

Attachment 1 to CP 339: Draft regulatory guide



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 000

The deferred sales model for add-on insurance

March 2021

About this guide

This guide is for issuers and distributors of add-on insurance.

It provides guidance on the requirements that apply to providers of add-on insurance when complying with the deferred sales model, and how ASIC will approach applications for exemption from the deferred sales model.

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 draft guide was issued in March 2021 and is based on legislation and regulations as at the date of issue.

Disclaimer

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

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

The Australian Government introduced the deferred sales model after the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommended an industry-wide deferred sales model for add-on insurance.

This guide explains:

- the scope of the deferred sales model—that is, which products and persons are subject to the deferred sales model; and
- the requirements that apply to providers of add-on insurance before, during and after the add-on insurance deferral period (deferral period).

This guide also explains ASIC’s powers to grant an individual exemption and how we will approach applications for individual exemptions.

Purpose of the deferred sales model for add-on insurance

- RG 000.1 In 2018, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) considered problems in the add-on insurance market. It found poor-value products, risks of unfair sales practices and outcomes, and worse claims outcomes than in other insurance markets.
- RG 000.2 To address these issues, the Royal Commission recommended the introduction of an industry-wide deferred sales model for add-on insurance: Recommendation 4.3. The Productivity Commission had earlier recommended a deferred sales model as part of its inquiry into competition in the Australian financial system.
- Note: See Productivity Commission, [Competition in the Australian financial system](#), inquiry report, June 2018; Royal Commission, [Final report](#), 4 February 2019.
- RG 000.3 The Government responded to the Royal Commission’s findings and recommendation by introducing a deferred sales model for add-on insurance. The deferred sales model is set out in Pt 2, Div 2, Subdiv DA (s12DO–12DZA) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
- Note: See the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Financial Sector Reform Act).

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RG 000.4 The deferred sales model requires a clear four-day pause between when a customer enters a commitment to acquire a principal product or service, and when they are offered or sold an add-on insurance product (‘deferral period’).

RG 000.5 When developing the deferred sales model, the Government stated:

The objective of the proposed deferred sales model is to promote informed purchasing decisions by consumers in add-on insurance markets. The model achieves this by introducing an enforced pause in the sales process between the purchase of a primary product and their decision to purchase add-on insurance. The deferral period will enable and encourage consumers to consider the merits of the insurance offered and to consult alternative providers.

Note: See Treasury, [Proposal paper: Reforms to the sale of add-on insurance products](#), 9 September 2019.

What this guide is about

RG 000.6 This guide explains our interpretation of the requirements that apply to issuers and distributors of add-on insurance products under the deferred sales model for add-on insurance and provides guidance on how to comply with those requirements. It also describes ASIC’s approach to applications for exemption from the deferred sales model.

RG 000.7 In this guide:

- (a) Section B *Scope of the deferred sales model* explains which products are subject to the deferred sales model and who must comply with the requirements under the deferred sales model;
- (b) Section C *Complying with the deferred sales model* outlines the requirements that apply before, during and after the deferral period and describes how to comply with the deferred sales model;
- (c) Section D *Exemptions from the deferred sales model* outlines our powers to grant an exemption from the deferred sales model;
- (d) Appendix 1 *Customer Information* relates to the ASIC-prescribed information that must be provided to a customer to start the deferral period;
- (e) Appendix 2 *Exemption factors* sets out what we will have regard to when assessing an application for exemption, including the types of data and information that will assist our assessment; and
- (f) Appendix 3 *Data template for use with applications for exemption from the deferred sales model* refers to a template on the ASIC website that applicants may use to collate and submit product data to support an application for an exemption.

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B Scope of the deferred sales model

Key points

The deferred sales model applies to an ‘add-on insurance product’ as defined in s12DO of the ASIC Act.

This section explains the following key elements of the definition of the s12DO definition:

- who is a consumer;
- what is a principal product or service;
- products offered or sold in connection with a principal product or service;
- products that manage financial risk; and
- types of contracts that can be add-on insurance products.

This section also outlines the exceptions that apply to certain add-on insurance products.

Definition of ‘add-on insurance product’

RG 000.8 The deferred sales model applies to an ‘add-on insurance product’ which is defined in s12DO of the ASIC Act as a financial product that:

- (a) is offered or sold to a consumer in connection with that person acquiring another product or service (referred to as the ‘principal product or service’ in this guide);

Note: The consumer is then referred to as the ‘customer’ in the deferred sales model provisions.

- (b) is offered or sold by:
- (i) the provider of the principal product or service (referred to as the ‘principal provider’ in this guide); or
 - (ii) another person, under an arrangement with the principal provider (referred to as the ‘third-party provider’ in this guide);
- (c) manages financial risk relating to the principal product or service; and
- (d) either:
- (i) is a ‘contract of insurance’; or
 - (ii) provides for the customer to benefit from a contract of insurance to which the provider of the financial product is a party.

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Who is a customer?

- RG 000.9 A product is only an ‘add-on insurance product’ if the customer who is offered or sold the product is a ‘consumer’.
- RG 000.10 Section 12BC provides that a person acquires financial service or a financial product as a ‘consumer’ if:
- (a) the price of the services or product does not exceed \$100,000;
 - (b) where the price of the services or product exceeds \$100,000—the services or product are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (c) where the services or product were acquired for use or consumption in connection with a small business and the price of the services or product exceeds \$100,000—the services or product are of a kind ordinarily acquired for business use or consumption.
- Note: Section 12BC defines consumers by reference to the ‘financial services’ they acquire. A ‘financial product’ is a ‘financial service’ for the purposes of s12BC: see s12BAB(1AA). The prescribed price threshold increases from \$40,000 to \$100,000 on 1 July 2021: see Sch 1, cl 2DA of the Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020.
- RG 000.11 A ‘small business’ is defined in s12BC(2) to mean a business employing less than:
- (a) if the business is or includes the manufacture of goods—100 people; or
 - (b) otherwise—20 people.

What is a principal product or service?

- RG 000.12 A principal product or service is the product or service that a customer acquires or agrees to acquire during the transaction in connection with which the customer is offered or sold an add-on insurance product: s12DO.
- RG 000.13 Examples of principal products and services include:
- (a) credit facilities such as home loans, with which consumer credit insurance may be offered;
 - (b) motor vehicles, with which consumer credit insurance, tyre and rim insurance and other insurances may be offered;
 - (c) furniture removals, with which removalist insurance may be offered;
 - (d) airline tickets, with which travel insurance may be offered; and
 - (e) mobile phones, with which screen protection insurance may be offered.
- RG 000.14 The provider of the principal product or service is the person the customer pays for the principal product or service: s12DO(1)(b). They are referred to as the ‘principal provider’ in this guide.

Products offered or sold in connection with a principal product or service

RG 000.15 ASIC considers the concepts of ‘offer’, ‘sale’ and ‘sold’ are relatively broad and take their ordinary meaning. The terms are intended to capture the actions of principal providers, third-party providers and other issuers of add-on insurance.

RG 000.16 An insurance product that is provided on a complimentary basis with a principal product or service is generally not ‘offered’ or ‘sold’ to a customer. For example, complimentary travel insurance that is provided with a credit card where there is no cost to the consumer for the insurance is not an add-on insurance product under the deferred sales model.

Note: See the [Explanatory Memorandum](#) to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (Explanatory Memorandum), paragraph 3.29 and Example 3.3.

RG 000.17 However, ASIC does not consider that an insurance product is complimentary if a component of consideration (payment by the customer for the insurance) is built into the price of the principal product or service, or the product cost is met by the seller and then passed on to the customer.

RG 000.18 This means that an offer or sale may occur where the cost of the insurance is bundled with the principal product or service, or where acquiring insurance is the ‘default’ option when purchasing another product or service. The add-on insurance product need not be wholly separate from the principal product or service.

In connection with a principal product or service

RG 000.19 An add-on insurance product will be offered or sold ‘in connection with’ a principal product or service if:

- (a) the add-on insurance product is sold around the same time as a principal product or service (e.g. during the same transaction in which the customer acquires the principal product or service); or
- (b) during the transaction for the principal product or service, the principal provider refers the customer to a third-party provider and the customer is offered or sold insurance by that third-party provider.

RG 000.20 For example, a lender may provide a home loan product to a customer and, under an arrangement, give the customer’s contact details to an issuer of home building insurance. If the issuer of the insurance contacts the customer three weeks later, the offer will still be ‘in connection with’ the customer acquiring the principal product.

RG 000.21 This is because the opportunity to sell the insurance arose because the customer acquired the home loan and the lender passed the customer’s

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details on to the issuer of home building insurance. The issuer of home building insurance will commit an offence if they have not complied with the deferred sales model before selling the add-on insurance product.

- RG 000.22 An insurance product is not sold ‘in connection with’ a principal product or service if the customer buys the insurance product on the standalone market, even if the seller of the insurance also sells insurance as an add-on insurance product.

Note: See [Explanatory Memorandum](#), paragraph 3.30.

Acquiring, or entering into a commitment to acquire

- RG 000.23 The product must be offered or sold in connection with the customer ‘acquiring, or entering into a commitment to acquire’ the principal product or service: s12DO(1)(a).
- RG 000.24 The terms ‘acquiring’ and ‘commitment to acquire’ in relation to a principal product or service take their ordinary meaning. If the principal product is a financial product or service, the term ‘acquire’ is modified by s12BA and 12BD.
- RG 000.25 Under s12DO(3), the Australian Securities and Investments Commission Regulations 2001 (ASIC Regulations) may provide that a customer is, for the purposes of the deferred sales model, taken to have entered into a commitment to acquire a principal product or service of a specified class at a specified time.
- RG 000.26 The point at which a consumer has entered into a commitment for certain classes of principal products and services is defined in reg 3B of the ASIC Regulations: see Table 1.

Table 1: When a customer enters into a commitment

Class of product or service	Time of entering into a commitment
Credit card	When the consumer is informed in writing of the approval of the credit facility
Loan secured by a mortgage, charge or other security interest over residential property in Australia	When the consumer is informed in writing of the approval of the credit facility
Loan for the purchase of a motor vehicle	When the consumer is informed in writing of the approval of the credit facility
Loan for personal, domestic or household purposes	When the consumer is informed in writing of the approval of the credit facility

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Class of product or service	Time of entering into a commitment
Hire of a motor vehicle	Either: <ul style="list-style-type: none"> • if the consumer makes a reservation for the hire of the vehicle before taking possession of the vehicle—when the consumer makes the reservation; or • when the consumer takes possession of the vehicle

Source: [Exposure Draft of the Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Regulations 2020: Deferred sales model for add-on insurance.](#)

Products that manage financial risk

- RG 000.27 To meet the definition of add-on insurance product, the product must manage financial risk relating to the principal product or service within the meaning of s12BAA.
- RG 000.28 Section 12BAA(5) provides that a person manages financial risk if they:
- (a) manage the financial consequences to them of particular circumstances happening; or
 - (b) avoid or limit the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices and interest rates).
- RG 000.29 For example, a financial product which covers the risk of default on a credit contract, with benefits aimed at remedying that default risk, is likely to be an add-on insurance product. We consider this would still be the case even if the benefits were paid directly to the customer rather than the lender, because the product is designed to meet the consequence of a default on the credit contract.
- RG 000.30 An example of a financial product that is less likely to be an add-on insurance product is, in the case of a principal product that is a loan, a life insurance product which:
- (a) does not link the benefits to the customer's financial obligations under the loan;
 - (b) pays the benefits directly to the insured or their beneficiaries, and allows these benefits to be used in any manner (i.e. there is no requirement to use the benefits to pay any outstanding loan amount); and
 - (c) continues even if the loan is not provided (e.g. the loan application is rejected) or has been repaid.
- RG 000.31 In circumstances of this kind, we consider that the link between the insurance and the financial risk of the principal product is less clear and not likely to meet the definition.

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RG 000.32 If the product is not an add-on insurance product (and therefore not subject to the deferred sales model), the hawking prohibition in s992A of the Corporations Act (hawking prohibition) applies

Note: See [Explanatory Memorandum](#), paragraphs 3.119–3.122 and [Regulatory Guide 38](#) *The hawking prohibitions* (RG 38). ASIC expects to consult shortly on updates to RG 38 in line with changes introduced by the Financial Sector Reform Act.

Types of contracts that can be add-on insurance products

RG 000.33 To meet the definition of add-on insurance product, the financial product must be either:

- (a) a ‘contract of insurance’ (s12DO(2)); or
- (b) provide for the customer to benefit from a contract of insurance to which the provider of the add-on insurance product is a party (s12DO(1)(d)(ii)).

RG 000.34 A ‘contract of insurance’ includes:

- (a) a contract that would ordinarily be regarded as a contract of insurance, even if some of its provisions are not by way of insurance; and
- (b) a contract that includes provisions of insurance, even if the contract would not ordinarily be regarded as a contract of insurance (the deferred sales model will only apply to the provisions of insurance).

Note: See [Explanatory Memorandum](#), paragraph 3.31.

RG 000.35 For example, a mobile phone protection plan which includes insurance components, as well as extended warranty components which are not insurance, will be a contract of insurance for the purposes of s12DO.

Note: For guidance on when a ‘warranty’ is more likely to include insurance elements, see [Information Sheet 198](#) *Extended warranties* (INFO 198).

RG 000.36 A contract of insurance under s12DO(1)(d)(ii) may include an arrangement where a group purchasing body provides eligible customers with cover under a risk management product that the group purchasing body has entered into with a third-party provider.

Note: For more information on group purchasing arrangements, see [Regulatory Guide 195](#) *Group purchasing bodies for insurance and risk products* (RG 195).

RG 000.37 For example, a lender may offer a customer coverage under a group life insurance policy that the lender holds with a third-party provider. The policy may cover the customer’s loan repayments to the lender for a specified period if an insured event occurs. This financial product is likely to fall within the definition of a ‘contract of insurance’ under s12DO.

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Persons who must comply with the deferred sales model

- RG 000.38 Principal providers and third-party providers of add-on insurance products are subject to the deferred sales model.
- RG 000.39 A principal provider is a person who provides principal products or services and who also engages in any of the following conduct in connection with the principal product or service:
- (a) selling an add-on insurance product;
 - (b) permitting another person to offer or sell an add-on insurance under an arrangement to which it is a party; or
 - (c) offering an add-on insurance product for issue or sale to a customer, or requesting or inviting a customer to ask or apply for or purchase an add-on insurance product: see s12DO(1) and 12DR(1).
- RG 000.40 A third-party provider is a person who has an arrangement with a principal provider and who also engages in any of the following conduct in connection with the principal product or service:
- (a) selling an add-on insurance product; or
 - (b) offering an add-on insurance product for issue or sale to a customer, or requesting or inviting a customer to ask or apply for or purchase an add-on insurance product: see s12DO(1), 12DQ(4) and 12DR(3).

Products that are not subject to the deferred sales model

- RG 000.41 The add-on insurance products covered by an exception from the deferred sales model are outlined in Table 2.

Table 2: Products not subject to the deferred sales model under the ASIC Act

Exceptions	Add-on insurance products covered
Financial advisers: s12DU	<p>The add-on insurance product is offered (including requests and invitations) or sold in the course of a person (financial adviser) providing personal advice about the add-on insurance product and principal product and the financial adviser is required under Pt 7.7A, Div 2 of the <i>Corporations Act 2001</i> (Corporations Act) to act in the best interests of the client in relation to that advice.</p> <p>This exception does not apply to credit assistance provided by a mortgage broker or mortgage intermediary, as that credit assistance is subject to the best interests duty contained in s158LA and 158LE of the <i>National Consumer Credit Protection Act 2009</i> (National Credit Act), rather than Pt 7.7A, Div 2 of the Corporations Act.</p> <p>Note: For information on providing personal advice and the obligations that apply when providing such advice, see Regulatory Guide 244 Giving information, general advice and scaled advice (RG 244) and Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure (RG 175).</p>

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Exceptions	Add-on insurance products covered
Product intervention order: s12DV	<p>The add-on insurance product is the subject of a product intervention order under Pt 7.9A of the Corporations Act that imposes a deferral period during which the add-on insurance product must not be sold.</p> <p>However, if a product intervention order does not specify a deferral period—instead, for example, specifying design standards for an add-on insurance product—the deferred sales model will continue to apply to that add-on insurance product.</p> <p>Note: A product intervention order that applies to a class of products is made as a legislative instrument. ASIC publishes a list of legislative instruments on our website. For product intervention orders that are not legislative instruments and that apply to a specified person or conduct, ASIC will serve a copy of the order on any person to whom we consider the order applies.</p>
Comprehensive motor vehicle insurance: s12DW	<p>This exemption applies to a contract sold to an individual who:</p> <ul style="list-style-type: none"> • wholly or partly owns a motor vehicle; or • has the use of a motor vehicle under a lease of at least four months' duration <p>where cover is for:</p> <ul style="list-style-type: none"> • loss of, or damage to, the motor vehicle or property of another person resulting from an accident; or • loss or damage caused by fire, theft or malicious acts.
Exemption by regulations: s12DX	<p>The regulations specify the class of add-on insurance products that are exempt from s12DQ, 12DR and/or 12DS.</p>
Exemption by ASIC: s12DY	<p>An add-on insurance product or class of add-on insurance products sold by a specified person is exempted from compliance with s12DQ, 12DR and/or 12DS by a notifiable instrument made by ASIC: see Section D of this guide.</p>

Note: See [Explanatory Memorandum](#), paragraphs 3.88–3.105.

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C Complying with the deferred sales model

Key points

There are three distinct periods in the deferred sales model:

- pre-deferral period;
- deferral period; and
- post-deferral period.

This section sets out:

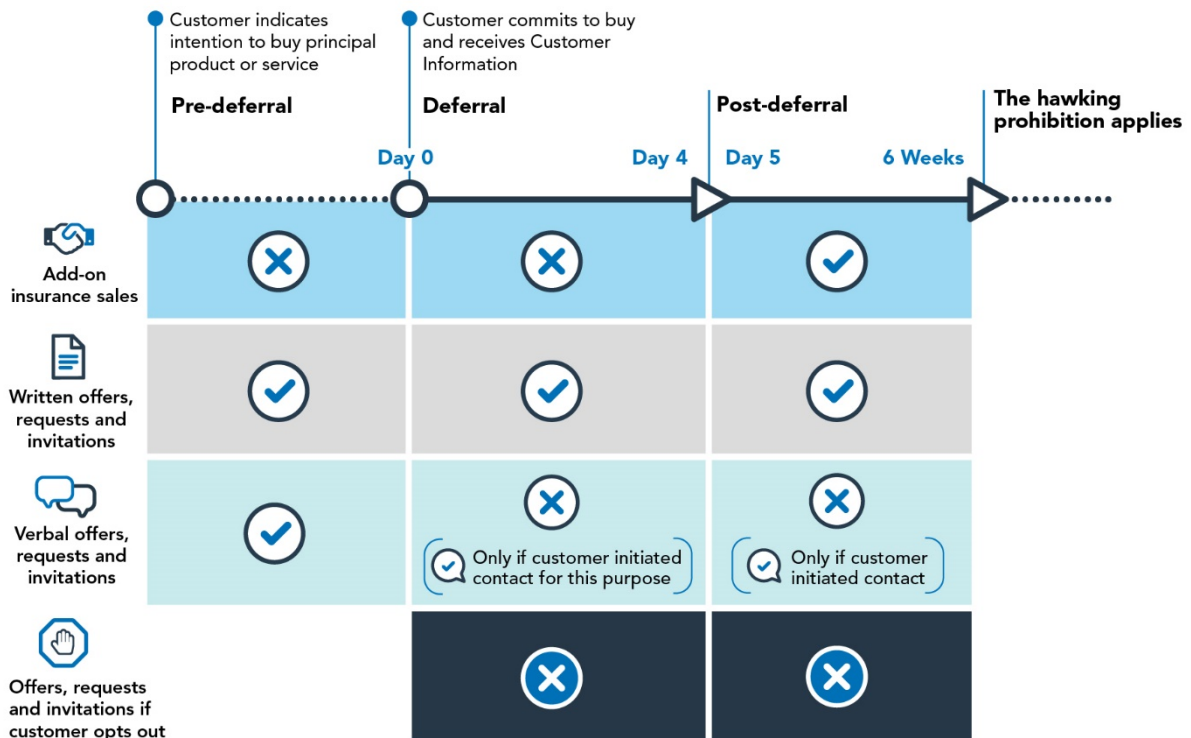
- when each period starts and ends; and
- the requirements that apply to a provider of add-on insurance products during each of the periods.

Outline of the deferred sales model

- RG 000.42 The conduct that is permitted and prohibited for providers of add-on insurance products changes over the distinct periods in the deferred sales model:
- (a) *Pre-deferral period*—This period starts when the customer indicates an intention to acquire a principal product or service and ends when the deferral period starts: see the conduct requirements set out in RG 000.54–RG 000.64.
 - (b) *Deferral period*—This period starts when the customer commits to acquire a principal product or service and receives the information in the manner and form prescribed by ASIC (Customer Information). It ends at the end of four days after the day on which the deferral period began: see the conduct requirements set out in RG 000.65–RG 000.84. A person only needs to give the customer the Customer Information to initiate the deferral period if they wish to offer or sell the customer add-on insurance.
 - (c) *Post-deferral period*—This period starts at the end of the deferral period and ends six weeks after the day the deferral period began: see the conduct requirements set out in RG 000.85–RG 000.94.
- RG 000.43 The start and length of each period and the key requirements for each period are set out in Figure 1.

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Figure 1: Outline of the deferred sales model



Note: For a summary of the content of this figure, see RG 000.42 (accessible version).

When has an add-on insurance product been sold?

- RG 000.44 It is an offence to sell an add-on insurance product during the pre-deferral period or deferral period: s12DQ.
- RG 000.45 An add-on insurance product is taken to be sold to a customer when no further action from the customer is required for the sale to occur, even if the sale does not occur until a later time: s12DQ(5).
- RG 000.46 This means a provider cannot:
 - (a) sell an add-on insurance product through an ‘opt-out’ process, where the sale will automatically occur once the deferral period ends; or
 - (b) structure the application and sale phases so that the customer does not need to engage further before the add-on insurance product is issued.
- RG 000.47 For example, it would be an offence for a provider to offer a customer an add-on insurance product, obtain the customer’s credit card details, wait until the end of the four-day deferral period, then process the sale of the add-on insurance product.

Note: See [Explanatory Memorandum](#), Example 3.7.

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Interaction with the hawking prohibition

- RG 000.48 Outside the periods in the deferred sales model, the hawking prohibition in s992A of the Corporations Act will apply and unsolicited offers, requests or invitations relating to add-on insurance are prohibited.
- RG 000.49 Before the start of the pre-deferral period, the hawking prohibition generally prevent a person from making an unsolicited offer of add-on insurance. This is the default regime applying to the sale of all insurance products.
- RG 000.50 Generally, the hawking prohibition will not apply to the offer to sell or issue the add-on insurance product if the customer has specifically consented to being contacted for the purpose of making the offer or the offer ‘was reasonably within the scope of the consumer’s consent’: see s992A(5) of the Corporations Act for all requirements.
- RG 000.51 The hawking prohibition will apply to offers, requests or invitations to apply for add-on insurance products if they are made six weeks after:
- (a) the day the deferral period starts; or
 - (b) if there is no deferral period (because the Customer Information is not given to the customer)—the day the customer indicates an intention to acquire a principal product to which an add-on insurance product relates: s992A(3) of the Corporations Act.
- RG 000.52 For example, if the customer indicated an intention to acquire the principal product on 1 September:
- (a) if the deferral period began at 9 am on 3 September, the hawking prohibition will resume after 11.59 pm on 16 October; or
 - (b) where there is no deferral period, the hawking prohibition will resume after 11.59 pm on 14 October.
- RG 000.53 After this time, any contact made by the principal provider or a third-party provider with the customer will be subject to the hawking prohibition.

Note: For more information on the hawking prohibition, see [RG 38](#). ASIC expects to consult shortly on updates to RG 38 in line with changes introduced by the Financial Sector Reform Act.

Pre-deferral period

- RG 000.54 The purpose of the pre-deferral period is to enable salespersons to discuss the add-on insurance products with customers before a principal product or service is sold, without triggering the hawking prohibition.

Note: See [Explanatory Memorandum](#), paragraph 3.33.

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When the period starts and ends

RG 000.55 The pre-deferral period starts when a customer indicates an intention to acquire a principal product or service.

Indicates an intention to acquire

RG 000.56 Whether and when a customer indicates an intention to acquire a principal product or service will depend on the circumstances. For example, a customer may indicate this intention by:

- (a) stating that they are considering purchasing a specific type of product or service; or
- (b) asking questions specific to that type of product or service of a representative of a business that sells that product or service.

RG 000.57 A customer asking a retailer questions about their white goods and furniture is unlikely to indicate an intention to acquire a specific product. The customer needs to indicate they are considering purchasing a specific type of product.

Note: See [Explanatory Memorandum](#), paragraph 3.36.

End of the period

RG 000.58 The pre-deferral period ends if a deferral period starts: see RG 000.66 for when the deferral period starts.

RG 000.59 If there is no deferral period, the pre-deferral period does not end: s12DP(3)(c). The add-on insurance product cannot be sold unless the customer was provided with the Customer Information required by s12DP(4) to trigger a deferral period and the deferral period has since ended.

RG 000.60 If a deferral period does not start within six weeks of the customer indicating an intention to acquire a principal product or service—that is, the pre-deferral period does not end—then the hawking prohibition applies to offers, requests or invites in relation to an add-on insurance product or service from the end of the six weeks: s992A(3)(b) of the Corporations Act.

Note: For more information on the hawking prohibition, see [RG 38](#). ASIC expects to consult shortly on updates to RG 38 in line with changes introduced by the Financial Sector Reform Act.

Prohibition on sale

RG 000.61 A principal provider or a third-party provider commits an offence if they sell an add-on insurance product to a customer during the pre-deferral period, unless an exception applies. This prohibition continues until both the pre-deferral and deferral periods have ended: s12DQ.

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- RG 000.62 A principal provider may commit an offence in relation to the prohibited sale of add-on insurance by a third party: s12DQ(2). The principal provider will commit an offence if:
- (a) there is an arrangement between the principal provider and a third-party provider that relates to the provision of add-on insurance for products or services offered by the principal provider to a customer; and
 - (b) the third-party provider sells add-on insurance to the customer, except after the end of the deferral period.

Permitted conduct

- RG 000.63 During the pre-deferral period, and before the hawking prohibition applies, a principal provider or a third-party provider can:
- (a) offer an add-on insurance product for issue or sale to the customer; or
 - (b) request or invite the customer to:
 - (i) ask or apply for an add-on insurance product; or
 - (ii) purchase an add-on insurance product: s12DR(2)(a).

- RG 000.64 This allows the provider to advertise and discuss the add-on insurance product in the pre-deferral period. There are no restrictions on what can be discussed during this period. The provider may answer any questions from customers and provide any information they wish, including in document form. However, the provider cannot sell the add-on insurance product.

Example 1: Communication during the pre-deferral period

Anh buys a mobile phone in-store. Zayn, the salesperson, offers Anh mobile phone insurance. Zayn has not given Anh the Customer Information and so the deferral period has not started. Anh asks a question about exclusions under the insurance policy. Zayn answers verbally and outlines the exclusions under the policy. Zayn also explains the cover under the policy and gives Anh some marketing materials.

Zayn has not committed an offence because the deferral period has not started and he has not sold the product.

Deferral period

- RG 000.65 The purpose of the four-day deferral period is to provide the customer with an opportunity to consider the suitability of the add-on insurance product being offered and alternative products, while reducing the likelihood of the customer disengaging entirely from the decision about whether to purchase the add-on insurance product.

Note: See [Explanatory Memorandum](#), paragraph 3.39.

When the period starts and ends

- RG 000.66 The deferral period starts at the later of:
- (a) the time the customer enters into a commitment to acquire a product or service or, if the customer does not enter into such a commitment before acquiring a product or service, the time at which the customer acquires the principal product or service; and
 - (b) the time the customer is given the Customer Information.

- RG 000.67 The deferral period ends four days after the day it begins. For example, if a customer buys a new mobile phone on Sunday 1 January and is given the Customer Information for add-on screen protection insurance, the deferral period ends at 11.59 pm on Thursday 5 January.

Note: See [Explanatory Memorandum](#), paragraph 3.38 and Example 3.4.

Customer enters into a commitment

- RG 000.68 For some classes of principal products or services, the time when a customer enters into a commitment is defined by reg 3B of the ASIC Regulations: see Table 1.

- RG 000.69 A commitment is generally a firm decision by the customer to acquire the principal product or service, such as:
- (a) making a payment for the product or service; or
 - (b) entering into an agreement for the product or service which might allow payment over a period of time or at a later date.

Note: See [Explanatory Memorandum](#), paragraph 3.41

- RG 000.70 A customer would generally know what they have purchased and would therefore have a risk to manage in relation to the purchase. A customer expressing a preference for a product or service does not amount to a commitment. The time at which a commitment has been entered into would depend on the circumstances of each case.

Note: See [Explanatory Memorandum](#), paragraphs 3.41–3.42.

- RG 000.71 An example of a customer making a ‘commitment’ to acquire a principal product is the customer paying a 50% deposit for a theatre season ticket online. Conversely, a customer has not made a commitment to acquire a product where the customer talks about a particular mobile phone with a salesperson in a store, then says they will return later to buy that phone.

Note: See [Explanatory Memorandum](#), Examples 3.5 and 3.6.

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Prohibition on sale

- RG 000.72 A principal provider or a third-party provider commits an offence if they sell an add-on insurance product to a customer during the deferral period: s12DQ.
- RG 000.73 The principal provider will also commit an offence if:
- (a) there is an arrangement between the principal provider and a third-party provider that relates to the provision of add-on insurance products for products or services offered by the principal provider to a customer; and
 - (b) the third-party provider sells an add-on insurance product to the customer, except after the end of the deferral period: s12DQ(2).
- RG 000.74 For example, a car hire company may lend a car to a customer, then email the customer's details to a third-party insurer who sells excess-reduction insurance. If that insurer offers and sells the insurance to the customer during the deferral period, the insurer has committed an offence and the car hire company has also committed an offence in relation to the insurer's conduct.

Note: See [Explanatory Memorandum](#), Example 3.8.

Prohibition on offers, request and invites other than in writing

- RG 000.75 During the deferral period, a principal provider or a third-party provider cannot offer, request or invite the customer to ask for, apply for, or purchase an add-on insurance product for issue or sale other than in writing: s12DR.
- RG 000.76 This means that a provider cannot discuss add-on insurance during any phone calls or in-person meetings with a customer during the deferral period, subject to the rules for customer-initiated contact: see RG 000.77–RG 000.84.

Responding to customer-initiated contact

- RG 000.77 The prohibition on making offers, invites and requests to a customer during the deferral period does not apply where:
- (a) the offer, request or invitation is made in response to contact initiated by the customer; and
 - (b) the offer, request or invitation relates only to the purpose for which the customer initiated the contact: s12DR(4).
- RG 000.78 For example, if the customer contacts the provider about the principal product or service, the provider can respond using any method of communication, but cannot initiate a discussion about the add-on insurance. On the other hand, if the customer initiates a discussion about the add-on insurance product during

a telephone call with the provider, ASIC considers that the discussion of the insurance was part of the customer's purpose for initiating the contact.

- RG 000.79 If a customer initiates contact for the sole purpose of discussing an add-on insurance product, the provider can respond using any method of communication. For example, if the customer emails the provider questions about an add-on insurance product, the provider can respond by telephone.
- RG 000.80 At all times, a provider must limit the communication to the purpose for which the customer initiated the contact. For example, if a customer initiates contact to discuss home building insurance offered with a home loan, the provider cannot discuss another add-on insurance product (e.g. consumer credit insurance) unless the customer raises it.
- RG 000.81 The prohibition on selling insurance during the deferral period remains and cannot be waived. Even if the customer says they wish to buy the add-on insurance product, the provider cannot sell the add-on insurance product until the deferral period ends.
- RG 000.82 For example, if a customer calls a provider during the deferral period and asks for information about an add-on insurance product's claims ratio, the provider can give the customer that information over the telephone, because the customer initiated the contact. However, it would be an offence for the provider to then offer to sell the customer the add-on insurance product during the customer-initiated telephone call.

Note: See [Explanatory Memorandum](#), Examples 3.9 and 3.10.

- RG 000.83 Providers of add-on insurance products need to be able to demonstrate that the offer, request or invitation to a customer relates only to the purpose for which the customer has initiated the contact.

Note: See [Explanatory Memorandum](#), paragraph 3.79.

- RG 000.84 Offers, requests and invitations in relation to an add-on insurance product are prohibited if a customer has indicated that they do not wish to receive those offers, requests or invitations: s12DS.

Note: For more information on the prohibition in s12DS, see RG 000.95–RG 000.97.

Post-deferral period

- RG 000.85 The period after the end of the four-day deferral period is called the post-deferral period.
- RG 000.86 When the post-deferral period ends, the deferred sales model ceases to apply and the hawking prohibition applies to sales of add-on insurance as defined in s12DO.

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When the period starts and ends

- RG 000.87 The post-deferral period starts at the end of the deferral period and ends on the date six weeks after the start of the deferral period. The duration of the post-deferral period is, therefore, five weeks and three days (six weeks with a four-day deferral period subtracted).

Add-on insurance products can be sold

- RG 000.88 The prohibition in s12DQ on selling an add-on insurance product ceases at the end of the four-day deferral period. For example, if the deferral period began on 1 July then it would end at 11.59 pm on 5 July and a provider would then be able to sell an add-on insurance product.

Note: For more information on when the deferral period starts and ends, see RG 000.66–RG 000.67.

Modified prohibition on offers, requests and invitations other than in writing

- RG 000.89 While a provider can conclude the sale of an add-on insurance product in the post-deferral period, offers, requests and invitations to buy the product can only be made in writing during the post-deferral period, subject to the rules for customer-initiated contact: s12DR(1) and (3).

Note: For a discussion of the meaning of ‘offers’, see RG 000.15–RG 000.18.

Responding to customer-initiated contact

- RG 000.90 A provider is able to make offers, requests and invitations where they are in response to customer-initiated contact: s12DR(4). This exception from the prohibition on offers, requests and invitations is broader during the post-deferral period than during the deferral period: see RG 000.77–RG 000.84.
- RG 000.91 Unlike during the deferral period, any offers, requests and invitations made during the post-deferral period do not need to relate only to the purpose for which the customer initiated the contact. However, they must still only be in response to customer-initiated contact.
- RG 000.92 If either the principal provider or a third-party provider is contacted by the customer during the post-deferral period, either party may respond to the customer’s inquiry using any method of communication and may make an offer, request or invitation in relation to add-on insurance in the course of the communication. The provider can also conclude the sale.

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- RG 000.93 For example, after the deferral period has ended in relation to an add-on insurance product:
- (a) if a customer writes to a provider to ask for more information about the insurance, the provider can call the customer and sell the insurance over the telephone, because the customer initiated the contact;
 - (b) a provider can offer the insurance by emailing the customer advertising material about the insurance and a link to purchase it; and
 - (c) a provider cannot offer the customer the insurance by contacting the customer by telephone—this would be an offence.
- RG 000.94 Offers, requests and invitations in relation to an add-on insurance product are prohibited if a customer has indicated that they do not wish to receive those offers, requests or invitations: s12DS.

Note: For more information on the prohibition in s12DS, see RG 000.95–RG 000.97.

Customer opt-out

- RG 000.95 At any time after a customer has acquired, or entered into a commitment to acquire, a principal product or service, they can indicate to the principal provider or a third-party product provider that they do not wish to receive offers, requests or invitations relating to an add-on insurance product.
- RG 000.96 A provider of add-on insurance will commit an offence if they offer, request or invite the customer to ask for, apply for, or purchase an add-on insurance product after the customer has informed either the principal provider or a third-party provider that they no longer wish to receive such offers, requests or invitations: s12DS. If the provider was not the person to whom the customer communicated their opt-out, the offence is committed if the provider was reckless as to the customer having opted out: s12GBCN(3A)(c).

Note: See [Explanatory Memorandum](#), paragraphs 3.61 and 3.74.

- RG 000.97 For example, a lender may offer a customer consumer credit insurance with a loan, then during the deferral period, the customer may contact the lender by telephone and say they do not want to be contacted about the insurance again. If the lender emails the customer three weeks later offering the insurance again, the lender will have committed an offence.

Note: See [Explanatory Memorandum](#), Example 3.11.

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Customer right of return and refund

- RG 000.98 A customer is entitled to a full refund of the amount paid for the add-on insurance product, less the value of any claim paid, if the provider sells them the product in breach of the prohibition on selling in s12DQ: s12DT.
- RG 000.99 This refund for the sale of the add-on insurance product is not at the discretion of the seller. The legislation operates to terminate automatically, from the time of return, an add-on insurance contract the customer has with a principal provider, third-party provider or other person.

Period of return

- RG 000.100 A customer can exercise the right to a refund at any time during the period starting when the product was sold and ending:
- (a) if s1019B of the Corporations Act gives the customer a right to return the product within a particular period (the cooling-off period)—one month after the end of that period; or
 - (b) otherwise—one month and 14 days after the product was sold.
- RG 000.101 The purpose of this right is to allow all customers approximately six weeks to exercise the right of return under the deferred sales model if they have been sold an add-on insurance product in breach of the deferred sales model provisions. Where applicable, the right to return during the cooling-off period can be exercised, even where an add-on insurance product has been sold in compliance with the deferred sales model.
- RG 000.102 This means that if an add-on insurance product is subject to a 14-day cooling-off period under s1019B of the Corporations Act, the right of return under the deferred sales model will run concurrently with the s1019B right of return and will last for an additional month after the end of the s1019B cooling-off period.

Product can be returned after a claim

- RG 000.103 Importantly, unlike the right of return under s1019B of the Corporations Act, the deferred sales model right of return and refund allows a customer to return an add-on insurance product even where they have made a claim.
- RG 000.104 Where an add-on insurance product has been sold in breach of s12DQ, a provider must not suggest to a customer that they cannot or should not return the add-on insurance if they have made a claim.

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No penalty

- RG 000.105 The customer cannot be required to pay any penalty for terminating the contract due to a contravention of s12DQ. This includes any fees linked to the cancellation of a product.
- RG 000.106 The provider cannot require the customer to make any other payments, even those that are not linked to the cancellation of the add-on insurance product, after the date the customer returns the product. This is because the contract is terminated by s12DT from the time of return.

Record keeping

- RG 000.107 As a matter of good business practice, and to comply with general business record-keeping obligations, a provider of add-on insurance should keep records relating to:
- (a) the add-on insurance product that was sold and when it was sold;
 - (b) the circumstances in which it was sold, such as whether it was sold in connection with the acquisition of a principal product or service, and whether a deferral period applies; and
 - (c) when the deferral period ended.
- Note: See [Explanatory Memorandum](#), paragraph 3.54. Specific record-keeping requirements applying to issuers and distributors in relation to the design and distribution obligations under Pt 7.8A are set out in s994F of the Corporations Act. See also s1101C of the Corporations Act for obligations relating to records required to be maintained under Ch 7 such as financial records, personal advice and training of representatives.
- RG 000.108 The time at which a principal provider makes an offer, request or invitation should be recorded by the provider as a matter of good business practice.
- Note: See [Explanatory Memorandum](#), paragraph 3.59.
- RG 000.109 ASIC also considers that it is important for principal providers and third-party providers to collect and retain information in relation to an add-on insurance product on:
- (a) when the pre-deferral period began for each customer, so the provider can demonstrate they are able to make offers not limited by the hawking prohibition;
 - (b) the nature of the customer interactions including the purpose, communication method and how contact was initiated; and
 - (c) whether and when the customer opted out of receiving offers, requests or invites.
- RG 000.110 Adequate record-keeping is also important because the evidentiary burden is on a provider who seeks to rely on an exception to an offence. For example, recordings of telephone calls may demonstrate that contact was initiated by the customer and the offer, request or invitation related only to the purpose for which the customer initiated that contact.

D Exemptions from the deferred sales model

Key points

ASIC has discretionary powers to exempt an add-on insurance product or class of products sold by a specified person.

ASIC must have regard to the factors specified in the ASIC Act when considering an application for exemption. We provide guidance on each factor and the type of information that will help us assess an application.

ASIC has discretion to impose conditions on an exemption and exemptions may be granted for a limited period.

[Regulatory Guide 51](#) *Applications for relief* (RG 51) remains our primary guidance on our approach to assessing individual relief applications.

ASIC's powers to grant an exemption

- RG 000.111 ASIC has discretionary powers to make a notifiable instrument exempting from s12DQ, 12DR and/or 12DS of the ASIC Act:
- (a) an add-on insurance product sold by a specified person (s12DY(1)(a)); and
 - (b) a class of add-on insurance products sold by a specified person (s12DY(1)(b)).
- RG 000.112 ASIC cannot make a legislative instrument to exempt a class of add-on insurance products. Under s12DX, the regulations may exempt a class of add-on insurance products.
- RG 000.113 When considering whether to grant an exemption by notifiable instrument on an individual basis, ASIC must have regard to specified factors set out in s12DY(2) including 'any other matters that ASIC considers relevant'.
- RG 000.114 If we decide to grant an exemption, the extent of the exemption and the situations in which it applies will depend on what is appropriate in the circumstances.
- RG 000.115 Decision made under s12DY are reviewable by the Administrative Appeals Tribunal: s244.
- RG 000.116 If a person, product or class of products is exempt from the deferred sales model, the hawking prohibition will generally apply to an offer, request or invitation in relation to an add-on insurance product.

Note: For discussion of the application of the hawking prohibition to add-on insurance, see RG 000.48–RG 000.53. For requirements under the hawking prohibition, see RG 38. ASIC expects to consult shortly on updates to RG 38 in line with changes introduced by the Financial Sector Reform Act.

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Our general approach to applications for exemption

- RG 000.117 ASIC will consider applications for an exemption from the deferred sales model in accordance with our general approach to relief set out in [Regulatory Guide 51 Applications for relief](#) (RG 51) and having regard to the factors set out in s12DY(2).
- RG 000.118 Our approach to granting exemptions is to do so in a way that promotes the objectives of the deferred sales model requirements and its consumer protection purpose. We will carefully consider the likely effects of an exemption on consumer protection and whether exempting a product will provide equal or greater benefits to consumers than the application of the deferred sales model.
- RG 000.119 The Explanatory Memorandum states:
- An exemption by making regulations will only be granted in exceptional circumstances and will be considered against other policy considerations by Government. An exemption might be granted when, for example, subjecting a class of add-on insurance products to the deferred sales model would produce perverse policy outcomes.
- Note: See [Explanatory Memorandum](#), paragraph 3.98.
- RG 000.120 ASIC considers this guidance in the Explanatory Memorandum to be a relevant matter within s12DY(2)(e) in relation to how we exercise our exemption powers. We also take the fact that ASIC does not have a general class exemption power to indicate that the Parliament intended that ASIC make exemptions in specific, limited circumstances. Industry-wide class exemptions may only be made in the regulations.

How to apply for an exemption

- RG 000.121 If a product does not fall within the terms of an existing exception, a person may apply to ASIC for an exemption under s12DY(1) on an individual basis.
- RG 000.122 Applications should be submitted through the ASIC Regulatory Portal. Fees are payable for applications and ASIC administers fees in accordance with [Regulatory Guide 21 How ASIC charges fees for relief applications](#) (RG 21).
- Note: For more information, see '[How you apply for relief](#)' on the ASIC website.
- RG 000.123 You must ensure that your application:
- (a) complies with RG 51; and
 - (b) addresses the considerations in this guide including:
 - (i) identifying the specific provisions for which the exemption is being sought (i.e. s12DQ, 12DR and/or 12DS);
 - (ii) identifying the scope of the exemption being sought (i.e. the specified persons and product or product class); and
 - (iii) providing information to support the exemption factors in s12DY(2).

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- RG 000.124 Generally, if your application does not contain all relevant information, we will refuse it. In some limited circumstances, we may consider delaying a decision on your application until you provide more information.
- RG 000.125 We exercise our powers based on as much relevant information as can reasonably be obtained. We may have regard to other sources of information available to ASIC where appropriate. However, you are generally better placed than us to obtain the most relevant information and we would expect you to do so if you are seeking the benefit of an exemption.

Note: Information available to us may include, for example, information from the Australian Prudential Regulation Authority, the Australian Financial Complaints Authority, the General Insurance Code Governance Committee, the Life Code Compliance Committee, reports of misconduct and breach reports lodged with ASIC, and other relevant information.

Identifying the scope of the exemption being sought

- RG 000.126 An application under s12DY(1) to exempt an add-on insurance product or a class of add-on insurance products sold by a specified person must:
- (a) identify or describe the add-on insurance product or class of products; and
 - (b) specify the person or persons selling the product or class of products.

Specified person

- RG 000.127 ASIC considers that a named person is a specified person, and that persons who are not individually named but who act on behalf of a named person are also specified persons. If ASIC grants an exemption for an add-on insurance product or class of products sold by a specified person, the exemption may cover the conduct of a wider range of persons than the specified person.
- RG 000.128 If the specified person is the product issuer, the exempt product will be any product of the kind described in the exemption instrument that is ultimately issued or 'sold' by the issuer when cover is provided to the customer. The exemption may therefore cover the making of offers, requests and invitations and other selling conduct by any principal provider in relation to that product issued by the specified product issuer.
- RG 000.129 If the specified person is the principal provider, the exempt product will be any product of the kind described in the exemption instrument that is 'sold' by that principal provider. The product issuer would also be able to rely on this exemption when it ultimately issues or 'sells' the product by making cover available to the customer. However, the exemption would not cover add-on insurance products issued or sold by other principal providers (even if those products are the same as the exempt product).

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- RG 000.130 If you are considering applying for an exemption, you should consider:
- (a) who will need to rely on the exemption; and
 - (b) who should be the ‘specified person’ to provide for the intended scope of the exemption.
- RG 000.131 This may influence which type of application you make, and potentially the number of exemptions required.
- RG 000.132 If ASIC alleges that a person has not complied with the deferred sales model, and a person has acted as though in accordance with an exemption, that person bears the evidential burden of showing that the add-on insurance product is exempt: s12DZA, and s13.3(3) of the *Criminal Code Act 1995*.

Class of add-on insurance products

- RG 000.133 If you apply to ASIC under s12DY(1)(b) to exempt a class of add-on insurance products from the deferred sales model, you must identify in your application:
- (a) the class of add-on insurance products; and
 - (b) the specified person or persons selling the class of products.
- RG 000.134 A class of products will typically be defined by the inherent features of the product, not how it is distributed.
- RG 000.135 There is no legislative definition of ‘class’ of add-on insurance products for the purposes of the deferred sales model. Our general view is that a class of add-on insurance products is constituted by products that cover the same type of insurable risk and have other similar inherent characteristics such as the key cover, exclusions, conditions and benefits.
- RG 000.136 When making an application, you should describe the class of add-on insurance products as narrowly as possible in your application. You may describe the class by identifying:
- (a) the line of insurance to which the product belongs (e.g. one of the types of contracts of insurance providing standard cover under Pt 3, Div 1 of the Insurance Contracts Regulations 2017); and
 - (b) the key cover, exclusions, conditions and benefits of the product.
- RG 000.137 You should also identify any conditions you consider appropriate to apply to any exemption we may make. This may narrow the scope of an exemption (e.g. to a class of add-on insurance sold with a particular principal product or service).

Note: For more information on conditions on exemptions, see RG 000.142–RG 000.144.

The exemption factors

RG 000.138 When considering whether to exempt an add-on insurance product or class of add-on insurance products sold by a specified person, ASIC must have regard to the factors in s12DY(2): see Table 3. Appendix 2 of this guide sets out the type of information that will help ASIC assess an application for an exemption.

Table 3: Exemption factors

Factor	Guidance
Any evidence of whether the product, or class of products, has historically been good value for money: s12DY(2)(a)	RG 000.147–RG 000.154
Whether, without an exemption, there is a high risk of underinsurance or non-insurance: s12DY(2)(b)	RG 000.155–RG 000.162
Any evidence as to whether the product, or the class of products, is well understood by consumers: s12DY(2)(c)	RG 000.163–RG 000.169
Any differences between the product, or products in the class, and financial products of a similar kind that are not sold as add-on insurance products: s12DY(2)(d)	RG 000.170–RG 000.171
Any other matters that ASIC considers relevant: s12DY(2)(e)	RG 000.172–RG 000.190

RG 000.139 We consider that the ASIC Act gives ASIC broad discretion to consider evidence related to each factor, to assess each factor individually, and to weigh up the factors against one another.

RG 000.140 To support each of the exemption factors, you must give ASIC the following information:

- (a) *Quantitative information about the product*—This includes numerical data on the product’s sales and performance (e.g. the claims ratio, claim decline rate and policy cancellation rate). It may also include broader statistical data, or analyses and comparisons of the data.
- (b) *Qualitative information about the product*—This includes data, research and other information showing the real-life context and experiences of a product. It is more descriptive, subjective, broader, deeper or conceptual than quantitative information. It may include the results of customer interviews, behavioural research, and broader academic, government or other research.

RG 000.141 We have provided a template to help applicants provide the information for each of the exemption factors: see Appendix 3. The template referred to in Appendix 3 is not an exhaustive list of data. It can be used as a starting point for an application for an exemption. We expect any information provided to ASIC to be accurate, from credible, reliable and identified data sources, fit for purpose and balanced.

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Conditions of an exemption

- RG 000.142 ASIC has the discretion to grant an exemption for a limited period or to impose conditions on the exemption: s12DY(2).
- RG 000.143 The conditions ASIC imposes depends on the circumstances of the application and the nature of the exemption granted. Examples of conditions that ASIC may apply include requirements to:
- (a) maintain a specified minimum claims ratio for the product;
 - (b) periodically provide a written statement to ASIC with information about the product, such as:
 - (i) premiums, claims, cancellations and other product data;
 - (ii) distributors of or finance providers for the product;
 - (iii) commissions and other financial benefits paid; and
 - (iv) governance and performance of distribution systems;
 - (c) notify ASIC of any change to the product (e.g. amendment of a PDS or issue of a supplementary PDS);
 - (d) provide specified information to a customer when add-on insurance is offered or sold; or
 - (e) only sell products with or without specified features (e.g. products without a waiting period before cover commences).
- RG 000.144 A person relying on an exemption must not breach a condition of that exemption: s12DZA. Breaching a condition is an offence: s12GB.

Appendix 1: Customer Information

RG 000.145 The sample Customer Information showing the proposed content and form of the information to be prescribed by ASIC for the purpose of s12DP(4) is contained in the appendix to Consultation Paper 339 *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance* (CP 339), which is available on our website at www.asic.gov.au/cp.

Note: For more information on our proposals for the content, form and manner of provision of the prescribed customer information and questions for feedback, see Section D of CP 339.

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Appendix 2: Exemption factors

RG 000.146 This appendix sets out the types of product data and other information in relation to each exemption factor under s12DY(2) that may assist ASIC in making a decision whether to grant an individual exemption.

Historically good value for money: s12DY(2)(a)

Good value for money

- RG 000.147 You should include in your application information to demonstrate that the product has been good value for money from the perspective of consumers who have bought the product in the past.
- RG 000.148 To show ‘good value for money’, you should show that the product or class of products is more than simply ‘valuable’ or is not ‘poor’ value.
- RG 000.149 In determining whether a product is ‘good value for money’, ASIC will consider several different measures of value to customers including, but not limited to the following:
- (a) *Relative value within the class*—This is the value of the product compared to others in the same class of products, including products distributed through add-on and other channels.
 - (b) *Minimum value for the class of products*—This refers to whether, on one or more indicators, the product is a good value insurance product: see RG 000.152–RG 000.153.
 - (c) *Relative value compared with like products*—A product may have a relatively high claims ratio within its class of add-on insurance products, but be poor value compared with other like products (e.g. because it has a lower claims ratio, higher claim decline rate or broad exclusions which lead to declined claims).

Example 2: Relative value

My Home Pty Ltd sells the consumer credit insurance product LoanSafe with residential mortgages. LoanSafe has a claims ratio of 35%, an average premium of \$200 per month, an average claim value of \$15,000 and a claims acceptance rate of 85%. In the class of consumer credit insurance products, LoanSafe may be an above-average value product. However, if compared with the average life, total and permanent disability and income protection insurance products sold by financial advisers, LoanSafe has a low claims ratio and claims acceptance rate.

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Historical value

- RG 000.150 You should provide information showing the value of the product over the past 10 years. If the product has not been on the market for at least 10 years, you should provide information covering the entire period that the product has been available to consumers. If the product has been replaced or updated with a new product, information on historical value for similar products is also relevant.
- RG 000.151 You should specify all major changes to the cover, exclusions, excesses, benefits and any other key features of the product over the relevant period, including the dates on which these changes occurred.

Example 3: Historical value of home building insurance

Rural Insure has been selling its RanchProtect home building insurance product for 15 years through several home lenders. The policy wording has remained largely consistent over that time. Over the past 10 years, the claims ratio of RanchProtect has fluctuated between 40% and 135%, largely due to differences in natural disaster claims each year. The average claims ratio over the life of the product is 62%. Both the annual and 10-year average claims ratios are indicators of the historical value of RanchProtect.

Indicators of historical good value for money

- RG 000.152 The following quantitative information could indicate a product or class of products has historically been good value for money:
- (a) *Claims ratio*—The net incurred claims divided by the net earned premiums is a key indicator of good value for money.
 - (b) *Claims acceptance rate*—A higher claims acceptance rate can indicate that the product is providing value to a substantial number of consumers who need it.
 - (c) *Declined claim and withdrawal rates and reasons*—Lower rates of declined claims and withdrawal can indicate that the product is designed to meet the expectations and needs of purchasers.
- RG 000.153 It is useful to provide this information for the first four days of a policy being taken out (i.e. during what will be the deferral period if an exemption is not granted).

New or redesigned products

- RG 000.154 If there is insufficient data to show the historical value of a product (e.g. new or significantly redesigned products), ASIC may consider other data about product value. This may include:
- (a) similar financial products and the value indicators for those products over time (e.g. claims ratios, data on claims outcomes and policy cancellations);

- (b) product design, including cover, exclusions, excesses, benefits and any other key features of the product; and
- (c) the risks and forecast and typical distribution costs of the intended distribution channels.

High risk of underinsurance or non-insurance: s12DY(2)(b)

RG 000.155 This risk relates to the likelihood and effect of a claim occurring during the deferral period (rather than the effect of an insurer leaving the add-on insurance market or an intermediary ceasing to sell the product if they are not operating under an exemption).

Note: Our approach is consistent with [Explanatory Memorandum](#), paragraph 3.102.

RG 000.156 A decrease in sales of an add-on insurance product will not necessarily, on its own, indicate a risk of underinsurance or non-insurance. This is because consumers may be able to buy insurance covering the relevant risks outside the add-on sales channel. An applicant will need to show why and how a deferral will result in consumers being underinsured or uninsured.

High risk

RG 000.157 A high risk is more than a moderate risk or possibility. Several factors may indicate a high risk of underinsurance or non-insurance, including:

- (a) whether consumers can access insurance to cover the relevant risk outside the add-on channel (e.g. through a financial advisor or directly from an issuer of insurance);
- (b) the number of consumers at risk of underinsurance or non-insurance (i.e. the number expected to make a claim within the first four days of a policy); and
- (c) the potential effect of an insurable event occurring for those consumers who are at risk of underinsurance or non-insurance, including whether its cost or effect would be low, moderate, high or catastrophic.

Specifying the risk

RG 000.158 An applicant will need to show that the relevant risk of underinsurance or non-insurance is addressed by the add-on insurance product or class of products.

RG 000.159 In general, there may be a higher risk of underinsurance or non-insurance where the product provides broader coverage of insurable risks commonly faced by consumers. Conversely, the risk of underinsurance or non-insurance may be lower if the insurable risk is already covered by other financial products. For example, the risks covered by a consumer credit insurance policy may be similarly covered by life insurance held by consumers, including through their superannuation fund.

- RG 000.160 In describing the risk of underinsurance or non-insurance in your application, you should address:
- (a) the relevant insurable risk (or risks);
 - (b) which classes of consumers face the risk;
 - (c) how the add-on insurance product addresses the insurable risk;
 - (d) how the operation of the deferred sales model would create a risk of underinsurance or non-insurance;
 - (e) when the risk occurs—that is, during or after the four-day deferral period;
 - (f) why there is a ‘high’ risk of underinsurance or non-insurance; and
 - (g) the financial and other effects of the risk materialising (e.g. the number of underinsured or uninsured consumers, the value of uninsured losses).

Indicators of a high risk of underinsurance or non-insurance

- RG 000.161 Indicators of a high risk of underinsurance or non-insurance in relation to the first four days of consumers taking out a policy may include:
- (a) total number of claims—higher claims may indicate a greater risk of an uninsured event occurring;
 - (b) total value of claims paid—claim value may indicate consumers are placed at more significant financial risk;
 - (c) proportion of claims where the total sum insured was paid—this may indicate claims are covering losses as expected by consumers;
 - (d) claim decline and withdrawal rates—lower rates may indicate that the product more effectively addresses the risk;
 - (e) reasons for claim declines and withdrawals—clearly recorded reasons may indicate that the issuer of the insurance understands why some policyholders are not adequately covered; and
 - (f) statistical data on the likelihood of the insurable risk materialising.
- RG 000.162 Other indicators of a high risk of underinsurance or non-insurance may include:
- (a) comparable data across the total life of the product;
 - (b) any waiting periods or other conditions or exclusions that may affect claims during the first four days of the policy; and
 - (c) product features that address the relevant insurable risk.

Whether the product is well understood by consumers: s12DY(2)(c)

- RG 000.163 The factors that consumers need to assess when buying an add-on insurance product can include:
- (a) their risks, and the likelihood and effect of the risks;

- (b) the cost of dealing with the event compared with the cost of insurance;
- (c) the type of cover needed; and
- (d) the cost, cover, excess and exclusions of a particular product.

Note: See Financial Conduct Authority (FCA), [General insurance add-ons market study—Remedies: Value measures](#) (PDF 1.54 MB), discussion paper, June 2015, p. 11.

RG 000.164 A consumer’s ability to understand an add-on insurance product can be affected by the circumstances of the sale, including a lack of clear information and barriers to engaging with any information (e.g. their focus on the principal product or service).

Note: For more information about the barriers to consumer understanding add-on insurance products, see [Report 492 A market that is failing consumers: The sale of add-on insurance through car dealers](#) (REP 492).

RG 000.165 The fact that an insurance product is frequently or repeatedly purchased by consumers does not in itself indicate the product is well understood by consumers. For example, research has found that the basic features of commonly purchased insurance (e.g. home building insurance) are not well understood by consumers.

Note: See [Report 416 Insuring your home: Consumers’ experiences buying home insurance](#) (REP 416), pp. 9–10.

RG 000.166 ASIC will have regard to a range of evidence—supplied with your application and obtained by ASIC from other sources—of:

- (a) consumer understanding of the specific add-on insurance product or class of products;
- (b) consumer understanding of the product or similar products distributed through a range of distribution channels;
- (c) the impact of the add-on sales process on consumer understanding, including the ‘no advice’ or ‘general advice’ models, the lack of product choice and consumer fatigue; and
- (d) consumer understanding of the product at the time of purchase and not at a later time (e.g. during the ‘cooling-off period’ which is relevant to opt-out sales, and not the relevant time for the purposes of the deferred sales model).

RG 000.167 When assessing consumer understanding, ASIC will consider the target market for the add-on insurance product. We will consider consumer understanding of the add-on insurance product, and the same or equivalent product(s) distributed through other channels.

RG 000.168 Evidence that the product is well understood by consumers may show that they understand:

- (a) the present or future risks to products or services they purchase;
- (b) whether they need to insure against those risks and, if so, the level of cover they need;

- (c) the main features of the product (e.g. excess, key cover, exclusions and conditions); and
- (d) whether the features of the product are suitable for them.

Indicators the product is well understood by consumers

RG 000.169 The following are examples of indicators that an add-on insurance product may be well understood by consumers:

- (a) *Claim decline and withdrawal rates*—Low rates may show that consumers are getting the cover they expect under the product.
- (b) *Claim decline and withdrawal reasons*—These could indicate that claims are declined for reasons other than the claimant not being eligible under the policy, or the loss not being insured.
- (c) *Distribution controls and processes*—Appropriate distribution controls and restrictions ensure that products are sold to the target market, and processes to monitor and review consumer outcomes including consumer understanding (e.g. the effect of disclosure or follow-up contact).

Note: See also [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274), which sets out our guidance on the design and distribution obligations in Pt 7.8A of the Corporations Act which apply to issuers and distributors of financial products. These include obligations to determine an appropriate target market for the product ('target market determination'), ensure distribution of the product is consistent with this determination, and monitor and review consumer outcomes.

Differences between the add-on insurance product and similar products: s12DY(2)(d)

RG 000.170 ASIC may consider differences in the main cover, exclusions, benefits and excess of the add-on insurance product or class of products, compared with financial products of a similar kind. We may also have regard to the benefit to consumers, if any, of the product being available as an add-on product. In doing so, we may consider the distribution costs of the add-on channel.

Indicators of differences between the add-on insurance product and similar products

RG 000.171 An add-on insurance product or class of products may be compared with and differentiated from financial products of a similar kind on the basis of factors such as:

- (a) key product features, including benefits and exclusions;
- (b) premiums and claims ratios;
- (c) target markets;
- (d) distribution costs; and
- (e) claims outcomes, including acceptance, decline and withdrawal rates and reasons.

Other matters ASIC considers relevant: s12DY(2)(e)

RG 000.172 ASIC considers relevant matters within s12DY(2)(e) to be:

- (a) Parliament’s intention for class exemptions to be provided by way of regulation to be exercised only in ‘exceptional circumstances’; and
- (b) the fact that Parliament did not give ASIC a general class exemption power.

Note: See [Explanatory Memorandum](#), paragraph 3.98.

RG 000.173 Some of the other matters we may consider are set out in Table 4.

Table 4: Other matters ASIC may consider as relevant

Matter	Guidance
Whether the add-on insurance product is a class of product which is required by law	RG 000.176
Whether the product provides ‘standard cover’	RG 000.177–RG 000.179
Complexity of the product or class or products	RG 000.180–RG 000.183
How product issuers and distributors manage conflicted remuneration	RG 000.184–RG 000.187
Governance and monitoring of product design and distribution	RG 000.188–RG 000.190

RG 000.174 In addition, when considering whether to exempt an add-on insurance product or class of products sold by a specified person, ASIC will consider whether applying any particular condition to an exemption will adequately address the risks for consumers that the exemption may create.

RG 000.175 A person applying for an exemption may propose that any specific condition or conditions apply to that exemption. For examples of the conditions ASIC may apply to an exemption, see RG 000.142–RG 000.143.

Insurance required by law

RG 000.176 A matter that ASIC may consider relevant in considering whether to make an exemption is whether the insurance is required by law.

Note: See [Explanatory Memorandum](#), paragraph 3.103.

Compliance with standard cover

RG 000.177 In some cases, ASIC may consider whether a product provides ‘standard cover’ under Pt 3, Div 1 of the Insurance Contracts Regulations 2017.

RG 000.178 The standard cover regime prescribes the type of cover, insured events, exclusions and minimum amounts for six general insurance products:

- (a) motor vehicle insurance;

- (b) home buildings insurance;
- (c) home contents insurance;
- (d) sickness and accident insurance;
- (e) consumer credit insurance; and
- (f) travel insurance.

RG 000.179 There is a greater likelihood that an add-on insurance product which provides standard cover will be fit-for-purpose and provide cover that consumers expect.

Product complexity

RG 000.180 Add-on insurance products may be complex by nature. Many risk products are complex due to the contingencies they cover, and because terms such as the excess and exclusions affect both the cost and potential value to the consumer of the product.

RG 000.181 ASIC will not preclude an add-on insurance product from being exempt from the deferred sales model solely on the basis that the product is complex. However, an application may include information about the complexity (or otherwise) of the product and whether—without a deferral period—that complexity is likely to affect consumers’ ability to understand the product and decide whether it is appropriate for them.

RG 000.182 Given the nature of add-on insurance products and sales models, providing consumers with disclosure documents at the time of sale will not, in and of itself, address the complexity of the decision that consumers face. Product issuers should consider product complexity and the target market when designing products.

Note: The limitations of disclosure documents in informing consumers and assisting them to make decisions about financial products has been detailed by ASIC in [Report 632](#) *Disclosure: Why it shouldn't be the default* (REP 632).

RG 000.183 ASIC will also consider the extent to which the systems, governance, and monitoring of product distribution are appropriate for the nature of the add-on insurance product: see RG 000.188–RG 000.190.

Management of conflicted remuneration

RG 000.184 When considering whether to exempt a product or class of products from the deferred sales model, ASIC will have regard to how effectively the product issuer and distributors manage the risks arising from remuneration of distributors.

RG 000.185 Conflicts of interest can arise where a product issuer or distributor has an interest in selling a consumer a product which does not align with the consumer’s interest in the product. Conflicted remuneration can include

commissions, volume-based benefits, profit shares, some performance benefits for employees, ‘soft dollar’ benefits and other incentives such as retention benefits or new business ‘strike rates’ (i.e. how often a salesperson closes sales).

- RG 000.186 Conflicted remuneration is not prohibited for sales of general insurance but is restricted for sales of life insurance: s963K of the Corporations Act. Conflicted remuneration has been shown to lead to poor consumer outcomes by contributing to high premiums, poor conduct by salespeople and sales of unsuitable products.

Note: See [REP 492](#).

- RG 000.187 Consumers are more likely to be adversely affected by conflicted remuneration if:
- (a) incentive schemes are based on sales volumes, fee income or similar measures;
 - (b) incentive schemes include features that are harder to manage;
 - (c) management does not understand how the features, complexity and value of their incentive schemes could increase mis-selling; and/or
 - (d) poor quality sales or mis-selling are not adequately reflected in the eligibility for, or level of, incentive payments.

Note: See FCA (formerly, Financial Services Authority), [Final guidance: Risks to customers from financial incentives](#) (PDF 2.29 KB), January 2013.

Product design and distribution governance

- RG 000.188 When considering whether to make an exemption, we will have regard to the governance and monitoring of the design and distribution of an add-on insurance product.

- RG 000.189 We expect that a product governance framework will:
- (a) focus on the identified target market across the lifecycle of the financial product;
 - (b) be designed to reduce the risk of products being sold to consumers when those products are not consistent with the consumers’ likely objectives, financial situation and needs; and
 - (c) be monitored actively and reviewed and improved regularly.

- RG 000.190 ASIC will have regard to any evidence linking the way the product is designed and distributed with the delivery of good consumer outcomes.

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Appendix 3: Data template for use with applications for exemption from the deferred sales model

RG 000.191 This appendix refers to a template on the ASIC website that applicants may use to collate and submit product data to support an application for an exemption. For the data template: see Attachment 2 to CP 339 on our website at www.asic.gov.au/cp.

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Key terms

Term	Meaning in this document
add-on insurance product	Has the meaning given in s12DA of the ASIC Act
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC Regulations	Australian Securities and Investments Commission Regulations 2001
consumer	Has the meaning given by s12BC of the ASIC Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 325 (for example)	An ASIC consultation paper (in this example numbered 325)
CTP insurance	Compulsory third party motor vehicle accident personal injuries insurance
customer	A consumer who has acquired, is acquiring or has entered into a commitment to acquire a principal product or service
deferral period	The add-on insurance deferral period—has the meaning given in s12DP of the ASIC Act
Explanatory Memorandum	Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020
FCA	Financial Conduct Authority (UK), formerly Financial Services Authority
final report	The final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, published February 2019
Financial Sector Reform Act	<i>Financial Sector Reform (Hayne Royal Commission Response) Act 2020</i>
hawking prohibition	The hawking prohibition in s992A of the Corporations Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
post-deferral period	The add-on insurance post-deferral period
pre-deferral period	The add-on insurance pre-deferral period—has the meaning given in s12DP of the ASIC Act

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Term	Meaning in this document
principal product or service	The product or service that a customer acquires, or agrees to acquire, during the transaction in which they are offered or sold an add-on insurance product
principal provider	The provider of the principal product or service
Product Disclosure Statement (PDS)	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 Note: See s761A for the exact definition.
reg 3B (for example)	A regulation of the ASIC Regulations (in this example numbered 3B), unless otherwise specified
REP 416 (for example)	An ASIC report (in this example numbered 416)
RG 38 (for example)	An ASIC regulatory guide (in this example numbered 38)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
s12DO (for example)	A section of the ASIC Act (in this example numbered 12DO), unless otherwise specified
third-party provider	The person who sells an add-on insurance product under an arrangement with the principal provider

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Related information

Headnotes

Add-on insurance, Customer Information, deferral period, deferred sales model, hawking prohibition, post-deferral period, pre-deferral period, principal product or service, principal provider, third-party provider

Regulatory guides

[RG 21](#) *How ASIC charges fees for relief applications*

[RG 38](#) *The hawking prohibitions*

[RG 51](#) *Applications for relief*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 195](#) *Group purchasing bodies for insurance and risk products*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 274](#) *Product design and distribution obligations*

Information sheets

[INFO 198](#) *Extended warranties*

Consultation papers

CP 339 *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance*

Reports

[REP 416](#) *Insuring your home: Consumers' experiences buying home insurance*

[REP 492](#) *A market that is failing consumers: The sale of add-on insurance through car dealers*

[REP 632](#) *Disclosure: Why it shouldn't be the default*

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Legislation

ASIC Act, Pt 2, Div 2, Subdiv DA (s12DO–12DZA) 12BA, 12BC, 12BC(2), 12BD, 12DO, 12DO(1), 12DO(2), 12DO(3), 12DP, 12DQ, 12DQ(1), 12DQ(2), 12DQ(5), 12DR, 12DR(1), 12DR(1)(b), 12DR(2)(a), 12DR(3), 12DR(4), 12DT, 12DU, 12DV, 12DW, 12DX, 12DX(1), 12DX(2), 12DX(4), 12DY, 12DY(1), 12DY(1)(b), 12DY(2), 12DY(2), 12DY(2)(a), 12DY(2)(b), 12DY(2)(c), 12DY(2)(d), 12DY(2)(e), 12DY(3), 12GB, 12BAA, 12BAA(5), 12BAB(1AA), 12DTA, 12DZA, 12DZA(2), 244

ASIC Regulations, reg 3B5

Corporations Act, Ch 7, Pt 7.7A, 7.9A, 963K, 992A, 994F, 1019B, 1101C

Criminal Code Act 1995, s13.3(3)

Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020

Financial Sector Reform Act

Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Regulations 2020

Insurance Contracts Regulations 2017, Pt 3, Div 1

National Credit Act, s158LA, 158LE

Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020

Other references

FCA, [Final guidance: Risks to customers from financial incentives](#) (PDF 2.29 KB), January 2013

FCA, [General insurance add-ons market study—Remedies: Value measures](#) (PDF 1.54 MB), June 2015

Royal Commission, [Final report](#), 4 February 2019

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