



ASIC
Australian Securities &
Investments Commission

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and Investments Commission**

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Mr Andrew Hall
Chief Executive Officer
Insurance Council of Australia

By email: ahall@insurancecouncil.com.au

Dear Mr Hall

Application for relief – Insurance Council of Australia

We refer to correspondence from the Insurance Council of Australia (ICA) dated 4 May 2020 and 4 December 2020 regarding regulatory relief for ICA members from sections 941D and 1012G of the *Corporations Act 2001* (Corporations Act), and regulation 7.9.15C(5)(b)(i) of the *Corporations Regulations 2001* (Corporations Regulations).

ASIC has decided that we will not take action against regulated persons for breaches of these provisions in certain circumstances, and subject to the conditions outlined in this letter.

Application for relief

We understand that the ICA is seeking relief for its members due to the effect of regulatory relief given to Australia Post by the [Australian Postal Corporation \(Performance Standards\) Amendment \(2020 Measures No. 1\) Regulations 2020](#).

The regulatory relief given to Australia Post temporarily adjusts Australia Post's performance standards by relaxing some delivery timeframes until 30 June 2021 ('postal standards relief').

As a result of the postal standards relief, it may not be possible in all cases for insurers to comply with obligations under sections 941D and 1012G of the Corporations Act and regulation 7.9.15C(5)(b)(i) of the Corporations Regulations, to the extent those provisions require documents to be given within five business days of specified events.

No-action position

ASIC does not intend to take action against a regulated person for breaching the following provisions where the breach was due to the effect of the postal standards relief:

- *section 941D of the Corporations Act* – the requirement to provide a Financial Services Guide within five business days of advice being provided in time-critical circumstances;
- *section 1012G of the Corporations Act* – the requirement to provide a Product Disclosure Statement (PDS) within five business days of a product being issued in time-critical circumstances; and
- *regulation 7.9.15C(5)(b)(i) of the Corporations Regulations* – the requirement to provide a document containing dollar disclosure within five business days of a general insurance product being issued.

ASIC's no-action position will cease when the postal standards relief expires.

Conditions and expectations

In relation to breaches of section 1012G and regulation 7.9.15C(5)(b)(i), for products issued from the date of this letter, ASIC's no-action position is subject to the following conditions:

1. The issuer must extend the cooling-off period for consumers who are sent a PDS or dollar disclosure document by mail by an additional five days ('additional cooling-off period') over the period specified in section 1019B of the Corporations Act ('statutory cooling-off period').
2. The regulated person must take reasonable steps to advise the consumer of the additional cooling-off period when the product is issued.
3. If a consumer seeks to return the product outside the statutory cooling-off period but within the additional cooling-off period, the issuer must allow the consumer to exercise their right of return, and they must refund the consumer in a way that is otherwise consistent with section 1019B.

For products issued before the date of this letter, ASIC expects regulated persons to be flexible in their approach to resolving disputes. This includes where:

- a dispute is received from a consumer about the delayed receipt of a disclosure document during a period where Australia Post's performance standards are affected by the postal standards relief; and/or
- a request has been made by a consumer before the date of this letter to return a financial product and receive a refund outside the statutory cooling-off period.

Other compliance concerns

The ICA raised further concerns in its correspondence dated 4 May 2020 about possible difficulties complying with some obligations under the *Insurance Contracts Act 1984* and section 912A of the Corporations Act. The ICA has not requested relief in relation to these concerns, and we confirm that this no-action position does not extend to those obligations.

Qualifications

ASIC may withdraw or revise this no-action position at any time and reserves the right to take regulatory action. Circumstances in which we might consider taking action include where a regulated person fails to act flexibly and fairly towards a consumer who raises a dispute or who suffers detriment due to conduct that relies on this no-action letter.

This no-action letter does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to that conduct or conduct of that kind. Nor will it necessarily impede a court from holding that such conduct contravenes the Corporations Act or the Corporations Regulations.

ASIC does not represent that such conduct will not be held to contravene the Corporations Act or the Corporations Regulations. Nor do we undertake to intervene in an action brought by third parties in respect of such conduct.

If you would like to discuss the matters in this letter, please contact Madeline Pryor, Executive Officer (madeline.pryor@asic.gov.au) or me.

Yours sincerely



Emma Curtis
Senior Executive Leader – Insurers
Financial Services and Wealth Group