



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention— Add-on Motor Vehicle Financial Risk Products) Instrument 2020/XX

Date 2020

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention—Add-on Motor Vehicle Financial Risk Products) Instrument 2020/XX*.

2 Commencement

This instrument commences on the day that is [3 months] after the day it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1023D(3) of the *Corporations Act 2001*.

4 Definitions and interpretation

(1) In this instrument:

Act means *Corporations Act 2001*.

add-on ~~insurance~~ motor vehicle financial risk product means any of the following:

(a) an assistance insurance product;

~~(a) a loan or lease termination insurance product;~~

(b) a consumer credit insurance product;

(c) a guaranteed asset protection insurance product;

(d) a mechanical breakdown insurance product;

(e) a warranty product;

(f) a purchase price protection insurance product;

(g) a tyre and rim insurance product.

arranging conduct, in relation to an add-on motor vehicle financial risk product (including a mechanical risk product) means:

(a) arranging for a retail client to apply for or acquire the product;

(b) arranging for a product issuer to issue the product to a retail client;
or

(c) applying, on behalf of a retail client, for the product.

assistance insurance product means a motor vehicle insurance product (other than comprehensive motor vehicle insurance) or a personal and domestic property insurance product that provides insurance cover (whether or not the cover is limited or restricted in any way) for out-of-pocket expenses which are incurred in connection with a declaration of total loss of a motor vehicle under comprehensive motor vehicle insurance but not covered by comprehensive motor vehicle insurance.

comprehensive motor vehicle insurance means a motor vehicle insurance product that provides insurance cover in respect of all of the following (whether or not the product also provides insurance cover in respect of other matters):

(a) loss of, or damage to, the motor vehicle resulting from an accident;

(b) loss of, or damage to, property of another person resulting from an accident in which the motor vehicle is involved;

(c) loss of, or damage to, the motor vehicle caused by fire, theft or malicious acts.

consumer credit insurance product means a contract or part of a contract that has the following characteristics:

(a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of:

(i) the death of the insured person; or

(ii) the insured person contracting a sickness or disease; or

(iii) the insured person sustaining an injury; or

(iv) the insured person becoming unemployed;

(b) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a motor vehicle loan or a motor vehicle lease to which the insured person is a party;

but does not include insurance of a kind specified in subregulation 7.1.15(2) of the Regulations.

deferral period, in relation to an online consumer roadmap made available to a retail client by or through an intermediary, means a period:

- (a) commencing at the time the intermediary makes the online consumer roadmap available to the retail client; and
- (b) ending at the start of the fourth day after the period commences.

guaranteed asset protection insurance product means a [motor vehicle insurance product \(other than comprehensive motor vehicle insurance\)](#) that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between:

- (a) in connection with a motor vehicle loan—the amount owing by a borrower under the loan and the amount covered by a motor vehicle insurance product [that is comprehensive motor vehicle insurance](#); or
- (b) in connection with a motor vehicle lease—the amount payable by a lessee under the lease and the amount covered by a motor vehicle insurance product [that is comprehensive motor vehicle insurance](#).

intermediary means a person who [engages in, or](#) offers to [engage in, arranging conduct in relation to](#) an add-on [motor vehicle financial risk product](#) in connection with:

- (a) a motor vehicle purchase;
- (b) a motor vehicle loan; or
- (c) a motor vehicle lease.

[kilometres-driven limit cover](#), in relation to a manufacturer warranty in relation to a motor vehicle, means the maximum number of kilometres that the motor vehicle can be driven and continue to be covered by the warranty.

~~**loan or lease termination insurance product** means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between:~~

mechanical breakdown insurance product means a [motor vehicle insurance product \(other than comprehensive motor vehicle insurance\)](#) that provides insurance cover (whether or not the cover is limited or restricted in any way) for the cost of repair or replacement of [any broken, failed or damaged components](#) of a motor vehicle.

mechanical risk product means:

- (a) a mechanical breakdown insurance product; or
- (b) [a](#) warranty product.

motor vehicle means a vehicle that is designed:

- (a) to travel by road; and

(b) to use volatile spirit, steam, gas, oil, electricity or any other power (not being human power or animal power) as its principal means of propulsion; and

(c) to carry passengers;

and includes a motor cycle.

motor vehicle insurance product has the meaning given by regulation 7.1.11 of the Regulations.

motor vehicle lease means a contract for the hire of a motor vehicle other than a contract for a fixed period of 4 months or less or for an indefinite period.

motor vehicle loan means the provision of credit, ~~whether or not regulated by the National Credit Code,~~ in connection with the purchase of a motor vehicle.

motor vehicle purchase means the purchase of a motor vehicle.

online consumer roadmap, in relation to an add-on motor vehicle financial risk product made available to a retail client by or through an intermediary, means an online portal that:

(a) includes a facility by which the client can choose to:

(i) apply for or acquire a product;

(ii) decline to apply for or acquire a product;

(iii) request further information about a product;

where those choices are presented to the client in a way that does not highlight one choice over another choice;

(b) does not permit the client to use the facility unless the following information is disclosed or made available through the portal:

(i) a prominent statement, displayed to the client immediately on first accessing the portal, to the effect that a consumer is not obliged to buy any add-on motor vehicle financial risk product;

~~(i) links to the websites of issuers of any add-on insurance products or extended warranty products that the intermediary is permitted to make available through the portal; and~~

(ii) for each warranty product that the intermediary is permitted to make available through the portal and for which the product issuer is not a member of AFCA—a prominent statement that

the client has no right to make a complaint to AFCA about the warranty product;

- (iii) for each add-on motor vehicle financial risk product that the intermediary is permitted to make available through the portal—the cost of each product, including any difference in cost depending on the method chosen to pay for each product;
- (iv) for all add-on motor vehicle financial risk products that the intermediary is permitted to make available through the portal—the total cost of the products, including any difference in the total cost depending on the method chosen to pay for the products;
- (v) a link to ASIC’s MoneySmart website, including a reference to ASIC’s “MoneySmart Cars” app (if available).

~~Note: An intermediary must not make available an add-on insurance product or extended warranty product, or option of cover within the product, through the online consumer roadmap to a retail client that the intermediary reasonably believes falls within an unsuitable class: see subsection 6(2).~~

personal and domestic property insurance product has the meaning given by regulation 7.1.17 of the Regulations.

product issuer means a person who issues, or offers to issue, an add-on motor vehicle financial risk product to a retail client in connection with:

- (a) a motor vehicle purchase;
- (b) a motor vehicle loan; or
- (c) a motor vehicle lease.

purchase price protection insurance product means a motor vehicle insurance product (other than comprehensive motor vehicle insurance) that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between the purchase price of a motor vehicle and the amount covered by a comprehensive motor vehicle insurance.

Regulations means the Corporations Regulations 2001.

tyre and rim insurance product means a motor vehicle insurance product (other than comprehensive motor vehicle insurance) that provides insurance cover (whether or not the cover is limited or restricted in any way) for the cost of repair or replacement of damaged tyres and rims of a motor vehicle.

warranty administrator, in relation to a warranty product, means a person who provides administration services in relation to the warranty product.

warranty product means a facility through which, or through the acquisition of which, a person (the *purchaser or lessee*) manages the financial consequences to them of particular circumstances happening in relation to a motor vehicle, comprising:

- (a) an arrangement between the purchaser or lessee of a motor vehicle and another person (the *third party*), not being the person from whom the purchaser or lessee acquired the vehicle, under which the third party promises to rectify, or to arrange for another person to rectify, any broken, failed or damaged components or parts of a motor vehicle; or
- (b) an arrangement between the purchaser or lessee of a motor vehicle and the person (the *dealer*) from whom the purchaser or lessee acquired the vehicle, under which the dealer promises to rectify, or to arrange for another person to rectify, any broken, failed or damaged components or parts of a motor vehicle;

but does not include a manufacturer warranty or statutory warranty, or comprehensive motor vehicle insurance.

(2) In this instrument:

- (a) comprehensive motor vehicle insurance is not taken to be an add-on motor vehicle financial risk product merely because part of the contract comprising the comprehensive motor vehicle insurance is an add-on motor vehicle financial risk product;
- (b) a reference to a purchase, loan or lease, in relation to a motor vehicle, includes a reference to a proposed purchase, loan or lease.

Part 2—Order

5 General prohibition—first

Application

- (1) The prohibitions in subsections (2) and (3) apply to conduct occurring on and after the day this instrument commences.

Intermediaries

- (2) An intermediary must not, in connection with ~~the purchase or lease of a motor vehicle by a retail client, arrange for the client to apply for or acquire~~ purchase, a motor vehicle loan or a motor vehicle lease, engage in arranging conduct in relation to an add-on insurance product or an extended warranty motor vehicle financial risk product except in accordance with the conditions specified in Part 3.

Product issuers

- (3) A product issuer must not, in connection with a motor vehicle purchase, a motor vehicle loan or a motor vehicle lease, issue an add-on motor vehicle financial risk product to a retail client as a result of an intermediary engaging in arranging conduct in relation to the add-on motor vehicle financial risk product except in accordance with the conditions specified in Part 3.

6 General prohibition—second

Application

- (1) The prohibitions in subsections (2) and (3) apply to conduct occurring on and after the day that is [6 months] after the day this instrument commences.

Intermediaries

- (2) An intermediary must not, in connection with a motor vehicle purchase, a motor vehicle loan or a motor vehicle lease, engage in arranging conduct in relation to an add-on motor vehicle financial risk product except in accordance with the conditions specified in Parts 3 and 4.

Product issuers

- (3) A product issuer must not, in connection with ~~the purchase or lease of a~~ motor vehicle ~~by a retail client~~ purchase, a motor vehicle loan or a motor vehicle lease, issue an add-on motor vehicle financial risk product to a retail client as a result of an intermediary engaging in arranging ~~for the client to apply for or acquire the~~ conduct in relation to the add-on motor vehicle financial risk product except in accordance with the conditions ~~specified in Part~~ specified in Parts 3 and 4.

7 General prohibition—third

Acknowledgements required by intermediaries

- (1) The prohibition in this section applies to conduct occurring on and after the day this instrument commences.
- (2) An intermediary must not require a retail client to sign an acknowledgment to the effect that if the client chooses not to acquire or apply for an add-on motor vehicle financial risk product then the client is likely to be required to make payment from their own monies instead of claiming under the product.

Note: The prohibition in this subsection applies on an unconditional basis.

8 Specific prohibition—mechanical risk products

Application

- (1) The prohibitions in this section apply in addition to the general prohibitions in sections 5, 6 and 7 to the extent those general prohibitions apply in relation to mechanical risk products.
- (2) The prohibitions in subsections (3), (4) and (5) apply to conduct occurring on and after the day this instrument commences.

Intermediaries

- (3) An intermediary must not, in connection with a motor vehicle purchase, a motor vehicle loan or a motor vehicle lease, engage in arranging conduct in relation to a mechanical risk product except in accordance with the conditions specified in section 12.

Product issuers

- (4) A product issuer must not, in connection with a motor vehicle purchase, a motor vehicle loan or a motor vehicle lease, issue a mechanical risk product to a retail client as a result of an intermediary engaging in arranging conduct in relation to the mechanical risk product except in accordance with the conditions specified in section 12.

Other scenarios

- (5) A person must not, irrespective of whether the conduct is in connection with a motor vehicle purchase, a motor vehicle loan or a motor vehicle lease, issue a mechanical risk product to a retail client or engage in arranging conduct in relation to a mechanical risk product except in accordance with the conditions specified in section 13.

9 Where the prohibitions do not apply

No consideration for issue

- (1) The prohibitions in sections 5 and 6 and subsection 8(5) do not apply where the add-on motor vehicle financial risk product is issued by the product issuer for no consideration.

Extension to loan or lease term

- (2) The prohibitions in sections 5 and 6 and subsection 8(5) do not apply in relation to the arranging conduct or issuing of an add-on motor vehicle financial risk product (the new product) where both of the following apply:

- (a) the arranging conduct or issuing of the new product occurs as a consequence of an extension to the term of a motor vehicle loan or motor vehicle lease to which the client is a party;
- (b) the client, at or around the time of becoming a party to the loan or lease, acquired an add-on motor vehicle financial risk insurance product that was the same as the new product.

Personal advice

- (3) The prohibitions in sections 5 and 6 do not apply where the arranging conduct or issuing of the add-on motor vehicle financial risk product occurs following the provision of personal advice in relation to the product by a person who holds an Australian financial services licence covering the provision of that kind of financial service or a person acting on behalf of such a licensee.

Note: *Personal advice* has the meaning given by subsection 766B(3) of the Act.

Part 3—General conditions

10 Data collection and reporting

- (1) A product issuer of an add-on motor vehicle financial risk product (other than a warranty product) must, if requested by ASIC, give a written statement to ASIC, no more frequently than every six months, containing information on one or more of the following matters in relation to the product:
 - (a) premiums;
 - (b) coverage and exclusions;
 - (c) cancellation rates;
 - (d) claims (including paid, withdrawn and declined claims);
 - (e) arrangements or provisioning to meet future claims;
 - (f) details of consumers and vehicles covered by the product;
 - (g) commissions and other financial benefits;
 - (h) distribution channels;
 - (i) eligibility criteria applicable to the acquisition of their products by retail clients; or
 - (j) details of third parties who provide finance to retail clients to enable retail clients to acquire their products.

- (2) A product issuer of a warranty product must:
- (a) to the extent the product issuer does not outsource the administration (or part of it) of the product to a warranty administrator—if requested by ASIC, give a written statement to ASIC, no more frequently than every six months, containing information on one or more of the matters specified in a paragraph of subsection (1) in relation to the product;
 - (b) to the extent the product issuer outsources the administration (or part of it) of the product to a warranty administrator:
 - (i) ensure that any outsourcing agreement requires the warranty administrator to, if requested by ASIC, give a written statement to ASIC, no more frequently than every six months, containing information on one or more of the matters specified in a paragraph of subsection (1) in relation to the product; and
 - (ii) give to the warranty administrator any information and reasonable assistance that the administrator reasonably requests to enable the administrator to comply with the request made by ASIC.
- (3) The product issuer must give (or, where paragraph (2)(b) applies, must cause the warranty administrator to give) ASIC the written statement in not less than 30 days after being requested by ASIC or such longer period as is reasonable in the circumstances and is agreed by ASIC to be appropriate.

Part 4—Additional general conditions

11 Online consumer roadmap and deferral period

- (1) The retail client must have expressed an intention to apply for or acquire the add-on motor vehicle financial risk product by using the facility in the online consumer roadmap before the end of the deferral period.
- (2) The intermediary must not initiate any contact with the retail client about an add-on motor vehicle financial risk product during the deferral period.
- (3) The deferral period must have ended in relation to the retail client.
- (4) The intermediary must not make the online consumer roadmap available to a retail client unless the retail client has:
 - (a) entered into a contract to purchase or lease a motor vehicle; or
 - (b) applied for a motor vehicle loan or motor vehicle lease.

- (5) The intermediary must keep a record of the [time and date](#) the online consumer roadmap was made available to the retail client.

Note: The conditions in this Part apply in relation to the [prohibitions](#) in [section 6](#).

~~(2) The intermediary:~~

- ~~(a) for each add-on insurance product or an extended warranty product, or option of cover within the product, that is made available by or through the intermediary—must identify each class (*unsuitable class*) of retail clients for whom the intermediary reasonably believes would not benefit from acquiring the add-on insurance product or extended warranty product or option of cover within the product; and~~
- ~~(b) must not make available the product or option of cover through the online consumer roadmap to a retail client that the intermediary reasonably believes falls within the unsuitable class; and~~

~~8 Unconscionable conduct or manipulation~~

- ~~(1) The intermediary must not, relation to an add-on insurance product or an extended warranty product, engage in conduct that involves a technique that should not in good conscience have been used in relation to the retail client or which manipulates the client.~~
- ~~(2) Without limiting subsection (1), the intermediary must not:~~
- ~~(a) make any representation to the retail client to the effect that if the client chooses not to acquire or apply for an add-on insurance product or extended warranty product then the client might be required to make payment from their own monies instead of claiming under the product;~~
- ~~(b) require the retail client to sign an acknowledgment to that effect.~~

Part 5—Special conditions for mechanical risk products

12 Manufacturer warranties

Any manufacturer warranty in relation to the motor vehicle to which the motor vehicle purchase, motor vehicle loan or motor vehicle lease relates must have:

- (a) expired; or
- (b) less than 12 months cover remaining; or
- (c) less than 10,000 kilometres cover remaining; or
- (d) less than 20% of the kilometres-driven limit cover remaining.

13 Terms of mechanical risk products

The terms of a mechanical risk product:

- (a) must not overlap with the period or terms of coverage of any manufacturer warranty or statutory warranty;
- (b) must provide coverage for a period of at least 12 months;
- (c) must not have a maximum individual claim amount of less than \$2,000;
- (d) must confer on the holder of the product a right to cancel the product at any time during the period of coverage and, if the right is exercised, to oblige the product issuer to refund any monies paid by the holder to the product issuer on a pro-rata basis that corresponds to the remaining period of coverage that would have applied but for the cancellation;
- (e) must not include a requirement for the motor vehicle to be serviced by the person from whom the vehicle was purchased or leased or any of their associates;
- (f) for new motor vehicles or used motor vehicles less than 10 years old—must not include a requirement for the vehicle to be serviced that is more onerous (including more frequently) than that specified in the manufacturer’s warranty that covered the vehicle;
- (g) must not contain a requirement requiring the holder of the product to pay an amount to a third party on cancellation of the product.