consumers who buy direct life insurance and CCI are often poor, with unsolicited telephone contact being associated with poor sales practices and poor consumer outcomes.
- 4 Life insurance and CCI are complex products. When these products are sold without personal advice, consumers must consider many features and try to determine whether the product is right for their circumstances. Consumers receiving an unsolicited phone call are unlikely to have thought about the type or level of cover they need, increasing the risk that they will buy a product they cannot afford or do not want, or that does not meet their needs.
- 5 In February 2019, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) recommended that the hawking of all insurance and superannuation products should be prohibited and stated a legislated definition of ‘unsolicited’ should be introduced.
- 6 ASIC’s ban is an interim measure that will provide greater protection for consumers ahead of broader law reform by the Government.

Consultation process

- 7 In July 2019, we consulted on the scope and effect of the proposed ban in [Consultation Paper 317 *Unsolicited telephone sales of direct life insurance and consumer credit insurance*](#) (CP 317).
- 8 This report highlights the key issues that arose out of the submissions on CP 317 and our responses to those issues.

- 9 [Regulatory Guide 38](#) *The hawking provisions* (RG 38) provides ASIC's guidance on the application of the provisions relevant to unsolicited sales. The guidance has been updated in line with the implementation of the ban.
- 10 After receiving submissions on CP 317, ASIC conducted a further round of consultation with respondents to CP 317 seeking feedback on a draft instrument and revised RG 38.
- 11 This report is not meant to be a comprehensive summary of all submissions received. It is also not meant to be a detailed report on every question from CP 317. We have limited this report to the key issues.

Responses to consultation

- 12 We received 15 non-confidential submissions to CP 317 from insurers, industry associations, professional bodies, community legal centres, state legal aid commissions and consumer groups. We are grateful to respondents for taking the time to send us their comments.
- 13 The main issues raised by respondents related to:
- (a) consumer experiences of unsolicited telephone sales of direct life insurance and CCI products;
 - (b) what conduct is captured by 'unsolicited' telephone contact;
 - (c) whether the ban could inadvertently cause consumer harm;
 - (d) provision of personal advice;
 - (e) whether other products or modes of communication should be included in the ban; and
 - (f) the likely effects of the ban on compliance costs, competition and other effects.
- 14 For a list of the non-confidential respondents to CP 317, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 317.

B Response to submissions on CP 317

Key points

This section outlines the submissions we received on the following aspects of the proposal in CP 317 and our approach to those submissions:

- consumer experiences (including feedback from respondents in response to the general proposal and questions C1Q1 and C1Q2);
- what behaviour is captured by 'unsolicited' telephone contact (including feedback from respondents in response to the general proposal and questions C1Q1 and C1Q2);
- whether the ban could inadvertently cause consumer harm (see question C1Q3);
- provision of personal advice (this was feedback from respondents in response to the general proposal);
- whether other products or other modes of communication should be included in the ban (see question C1Q4); and
- likely effects on compliance costs, competition and other effects—for insurers and distributors (see question C1Q5).

Consumer experiences

- 15 Four respondents gave accounts of consumer experiences of unsolicited telephone sales of direct life insurance and/or CCI.
- 16 A community legal centre cited the case of a consumer with a mental disability whose only income was the disability support pension and who depended on support workers to live independently. Since 2013 he had been sold four funeral insurance products via unsolicited telephone calls, two of which were sold by the same insurer. In each case it is likely the offeror would have been aware that the consumer did not understand the complexity of the product, as when complex questions were put to the consumer, he usually gave simple answers.
- 17 A further example provided by a community legal centre was that of an Indigenous consumer with a disability who already had a funeral insurance policy. The consumer received multiple telephone calls from another insurer about signing up for funeral insurance with an added accidental death benefit. Despite insisting that she was not interested, the consumer continued to receive telephone calls. After receiving offers of financial incentives, she accepted the policy because she wanted the calls to stop.

- 18 A submission by a legal aid commission listed the negative effects that the unsolicited sale of these products had on clients the commission represented. These effects included being sold life insurance or CCI that:
- (a) provided little or no benefit to the consumer;
 - (b) the consumer could not afford; and/or
 - (c) the consumer did not understand.

- 19 Other respondents listed issues they have seen when funeral insurance, which is a life insurance product, is sold using inappropriate techniques, particularly to vulnerable consumers. They observed that complexities are not made clear to consumers at the time of purchase including that premiums may increase, and the consumer may pay more for the policy over time than the cost of the actual funeral.

Note: Funeral insurance excludes funeral benefits that cover the cost of funeral and burial or cremation services (e.g. pre-paid funeral plans) and funeral-expenses-only policies that provide a benefit for the sole purpose of meeting expenses of, and incidental to, a funeral and burial or cremation (i.e. where the payout does not exceed these substantiated expenses). This is because such benefits and policies are not currently covered by the financial services licensing and conduct regime of the Corporations Act: see s765A(1)(w) and 765A(1)(y) of the Corporations Act, and reg 7.1.07D of the Corporations Regulations 2001.

- 20 In another submission, a respondent submitted that CCI products are being sold to consumers without their consent or knowledge, that sales are being induced using pressure tactics and harassment, and that there are many exclusions which are complex to understand that can prevent the consumer from benefiting from the policy. The respondent provided a case study of a consumer being sold a CCI product which was unsuitable for the consumer and provided no benefit.

ASIC's response

The consumer experiences and observed effects outlined in submissions are consistent with ASIC's findings in recent reports that unsolicited telephone sales of direct life insurance and CCI are associated with poor sales practices and poor consumer outcomes.

The consumer accounts illustrate how the existing exemption for unsolicited telephone sales has not prevented harm to consumers.

ASIC's ban on unsolicited telephone sales of these products when no advice or general advice is given will reduce the risk of consumers purchasing complex products that they do not need, want or understand.

Behaviour captured by ‘unsolicited’ telephone contact

- 21 In questions C1Q1 and C1Q2 we sought feedback on the general proposal to ban unsolicited telephone sales of direct life insurance and CCI, respectively. All respondents support a regime that prohibits ‘cold calling’ consumers for the purpose of selling direct life insurance or CCI.
- 22 Nine respondents expressed concern about what behaviour may be captured by ‘unsolicited’ telephone conduct.
- 23 Of these respondents, five were concerned that the general proposal would curtail the ability of service providers to call an existing client regarding either an existing policy or a new related product. It was submitted that the definition of ‘unsolicited’ should not prevent an insurer from suggesting to an existing client that they purchase another related product.
- 24 Two respondents took the view that the test for what is considered ‘unsolicited’ should be the absence of clear, positive and informed *consent*. One respondent said that such a test would allow an insurer or distributor to call a consumer who had ticked a box on a website that indicated they wished to receive a call about a product.

ASIC’s response

ASIC has provided guidance on the meaning of ‘unsolicited’ in RG 38. Generally, ASIC considers a telephone call to be unsolicited unless it takes place in response to a request that is positive, clear and informed (see RG 38.20).

The term ‘unsolicited’ in s992A of the Corporations Act does not have a statutory definition. The Royal Commission’s final report recommended that a legislated definition should be introduced, and the Government has accepted this recommendation.

ASIC considers that the Government’s legislative process is the appropriate mechanism for implementing this recommendation. Defining the term ‘unsolicited’ will affect products other than direct life insurance and CCI and may also affect other provisions of the legislation.

Providers of direct life insurance and CCI are not prevented from contacting consumers in relation to their existing policies. As set out in RG 38, whether a telephone call is ‘solicited’ depends on the circumstances (see RG 38.20–RG 38.43).

Whether the ban could inadvertently cause consumer harm

- 25 In CP 317, we asked whether the ban could cause inadvertent harm to consumers.
- 26 Six respondents said that the ban did not pose a risk of consumer harm. One of these respondents said that the ban will create a new sales model that will be advantageous to consumers.
- 27 Three respondents stated that a risk associated with the ban was that consumers would have decreased awareness of life insurance and related products which may be suitable for them. One respondent warned that the ban risks creating a perception among the public that the product is inferior. One respondent stated that Australia is underinsured, and that lower consumer awareness of life insurance is likely to further reduce insurance rates.
- 28 One respondent who said the ban did not pose a risk of consumer harm rebutted arguments relating to the risk of underinsurance, stating there was not a real risk of lower consumer awareness of life insurance products because of the remaining types of advertising available.

ASIC's response

Having considered the feedback, we think on balance that the ban does not pose an inadvertent risk to consumers.

It is open to insurers to continue to promote their products and educate consumers on the benefits of these products.

We do not think that the risk of harm identified outweighs the consumer harm identified by both ASIC and the Royal Commission resulting from unsolicited sales of products over the telephone.

Provision of personal advice

- 29 In CP 317, we proposed to use our modification power to ban unsolicited telephone sales of life insurance and CCI when sold with no advice or general advice.

Note: General advice is financial product advice that is not 'personal advice': see s766B(4) of the Corporations Act. 'Personal advice' is defined in the Corporations Act as financial product advice where the person giving the advice has considered one or more of the recipient's objectives, financial situation and needs, or where a reasonable person might expect the person giving the advice to have considered one or more of these matters.

- 30 One respondent submitted that the person allowed to provide the advice should be limited to persons permitted to use the terms 'financial adviser' or 'financial planner' under s923C of the Corporations Act to ensure that the person meets specified requirements.

- 31 In another submission, a respondent set out a hypothetical example where a financial adviser calls an existing client regarding a change in circumstances (perhaps based upon the client's age) and suggests the client obtain personal advice about the matter. The client subsequently obtains personal advice from the financial adviser, is provided with a Statement of Advice and makes an informed decision to purchase the life insurance product. The respondent sought clarification as to whether the purchase of the life insurance product would be 'because of' the initial unsolicited contact.
- 32 A further issue raised by two respondents was the need to explicitly permit financial advisers to contact existing clients by phone, or to offer a life insurance product as a result of a referral from another professional (e.g. an accountant). One example raised concerns about how the ban may affect consumers living in regional locations for whom phone contact with their financial advisers is commonplace.

ASIC's response

In line with our proposal in CP 317, ASIC has decided to proceed with a ban on unsolicited telephone sales of life insurance and CCI *when sold with no advice or with general advice*.

We have decided not to limit the provider of personal advice to a person who may use the terms 'financial adviser' or 'financial planner' under s923C of the Corporations Act. This is because the legislative instrument is not intended to limit who can provide advice on particular products, and the existing law allows certain persons who are not permitted to use the term 'financial adviser' or 'financial planner' to provide advice on CCI (see s923C and the definition of 'relevant provider' in s910A of the Corporations Act).

It will still be the case that only persons who are permitted to use the terms 'financial adviser' or 'financial planner' will be permitted to provide personal advice on life insurance, provided they have the appropriate authorisation (see s923C and definition of 'relevant provider' in s910A of the Corporations Act).

Concerns about the ability of financial advisers to contact existing clients by phone, or the ability for other professionals to recommend that a consumer seek personal advice, appear to relate to the interpretation of the phrase 'because of'.

RG 38 outlines ASIC's approach to the meaning of 'because of'—that is, whether an unsolicited telephone call has a causal connection with a subsequent sale will depend on all the circumstances.

RG 38.34 states that the 'connection may be broken if ... since the initial unsolicited contact, the consumer has obtained personal advice (and the appropriate Statement of Advice) on the product'.

We note that the implementation of the ban does not limit the obligations of financial advisers or other providers of personal advice under other parts of the Corporations Act. It also does not limit other obligations relating to telemarketing calls, such as those under the *Do Not Call Register Act 2006* and the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017.

Whether other products or communication channels should be included in the ban

- 33 In CP 317, we asked whether other products should be included in the ban beyond CCI and life insurance products (question C1Q4).
- 34 Nine respondents considered that the ban should be extended to other products not already covered under the general proposal.
- 35 Three respondents said that the ban should extend to all financial products. Two others said it should extend to all insurance products but particularly add-on insurance products such as mechanical breakdown insurance and guaranteed asset protection insurance.
- 36 One respondent recommended that the ban should extend to the unsolicited sale of time shares.
- 37 Other respondents suggested extending a similar ban to other products such as funeral expenses insurance that are not currently subject to the unsolicited telephone call exemption in s992A(3) of the Corporations Act and are outside the scope of ASIC's modification power.
- 38 Four submissions stated the ban should be extended to address unsolicited sales made through other communication channels such as door-to-door sales, unsolicited public approaches and online communication. Two respondents submitted that the ban should be technologically neutral to prevent pressure sales through web chat, text messaging, pop-up ads and email.

ASIC's response

ASIC does not intend to expand the scope of products affected by the ban. This is because:

- we are implementing the ban to address specific harms associated with the unsolicited sales of direct life insurance and CCI and we do not have evidence to suggest a similar degree of harm is associated with other products subject to the hawking provisions in s992A of the Corporations Act; and
- the ban is intended to provide interim protection ahead of broader law reform to prohibit the unsolicited sale of insurance and superannuation in response to the Royal Commission recommendations.

Regarding submissions on extending the ban to add-on insurance products, we have recently consulted on the proposal to use our product intervention powers to apply a deferred sales model to sales of add-on insurance and warranties sold by caryards in [Consultation Paper 324](#) *Product intervention: The sale of add-on financial products through caryard intermediaries* (CP 324). We are currently considering submissions made in response to CP 324.

Time shares are a type of managed investment scheme. The hawking of these products is regulated under s992AA of the

Corporations Act. Unsolicited telephone sales of time shares are prohibited under s992AA as there is no equivalent exemption in place to the telephone sales exemption addressed by this ban.

We have also decided not to expand the ban to other communication channels. This is because:

- unsolicited face-to-face meetings (e.g. door-to-door sales, sales in a bank branch or sales in a shopping centre) are already banned (see s992A(1) of the Corporations Act);
- there are other consumer protections that restrict unsolicited contact in certain circumstances (e.g. *Spam Act 2003*); and
- the submissions received did not demonstrate widespread or systemic consumer harm arising from the sale of direct life insurance or CCI through other communication channels.

Likely effects on compliance costs, competition and other impacts

- 39 In CP 317, we asked stakeholders to provide information on the likely effect on compliance costs, competition and any other impacts.
- 40 Five respondents addressed the question of cost and/or competition.
- 41 All of the respondents that addressed compliance costs said the ban would be unlikely to significantly affect compliance costs. One respondent stated that industry has already moved away from unsolicited sales in response to ASIC's [Report 587](#) *The sale of direct life insurance* (REP 587).
- 42 All submissions addressing competition stated that the ban is unlikely to have a negative impact. Rather, one respondent stated that the ban is likely to encourage competition because companies will be required to explain their product more clearly to engage consumers. In a separate submission, it was suggested that insurance companies would be more likely to invest more in advertising products to consumers.
- 43 One submission raised the risk of over-regulation. It stated that it is important to get the balance right between being exact in regulation to provide certainty and not being so prescriptive that innovation is reduced and insurers' capacity to service customers or educate consumers is limited.

ASIC's response

We have considered the feedback and agree with the respondents that there is unlikely to be an adverse effect on compliance costs or competition because of this ban.

We do not consider that the ban inappropriately limits insurers' capacity to advertise to or educate consumers about their products or offerings.

ASIC is committed to promoting innovation in the financial services sector. ASIC's Innovation Hub provides fintech start-ups and scale-ups with assistance to navigate Australia's regulatory framework.

C Other issues

Key points

This section clarifies the following issues relating to the implementation of the general proposal:

- the commencement of the instrument; and
- guidance on the effect of the instrument.

Commencement date

- 44 The ban will take effect with a five-week notice period.
- 45 We consider that industry has been aware of our intention to implement the ban for a long period and it is reasonable to expect that industry will have made changes in response to our concerns.
- 46 These concerns were set out in:
- (a) REP 587, released in August 2018, which identified consumer harm resulting from unsolicited telephone sales and announced our intention to restrict outbound sales of direct life insurance;
 - (b) [Report 622](#) *Consumer credit insurance: Poor value products and harmful sales practices* (REP 622), released in July 2019, which recommended banning unsolicited telephone sales of CCI products; and
 - (c) CP 317, released in July 2019, consulting on the ban.

Guidance

- 47 We have updated our guidance on the hawking provisions in the revised RG 38 in line with the implementation of the ban.
- 48 Because we have not changed our overall interpretation of the hawking provisions, we have not made substantial changes or updates to RG 38.
- 49 We will consider the need to further revise and reissue RG 38 to provide guidance on legislative change to be implemented by Government.

Appendix: List of non-confidential respondents

AIA Australia Limited

Association of Financial Advisers Ltd

Australian Financial Complaints Authority

Consumer Law Centre of the ACT and Care Inc.

COTA Australia

Financial Counselling Australia

Financial Rights Legal Centre and Consumer Action Law Centre

Financial Planning Association of Australia

Financial Services Council

Insurance Council of Australia Ltd

Legal Aid NSW

Legal Aid Queensland

Queensland Law Society

Redfern Legal Centre

Zurich Australia Ltd