

30 April 2021

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Dear Ms Eckermann

DEFERRED SALES MODEL FOR ADD ON INSURANCE: CONSULTATION PAPER 339

The Insurance Council of Australia (Insurance Council)¹ appreciates the opportunity to provide comments on ASIC Consultation Paper 339 (CP 339): *Implementing the Royal Commission Recommendations: The Deferred Sales Model for Add-on Insurance* which was released for consultation on 11 March 2021.

As always, we have greatly benefited from ASIC's ongoing and open engagement with the ICA in relation to the Deferred Sales Model (DSM) including through consultations on the proposed Consumer Information Statement (CIS) earlier this year. We would be keen to continue to work closely together towards the finalisation of the draft regulatory guide accompanying CP 339.

Key recommendations

Our key recommendations include the following:

- That applications made under Section 12DY to ASIC for an exemption under the DSM should be considered on the basis of the facts, circumstances, and merits of each individual application. In relation to RG 000.120, we suggest that ASIC should not consider as relevant matter: Parliament's intention that class exemptions should

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance). December 2020 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$53.2 billion per year and has total assets of \$143.6 billion. The industry employs approximately 60,000 people and on average pays out \$187.2 million in claims each working day (\$47.2 billion per year). Over the 12 months to the end of December 2020 the industry's net profit after tax (NPAT) was \$35 million - a 98.9 per cent decrease from the prior year's NPAT of \$3.1 billion. The industry's underwriting result was -\$78 million, falling sharply from \$2.3 billion in the prior year.

All legislative references are to the *Australian Securities and Investments Act 2001* (Cth) unless stated otherwise.

only be granted in exceptional circumstances; and that Parliament did not give ASIC a general class exemption power. (Recommendation 1)

- That ASIC should provide an indicative timeframe for the assessment of each Section 12DY application and if requested by the applicant, provide a no action letter for the duration of the period that ASIC is considering such application. (Recommendation 2)
- That ASIC should provide detailed reasons for its decisions, including providing an assessment of the metrics submitted by insurers, and how they impacted ASIC's decisions regarding whether or not to provide an exemption, or to impose conditions, as appropriate. (Recommendation 3)
- That ASIC should provide a condensed list of metrics necessary to support a Section 12DY application to more closely align with the Treasury data request of January 2021 which we believe will be more practically feasible for insurers to meet. (Recommendation 8)
- That ASIC should provide insurers with a reasonable opportunity to review information provided by "other sources" and provide responses as appropriate. (Recommendation 9)
- That insurers should be able to provide data in relation to intermediated sales, rather than in relation to the new category of "add on insurance", for the initial set of applications for exemptions under Section 12DY. (Recommendation 10)
- That ASIC should "conduct further testing of [its] proposal" regarding Consumer Information statements (as suggested by ASIC in paragraph 56 of CP 339) – to address the possibility that they may unintentionally lead to reduced take up of (any) insurance, leading to increased risk of non-insurance. (Recommendation 13)
- That ASIC should "conduct further testing of [its] proposal" regarding Consumer Information statements (as suggested by ASIC in paragraph 56 of CP 339) – to address their potential negative impact on disadvantaged cohorts relying on postal communications. (Recommendation 14)

We would appreciate an opportunity to meet with you to discuss this submission in greater detail. In the meantime, if you have any questions in relation to our submission, please contact _____, Senior Policy Manager, by email at _____ or on telephone on _____. Please note that, as per usual practice, this submission will be made public on our website shortly.

Yours sincerely

Executive Director & CEO

PART A. BACKGROUND TO OUR PROPOSALS

Purpose of the DSM

Reference

RG 000.1 – 5; CP 339, paragraphs 1 – 11

Recommendation

1. That applications made under Section 12DY to ASIC for an exemption under the DSM should be considered on the basis of the facts, circumstances, and merits of each individual application. In relation to RG 000.120, we suggest that ASIC should not consider as relevant matter: Parliament's intention that class exemptions should only be granted in exceptional circumstances; and that Parliament did not give ASIC a general class exemption power.
2. That ASIC should provide an indicative timeframe for the assessment of each Section 12DY application and if requested by the applicant, provide a no action letters for the duration of the period that ASIC is considering such application.
3. That ASIC should provide detailed reasons for its decisions, including providing an assessment of the metrics submitted by insurers, and how they impacted ASIC's decisions regarding whether or not to provide an exemption, or to impose conditions, as appropriate.

Additional information

We continue to support the policy intent of the DSM, and recognise the substantial work undertaken by ASIC over the recent years which has found "...systemic problems with the sale of add-on insurance through car yards and lenders..." (CP 339, paragraph 8).

At the same time, we suggest there should also be recognition that the DSM as legislated applies to all "add on" insurance products rather than applying only to those products where the evidence of consumer harm has been as clearly established. As outlined in our October 2019 submission to the Treasury Proposal Paper on the DSM, the industry remains concerned that the DSM will apply to a large number of add on insurance products that provide substantial value to customers, resulting in reduced take up of insurance, potentially leading to greater risk of under-insurance or non-insurance.

Our reading of the DSM legislation and the Explanatory Memorandum is that the Parliament has addressed the industry's concern by providing the minister and ASIC with the power to provide exemptions from the DSM under Sections 12DX and 12DY respectively. We recognise that exemptions through ministerial regulations under Section 12DX will only be granted in 'exceptional circumstances, as noted at paragraph 3.98 of the Explanatory Memorandum. In light of this position, it is all the more critical therefore that Section 12DY applications to ASIC for exemptions from the DSM be considered on a case-by-case basis according to their merit in accordance with ASIC's power to grant relief as reflected in Regulatory Guide 51 rather than be limited only to exceptional cases. For these reasons we believe that ASIC should not consider as relevant factors under s12DY (2) (e), Parliament's intention for class exemptions by way of regulation given that ASIC does not have a general class exemption power (as noted in RG 000.120). Rather ASIC should adopt the approach as set down in Regulatory Guide 51, namely ASIC should consider each individual application on the basis of the facts, circumstances, and merits of each such application.

We look forward to engaging in further discussions with ASIC regarding the process to be followed in respect of applications under Section 12DY, including how the industry may be

able to assist ASIC with the management of the potential large volume of applications. In that context, we also suggest that it would be appropriate for ASIC to provide indicative timeframes for the assessment of Section 12DY applications. We recognise that under Regulatory Guide 51.55, ASIC attempts to provide an in-principle decision within 28 days but we consider that it would be beneficial if a more specific timeframe were to be provided by ASIC.

Our members also consider it would be of assistance if ASIC provided no action letters for the duration of the period during which ASIC was considering an exemption application, to avoid unnecessary compliance burdens. If insurers do not have the benefit of no action letters, they will need to make systems changes at considerable expense to comply with the DSM from 5 October 2021, which would then potentially have to be unwound after receiving an exemption from ASIC.

We also suggest that ASIC should provide detailed reasons for its decisions including providing an assessment of the metrics submitted by insurers, which would be critical for the relevant insurer to inform any future applications for exemptions. Whilst ASIC may currently provide brief decisions in respect of applications, we consider it would be beneficial to all insurers and ASIC if insurers could understand full detailed reasons as to why an exemption application was or was not successful. This would assist in insurers understanding the rationale for the decisions and minimise the potential for insurers to consider seeking an administrative review of ASIC's decisions on exemptions (as referred at paragraph 3.105 of the Explanatory Memorandum).

PART B. SCOPE OF THE DSM

Bundled products

Reference

RG 000.18, Explanatory materials, DSM legislation, paragraph 3.29, Example 3.3

Recommendation

4. That ASIC should provide more detailed guidance on how RG 000.18 regarding bundled products interacts with statements in the explanatory materials that the DSM does not apply to complimentary products which are not offered separately.

Additional information

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

We would appreciate further guidance on how RG 000.18 interacts with paragraph 3.29 of the explanatory materials accompanying the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Cth), which states that insurance that is provided complimentary with a product or service is generally not an add-on insurance product and is unlikely to be caught by the DSM as it is "...*generally not offered or sold to a customer...*".

For an illustrative example in relation to grass root sporting clubs:

- The peak sporting body ascertains how many players there will be in the season (clubs are required to estimate).
- The peak body then places the insurance (liability and personal accident) with a broker who writes a policy (with the insurer),
- The peak body pays for it, then informs the Clubs of the cost and the clubs work out the fees for the year which include the cost of insurance as well as other costs such as grounds hire. Members sign up for the season and pay a set amount which includes the insurance.
- The Club then pays back the peak body for the insurance coverage for their individual members. To require the sports club to introduce a deferred sales model would be highly impractical, unlikely to be complied with – at least initially and potentially could lead to players not paying the insurance.

An alternative view may be that as the insurance is bought prior and all the player is doing is paying back a set amount of premium to the governing body, therefore its not add on insurance to a membership.

In our view the preferred approach would be for the finalised regulatory guide to clearly distinguish the commentary in RG 000.18 from those cases such as the sale of sporting club memberships where a separate offer or sale of insurance does not arise but is merely offered as part of the bundled product (in the case of sporting club memberships, to provide public liability and other coverage for any damages associated with membership activities).

Lender's mortgage insurance

Reference

RG 000.29

Recommendation

5. That ASIC should provide express guidance on whether the DSM applies to lender's mortgage insurance.

Additional information

We would appreciate express guidance on whether the DSM applies to lender's mortgage insurance. This is particularly given RG 000.29 which notes that 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. The commentary further notes that ASIC would 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.

Communication with consumers following deferral

Reference

RG 000.90 – 000.94

Recommendation

6. That ASIC should provide clarity that what constitutes customer-initiated contact includes requests made during the pre-deferral period to be contacted later. Where a customer had made such a request, it should be clarified that a provider can communicate with the customer in the manner requested, including by telephone, in the post deferral period.

Additional information

As noted in RG 000.91, during the post-deferral period, a provider can only make an offer, request, or invitation to a consumer to purchase the add-on insurance in writing. However, if the consumer had initiated the contact, the provider may use any method of communication to make an offer, request, or invitation. There is some ambiguity in the legislation around what constitutes "customer-initiated contact".

The Insurance Council submits that it should be permissible for a provider to make an offer, request or invitation using any method of communication if, in the pre-deferral period, the customer had indicated that they would like to be contacted. Acknowledging that the communication would need to take place after the deferral period ends, we seek clarification from ASIC that, where the customer is given options and asks to be contacted, this falls within the scope of customer-initiated contact. While we note that providers can communicate with customers in the post-deferral period in written form, many customers prefer to speak to a person when considering their insurance needs.

Consistent with the anti-hawking prohibition, which applies prior to the pre deferral period and 6 weeks after the commencement of the deferral period, any customer request to be contacted in the post-deferral period should be positive, voluntary, and clear. Provided that such requests are clearly made and recorded, we do not see any consumer detriment to enabling communication in forms other than in writing. Customers will have been provided with the ASIC customer information and the sale itself will still be subject to a four-day deferral period giving customers time to consider whether the product is right for them and to obtain quotes or information from other insurers.

PART C. COMPLYING WITH THE DSM

Anti-hawking prohibition and DSM exemptions

Reference

RG 000.54 – 64

Recommendation

7. That ASIC should provide express guidance on whether (and how) the hawking prohibition applies in relation to add on products that are exempt from the DSM.

Additional information

We note in that regard, RG 000.54 to RG 000.64 which state that 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.

For background, add on insurance products that will not be subject to the DSM are comprehensive motor insurance, compulsory third party motor insurance, travel insurance, and any other products that will be exempt through ministerial regulations under Section 12DX or through an ASIC instrument under Section 12DY.

PART D. EXEMPTIONS FROM THE DSM

Exemption factors: metrics requested

Reference

Appendix 2

Recommendation

8. That ASIC should provide a condensed list of metrics necessary to support a Section 12DY application to more closely align with the Treasury data request of January 2021 which we believe will be more practically feasible for insurers to meet.

Additional information

ASIC has requested an extensive set of data to support a Section 12DY application. We have serious concerns about whether it would be practically feasible for insurers (particularly the smaller insurers) to be able to prepare the requested data to support its application.

In that regard we would appreciate a discussion about how the data request can be pared back to be more closely aligned with the data request from Treasury in January 2021 for the purposes of a Section 12DX application for exemption by ministerial regulations, which we believe provides a comprehensive overview of the product in question while reducing compliance burdens for insurers. If this is not feasible, as noted earlier in the submission, we believe that consistent with administrative law principles of procedural fairness, ASIC should provide detailed reasons for its decisions including providing an assessment of the metrics submitted by insurers, and how they impacted ASIC's decision making.

Exemption factors: other sources of information

Reference

RG 000.125

Recommendation

9. That ASIC should provide insurers with a reasonable opportunity to review information provided by "other sources" and provide responses as appropriate.

Additional information

We would appreciate further clarification of ASIC's suggestion in RG 000.125 that it may have regard to "other sources of information available to ASIC where appropriate" when assessing an application for a Section 12DY exemption. Given that these "other sources" would influence the outcome of the application for an exemption, we believe that it would be appropriate for insurers to have a reasonable opportunity to review information provided by these "other sources" and provide responses as appropriate.

Exemption factors: data on intermediaries as proxies

Reference

Appendix 2

Recommendation

10. That insurers should be able to provide data in relation to intermediated sales, rather than in relation to the new category of "add on insurance", for the initial set of applications for exemptions under Section 12DY.

Additional information

While preparing class exemption applications under Section 12DX, we found that data in relation to “add on insurance” has not historically been collected by insurers, given that the category of “add on insurance” was only introduced into law with the DSM legislation. As such we relied on data historically collected in relation to intermediated sales as the best available proxy metric to provide a comparison against products sold directly by the insurer.

Exemption factors: historical value timeframe

Reference

RG 000.150

Recommendation

11. That there should be greater flexibility in the timeframe over which historical value should be demonstrated.

Additional information

RG 000.150 notes that insurers should provide information showing product value over the past 10 years. (If the product has not been on the market for at least 10 years, ASIC notes that insurers should provide information covering the entire period that the product has been available to customers. ASIC also notes that information on historical value for similar products is also relevant if the product has been replaced or updated with a new product).

Our recent experience with Section 12DX class exemption applications suggests that historical data over 3 to 5 years will generally provide a sound basis for determining whether a given product has historically delivered customer value. While we accept that there may be sound reasons why ASIC may be interested in reviewing historical value data over a longer time horizon for a given product, we also note that there may be challenges associated with datasets going beyond the 3 to 5 years horizon. For example, there may have been significant changes to the key attributes of the given product, as well as the broader market and consumer base, which may mean that datasets over a longer time horizon may not always be indicative of product value going forward. There may also be cases where data going over 10 years may simply not be available, noting for example that Section 286 of the *Corporations Act 2001* (Cth) currently requires financial records to be kept for a maximum of 7 years after transactions covered by the records are complete.

Exemption factors: benchmarking

Reference

RG 000.152

Recommendation

12. That there should be greater guidance on appropriate benchmark rates regarding indicators of historical good value for money.

Additional information

Greater guidance on appropriate benchmarks for claims ratios, claims acceptance rates, declined claims and withdrawal rates and reasons would provide a firmer basis for insurers in preparing exemption applications. Such guidance could, for example, be similar to the

guidance provided by the Financial Conduct Authority in the United Kingdom which has noted that:²

Typically, home and motor products would have expected claims ratios of 50% or higher. Where a firm has an average claims ratio of 50% for a reporting channel, they should report the proportion of customers with expected claims ratio [sic] 40% or below and 20% or below for that reporting channel.

PART D. CUSTOMER INFORMATION

Consumer research: risk of non-insurance or under-insurance

Reference

CP 339, paragraphs 49 – 56

Recommendation

13. That ASIC should “conduct further testing of [its] proposal” regarding Consumer Information statements (as suggested by ASIC in paragraph 56 of CP 339) – to address the possibility that they may unintentionally lead to reduced take up of (any) insurance, leading to increased risk of non-insurance.

Additional information

The “Slowing down to add it up” report (*BETA report*) produced by ASIC with the Behavioural Economics Team at the Department of the Prime Minister and Cabinet, which was attached to CP 339, is a welcome contribution to the policy debate around the DSM. It is the most significant attempt to date at an evidence-based analysis of the likely impact of the DSM; we believe it is the step in the right direction towards better informed policy and regulatory discussions between ASIC and the industry. We would be keen to discuss how we can work together with ASIC including on any additional consumer research as appropriate.

Most importantly we note the following:

We found being given any information statement substantially decreased sales of add-on insurance in our experiment. Of people who were given an information statement, 29 per cent bought add-on insurance compared to 38 per cent of people who were not given an information statement. This is a 24 per cent reduction; a large and statistically significant difference. The impact was similar across all statement designs.

The central question is: if there is a 24% reduction in add-on insurance take up as a result of the Consumer Information statement being provided, what proportion of that group will purchase insurance on a stand-alone basis? Our concern is that a substantial proportion of that group would decide against purchasing, or not in a sufficiently timely manner. A potential unintended consequence of the Consumer Information statement is increasing the risk of non-insurance and under-insurance.

Without having undertaken our own consumer research it is not clear whether this potential regulatory detriment will be outweighed by any regulatory benefits of the Consumer Information statement. However, this does appear to be a critically important regulatory consideration which we believe should be further explored by ASIC in consultation with the

² Financial Conduct Authority, “General insurance pricing practices market study: Consultation on Handbook changes”, Consultation paper CP20/19***, September 2020, paragraph 6.15.

industry. As suggested by ASIC in paragraph 56 of CP 339, we would welcome an opportunity to work together with ASIC and other interested parties to build on the BETA report through additional consumer research.

We would also appreciate a broader discussion on other aspects of the BETA report.

- For example, on whether “the add-on insurance market isn’t delivering value-for-money for consumers” (BETA report, page 5), the BETA report cites ASIC’s work on add on insurance through car yards and uses it to support a broader claim about add-on insurance more generally. As noted earlier, we recognise the considerable work undertaken by ASIC in relation to car yards, and at the same time would also suggest there should be recognition that the DSM as legislated applies to all “add on” insurance products rather than applying only to those products where the evidence of consumer harm has been clearly established.
- Another example is the statement in the BETA report that the “sales environment for add-on insurance limits consumers’ ability to make optimal choices” (BETA report, page 5): The BETA report cites the Treasury’s 2019 Proposals Paper on the DSM which did not provide research or evidence to support the claims that: consumers are typically focused on the main item they are buying, and give little or no thought to an add-on they may be offered at the close of the sale; and that time and fatigue can also hamper consumers’ ability to make informed choices. We welcome consumer testing of these statements.

Manner of provision: Postal communications

Reference

CP 339: para 80 – 89, RG 000.66-67

Recommendation

14. That ASIC should “conduct further testing of [its] proposal” regarding Consumer Information statements (as suggested by ASIC in paragraph 56 of CP 339) – to address their potential negative impact on disadvantaged cohorts relying on postal communications.

Additional information

Section 12DP provides that ASIC has the discretion to decide whether or not to prescribe a Consumer Information statement, and that if ASIC exercises its discretion, the Consumer Information statement must be given by to a customer in order for the 4-day deferral period to start in relation to an add-on insurance product.

In CP 339, ASIC proposes to prescribe that:

- The default method of providing the Consumer Information statement is electronic, but ASIC will not prescribe exhaustively the available methods for electronic provision.
- If the customer does not confirm that they can access the Customer Information statement electronically, the provider must give the Customer Information statement in hardcopy format.
- If the Customer Information statement is sent via postal mail, a return paid and addressed envelope must be included so the customer may return the page with the opt-out tick box checked, and the provider must account for postage time when

recording when the Customer Information Statement was given.

ASIC notes that it is important that a customer who receives the Customer Information statement via postal mail is not disadvantaged relative to other customers.

We are concerned that this will indeed end up being the outcome because delays in postal communication will end up considerably stretching out the deferral period well beyond the 4-day period in the legislation. This will make it harder to get insurance coverage when needed, increasing the risk of non-insurance. This is likely to be exacerbated in rural areas, and even more so during natural disasters or other disruptive circumstances.

We believe the impact of the Customer Information statement on customers relying on postal communications should be prioritised as a key regulatory consideration given that such customers are more likely to be in more disadvantaged cohorts such as the elderly, rural Australians, Indigenous Australians, and lower income households. We note in particular the latest Telstra Digital Inclusion Index which found:³

- The 2018 ABS survey data indicating 2.58 million Australians aged 15 years and over did not access the internet during the 6 months before being surveyed.
- There is a substantial gap between Australians living in urban areas – who are much more likely to be digitally included – and those living in rural areas (although the gap is closing through NBN take up).
- Affordability of internet expenditure is a key challenge – it has increased faster than household income – and is likely to be exacerbated by the COVID-19 economic slowdown.
- Older Australians are particularly likely to suffer from digital exclusion. Around 1 in 5 older Australians do not use the internet at all.
- Increases in digital inclusion for Indigenous Australians have stalled.

We would appreciate discussions with ASIC about directions going forward. One possible approach could be for ASIC to allow insurers to commence the deferral period by reading out the content of Consumer Information statements over the phone or directing the customer to a website containing the Customer Information Statement (with the customer confirming they had read the Customer Information statement), and then subsequently provide the hard copy via postal mail.

Content of provision: that customer can say ‘no’ and insurance is not compulsory

Reference

CP 339: para 62, proposal D2(d)

Recommendation

15. That ASIC should revisit the statements that a customer can say ‘no’ and that insurance is not compulsory, given that insurance may in some cases be required under legislation or as a matter of commercial practice.

³ Telstra (2020): “Measuring Australia’s digital divide: The Australian digital inclusion index 2020”, available at https://digitalinclusionindex.org.au/wp-content/uploads/2020/10/TLS_ADII_Report-2020_WebU.pdf.

Additional information

In CP 339, ASIC notes that:

The statements that a customer can say ‘no’ and that insurance is not compulsory are intended to convey to a customer that they do not need to buy the add on insurance they have been offered. These statements may help counter a common misconception about add-on insurance that has been created by some sellers during the sales process.

In this regard – we would note:

- We have not seen evidence to support the “common misconception... that has been created by some sellers”. What ASIC is suggesting could potentially amount to misleading conduct. If there is evidence of such behaviour, ASIC now has the necessary regulatory tools to take appropriate action against specific cases.
- There will be situations where insurance may indeed be “compulsory” in the sense that it is required under legislation or as a matter of commercial practice. Perhaps the best-known example is home and contents insurance – required by legislation in Queensland for home purchasers, and by way of contractual obligations for home purchasers in other jurisdictions (where insurance is required by the lender). Another example is boat insurance – under Queensland legislation, recreational ships more than 15 metres in length must have an insurance policy that provides more than \$250,000 for pollution clean up and \$10 million for salvage and wreck removal for any vessel in Queensland’s coastal waters.⁴
- At a broader level we would welcome an opportunity to further discuss the phrasing of these statements so that they do not unintentionally create the false impression that the customer does not need insurance, or indeed that insurance is harmful. There would be benefit in further consumer testing the phrasing of these statements to ensure they deliver on ASIC’s regulatory intent.

Content of provision: opt out mechanism

Reference

CP 339: para 66

Recommendation

16. That a more flexible approach should be taken regarding the opt-out mechanism where the Customer Information is provided electronically.

Additional information

In CP 339, ASIC notes that:

Where the Customer Information is provided electronically, the opt-out mechanism is to be via hyperlink. This is intended to make it efficient for customers to opt out at any time after the sale, without requiring any further direct contact with the salesperson (provider).

Members have noted that a hyperlink may not always be the most effective way to opt out of add-on insurance products where the customer information is provided electronically. Alternative approaches could include showing the customer the customer information while

⁴ <https://www.msq.qld.gov.au/Marine-pollution/Ship-insurance>.

being logged into an online portal, which may provide the option of showing a tick box within the on-screen text to allow opting out without navigating away from the customer information which would be necessary through a hyperlink. Another example could be where the customer information is sent through the use of an SMS text and the opt out is as simple as the customer replying with the number “1” or text “opt out”. In this regard we recommend that a broader approach should be taken, and that ASIC should provide examples of acceptable and unacceptable opt outs. This would be more consistent with other regimes including Australian Communications and Media Authority expectations for opting out of commercial electronic messages.

Content of provision: statement why the customer has been given the Customer Information statement

Reference

CP 339: para 66

Recommendation

17. That the statement why the customer has been given the Customer Information statement should be reconsidered to also address the possibility that they may unintentionally lead to reduced take up of (any) insurance, leading to increased risk of non-insurance, for reasons outlined under “Additional Information” to recommendation 12.

Content of provision: opt out mechanism

Reference

CP 339: Question D1Q2

Recommendation

18. That ASIC should prescribe product-specific content.

Additional information

Members have suggested that ASIC should prescribe some product specific content that differentiates the product and provider, and if applicable third-party providers, to which the customer information relates. This is necessary context for the customer receiving the information and without this the customer may not know what the information relates to, especially if multiple notices are received in proximity to each other. For example, a customer obtains a loan for the purpose of a holiday and so may receive multiple add-on insurance offers within a close proximity, including consumer credit insurance for the loan and travel insurance for the holiday.

Under ASIC’s proposed Customer Information statement, the only differentiator for the customer appears to be the sender’s email address. The lack of context about who the information is from and what product to the information relates to is therefore likely to diminish the effectiveness. It could also risk an error in the customer unsubscribing or opting out based on the information, as they will not know clearly which product or provider they are opting out from. It is recommended that the addition of simple field headings can be used to add minimal specific information to provide the customer with essential contextual information (e.g., product names, product types, etc.)

Manner of provision: font size and type

Reference

CP 339: D2Q1

Recommendation

19. That a more flexible approach should be taken regarding font size and type, with objective criteria about the font's attributes.

Additional information

Members have suggested that the requirement of the font to be Arial seems an unnecessary restriction, would be inconsistent with a technology neutral approach and could create an unnecessary burden for providers to comply with. Specifically, it may require significant changes to existing technology platforms which may be used to deliver the customer information in order to alter what is perfectly clear and easy to read font to Arial. It may also not be possible in certain digital mediums where a customer is able to customise the appearance of text displayed to them. For example, chatbots or digital customer service interfaces, SMS, mobile devices, etc. It is recommended that instead of prescriptive font requirements, that ASIC provide objective criteria about the font's attributes and then potentially only go so far as to provide recommended fonts that meet the objective criteria. Members have also noted that the current requirements do not cover all of the visual elements that may reduce the readability of the text. For example, nothing would currently prevent a provider using light blue font on a grey background.

Manner of provision: other form requirements for the electronic format

Reference

CP 339: D2Q2

Recommendation

20. That ASIC notes the following suggestions from members regarding other form requirements for the electronic format.

Additional information

Regarding links and attachments, members have noted that ASIC's proposal that customer information cannot be given via a link or as an attachment seems unnecessarily restrictive where a provider has the technology to allow them to monitor and record when a consumer has opened such a link or an attachment.

Regarding subject lines, there is a concern among members that the subject line proposed by ASIC lacks sufficient context and may not encourage the recipient customer to read any further. Members have suggested that subject lines should merely give an indication of what is within the message whereas the proposed subject line attempts to communicate a message in itself. While it is understood that part of the subject line should be consistent and prescribed, members have suggested that particular content and any variable content should be reconsidered by ASIC.

Manner of provision: when to provide the Customer Information

Reference

CP 339: D5Q1

Recommendation

21. That there should be greater flexibility regarding when the Customer Information statement can be provided.

Additional information

ASIC proposes to prescribe that the Customer Information statement must be given to the customer only after, and not before, they have made a commitment to acquire the principal product or service.

Members have raised concerns about ASIC's proposal potentially extending the deferral period (noting the concerns raised under Recommendation 13 particularly when the Customer Information statement is provided through postal communications). We submit that greater flexibility, including for example to have the Customer Information provided in the pre-deferral period when the provider is allowed to discuss the add-on insurance product with the customer is consistent with legislative intent, and may provide greater assistance to the customer by providing a longer period to consider the content of the Customer Information statement.

Additional issues for clarification

Reference

As below

Recommendation

22. That ASIC provides clarifications suggested by members below.

Additional information

Members have asked for clarification regarding the following references in the draft regulatory guidance.

References	Questions for clarification
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.	Does this include consideration where the component passed on is purely a reasonable administration fee charged by a group purchasing body (GPB) which is acting under the GPB ASIC instrument and is an allowable cost to be passed on to the customer under the ASIC instrument?
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.	Members have sought clarification that ASIC would regard home insurance sold with or in connection with a home loan to be add on insurance, noting that this question has been raised by other industry associations. That is, would the primary product be regarded as the home, not the loan, so the insurance may not be considered an add on to the loan.
RG 000.21 This is because the opportunity to sell the insurance arose because the	

References	Questions for clarification
<p>customer acquired the home loan and the lender passed the customer's 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.</p> <p>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.</p>	
<p>RG 000.41 The add-on insurance products covered by an exception from the deferred sales model are outlined in Table 2.</p>	<p>Does the financial adviser exemption include financial institutions (including banks) distributing insurance products under a personal advice model?</p> <p>Is the definition of comprehensive motor insurance meant to include third party property damage insurance products?</p>