



## **Stephen Garofano**

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### **Response to Consultation Paper 346: feedback on ASIC proposals for updating Regulatory Guide 38 *The Hawking Prohibitions (RG 38)* to reflect new legislative changes.**

We refer to ASIC's request for comments on Consultation Paper 346. RAC INSURANCE Pty Limited ("RAC INSURANCE") welcomes the opportunity to provide the feedback below in order to assist ASIC in providing further clarity to the General Insurance industry.

#### **ABOUT RAC Insurance**

RAC INSURANCE Pty Limited ("RAC INSURANCE") is a general insurer based in Western Australia principally focussed on offering insurance to Western Australians. The main insurance products offered are car and home type products. For a full list of products refer to the RAC website <https://rac.com.au/>.

RAC INSURANCE is a wholly owned subsidiary of the Royal Automobile Club of WA (Inc) ("RAC"). RAC is an Associated Incorporation and as such is governed by the Associations Incorporation Act 2015 (WA).

RAC is a membership organisation trading under the RAC brand representing the interests of more than one million Western Australians. RAC also advocates to protect and enhance the lifestyle of its members with a focus on reinvesting profits to benefit both members and the Western Australian community.

Drawing on its heritage, a key role for RAC is to act as a voice for its members and as a strong public advocate on the mobility issues and challenges facing Western Australia. RAC also collaborates with Government and other organisations to ensure safe, accessible and sustainable mobility options are available for its members and the community.

In addition to being a membership organisation, RAC also provides a number of services to members through Roadside Assistance, Insurance, Travel, Tourism and Finance, Auto Services, Batteries, Tyres, and Security.

## 1. CP346 PROPOSAL B1: FORMS OF CONTACT SUBJECT TO THE PROHIBITION

*We propose to update our guidance to include further information on the forms of communication that are subject to the prohibition. This includes providing guidance on real-time interactions, which are in the nature of a conversation or discussion. This also includes providing guidance on advertising and information-giving practices. Note: See Section C of the draft updated RG 38 attached to this paper.*

### Feedback

- **B1Q1** **What forms of communication do you currently use, or foresee using, with consumers, and do you anticipate any practical issues raised by the prohibition in respect of those forms?**

While we provide protection for customers' largest assets, we do not often have the opportunity to speak with our members as most transactions are now via online methods. Currently, when we do speak with our members, we take that opportunity to discuss their needs so that we can ensure they are appropriately covered.

When discussing our Customers' needs, we will enquire as to whether they need any other assistance. In the past, we would have undertaken a "health check" regarding their key assets and what they may need to consider in relation to protection by way of insurance. This discussion could lead to an offer to purchase additional valuable products, or highlight that purchasing multiple products provided a discount on the premium. Losing that opportunity could leave members at risk of under insurance or missing price benefits.

When a customer calls about an issue that is not about the extent of their insurance cover, our usual practice would be to check the status of the policies held by the customer and highlight if any of the policies have lapsed.

The Anti-hawking Legislation prohibits any offer, sale or invitation related to products that are not within the scope of the Customer's consent so will preclude this pro-active approach.

- **B1Q2** **Is there any additional or alternative guidance you think would be useful in helping you design and monitor communication methods with consumers?**

The existing ban on hawking under the Corporations Act prohibits the sale of financial products in the course of a face-to-face meeting that was "unsolicited". The Anti-hawking Legislation goes much further and prohibits the introduction of financial products in the course of a meeting that has been requested by the customer.

In our view, the legislation, and RG38, goes significantly further than the recommendations in Commissioner Hayne's final report. The impact of these amendments will be to limit the information that insurers can make available to their customers and potential customers and will hamper industry-wide efforts to educate consumers about appropriate levels of insurance.

We request confirmation via amendments to RG38 that:

- 1) Allow us to mitigate the risk of our customers being under-insured. So that when through conversation with a customer an issue of appropriate level of cover becomes apparent, we can raise that point with the person. For example, when a customer contacts us to update their policy details on motor insurance due to

a change in address, we would like to clarify whether they need to adjust their home or contents cover for that new home.

- 2) When through conversation with a customer it is determined by our staff that a Customer's policy has lapsed, we can refer to that situation, but also go further and pro-actively ask if the Customer seeks to have cover in place, and if that answer is yes, proceed to sell the relevant policy.
  - 3) When through conversation with a customer other cover (another product) is raised in some way that is not within the scope of the Customer's request, our staff are able to offer to send written information about the product, without:
    - a) this being considered an invitation; and
    - b) any subsequent contact made by the positive action of the Customer being considered to be because of unsolicited contact.
  - 4)
- **B1Q3** ***Do you currently use unsolicited real-time contact to advertise or provide consumers with information about your products? If so, what types of information do you provide, and how do you communicate it?***

## 2. CP346 PROPOSAL B2: NATURE OF THE CONSENT REQUIRED FOR CONTACT

*Reflecting the reforms, we propose to revise our guidance on the nature of the consent that is required from a consumer who wishes to be contacted about a financial product, including:*

- (a) that the consent must be positive, voluntary, and clear;*
- (b) that a reasonable person would have understood that a consumer consented to the contact;*
- (c) that the consumer can vary or withdraw the consent and the implications of doing so;*
- (d) what we expect from an offeror in relation to a contact, including the time period following consent within which the contact must be made; and*
- (e) the records that an offeror may need to keep.*

### **Rationale**

*22. The new legislative provisions require that consent from a consumer must be positive, voluntary and clear, and that a reasonable person would have understood that it was being given. We have updated our guidance to align with these requirements. In providing our guidance in relation to these requirements we have closely followed Parliament's intention as set out in the legislation and the Explanatory Memorandum.*

### **Feedback**

- **B2Q1 Do you anticipate any practical issues in seeking consumer consent? Please give details.**

We are aware that our customers may not always be sufficiently clear in expressing the range of products they may need in the initial conversation.

Also, we like to offer good customer service by being able to offer our customers the service of calling back at a date that may suit their needs, eg. prior to an upcoming renewal. The current legislation limits the validity of the consent to a period of 6 weeks.

A practical complication that we anticipate is when a customer is not available to discuss the product and requests a call back on a date that is outside of the 6 week consent period. Clarity is required to confirm that this delayed contact still falls within the original consent.

Further, we are working diligently to design internal policies and processes to ensure compliance with the new prohibitions, but this requires sufficient time to develop the requisite training and embed these processes. The development of the necessary IT system modifications is even more time-pressed. This is particularly because the legislation comes into effect on 5 October and we are yet to have the final Regulatory Guide.

- **B2Q2 Is there any additional or alternative guidance you think would be useful to help you design internal policies and processes to ensure compliance with the new prohibition? Please give details.**

We are concerned that RG 38.70 uses the language of Explanatory Memorandum paragraph 5.74 to state:

*38.70 An offeror may only rely on a consent given by a consumer before the contact occurs—they cannot elicit consent from a consumer for the contact after it has already begun: see RG 38.44. This means that if a consumer contacts a product offeror or consents to being contacted about a product, the offeror cannot in the course of that contact offer another product outside the scope of consent even if the consumer*

*gives further consent during the contact: see paragraphs 5.72 and 5.74 of the Explanatory Memorandum.*

RAC Insurance requests confirmation via amendments to RG38 that:

- 1) If a Customer, without any prompting by our staff, clearly states during a discussion that they would like to enquire about another issue of insurance protection, the failure on the part of the customer to raise this at the commencement of the contact does not mean that this product is “outside of the scope of consent”. Put another way, we submit that this should be considered to be within the scope of consent, and not be categorised as giving “further consent during the contact” and thereby inadequate.
- 2) Allow Customers to consent, via response to a written invitation to do so, to an extension of the six weeks limit to enable solicited contact prior to an upcoming renewal, or to a date that the customer specifies.

Our preference would have been that ASIC provided a no action letter to provide a transition period of a further 3 months to allow insurers to engage constructively with the regulatory guidance consultation and implement the final RG38 requirements. Given the 12 August media release [21-213MR], we understand that this may not be considered. While the recognition by ASIC of a period of transition for the industry is needed, in which ASIC will adopt a reasonable approach to enforcement, we request that this period be quantified to allow some greater certainty as to the expectations.

- **B2Q3 Do you anticipate any practical issues associated with your implementation of our guidance on the creation and maintenance of records, including practices that may help offerors meet their obligations? Note: See Section D of the draft updated RG 38 attached to this paper.**

### **3. CP346 PROPOSAL B3: ESTABLISHING THE SCOPE OF THE CONSUMER'S CONSENT**

#### *Proposal*

*We propose to revise our guidance to clarify that we expect an offeror to offer, issue or sell to a consumer (or invite or request a consumer to purchase or apply for) only financial products that are reasonably within scope of what the consumer has consented to, including offers of cross-sold or bundled products.*

#### **Feedback**

- **B3Q1 Do you agree with our proposed guidance on offering products that are within reasonable scope of a consumer's consent? If not, why not?**

Whilst we agree that the pressure selling tactics and other improper conduct highlighted during the Hayne Commission must be prohibited, none of the case studies reported related to home or motor insurance. Unlike direct life, disability and income protection insurance, home and motor are widely understood, highly utilised and largely comparable across issuers. These products offer real and tangible value to insureds.

It is a common approach in the industry to bundle motor and home policies and most insurers offer discounts in the vicinity of 10% to bundle the cover. If we are not able to inform members of that discounts, that is a detriment to consumers.

Our other concern is that the response to the proposed regulation on bundled products may result in products that offer consumers a lower level of protection. Standalone policies offer

the most comprehensive cover, and can be tailored to meet the customer's needs. We understand that some other insurers are offering optional extensions, such as adding pet insurance as an additional cover to a home insurance policy. These policy extensions offer limited cover and there is a risk that consumers will find themselves in a position of being underinsured.

- **B3Q2** *What products do you commonly cross-sell or bundle together for sale or issue? Does the prohibition raise practical issues for these practices?*

...

- **B3Q3** *Is there any additional or alternative guidance you think would be useful to help you design or update your processes and procedures for your staff to identify the products that are within the scope of a consumer's consent?*

RG38 currently includes the following content:

*RG 38.66 A financial product is 'so closely related to a product or service that a consumer would reasonably expect to be offered it', if the financial product is functionally related to the initial product or service. In the case of an insurance product, it will be functionally related to another product or service, if it primarily manages financial risk:*

*(a) directly relating to that other product or service, or assets secured by that product; or*

*(b) directly relating to the purposes for which the other product or service is commonly supplied, or the purposes for which assets secured by that product are commonly supplied.*

*RG 38.69 A second product will be within the scope of a consumer's consent if, for example, it covers the same risk, has the same purpose or function, or is so closely related to the product that the consumer consented to being contacted about that the consumer would reasonably expect to be offered the second product: see RG 38.65–RG 38.66. Understanding the breadth of a consumer's consent in each case will depend on its circumstances, and, in particular, the words used by the consumer: see Example 12.*

We request confirmation via amendments to RG38 that:

- 1) Provide greater clarity and certainty in the interpretation of the 'scope of the request'. For example, further insurance examples could be provided, to demonstrate how RG38.66 and RG38.69 can be applied in the insurance context. In particular, examples that demonstrate the meaning of:
  - a) *A financial product being "functionally related to the initial product or service"; or*
  - b) *A financial product that "covers the same risk, has the same purpose or function, or is so closely related to the product that the consumer consented to being contacted about that the consumer would reasonably expect to be offered the second product".*

- 2) We have taken the view that the above content means the following are permissible, but the inclusion of such examples may minimise the risk of detriment to consumers if this is not sufficiently clear to the industry:
- a) a financial product being “functionally related to the initial product or service”:
    - i) for a home loan, home insurance can be offered as it manages financial risk directly relating to the other product;
    - ii) for a car loan, motor insurance can be offered as it manages financial risk directly relating to the other product;
  - b) provides cover for the same risk or the product has the same purpose or function:
    - A. If a consumer calls to add an engagement ring to their Contents policy – the risk is the risk of loss or damage to the asset, so the insurer can raise:
      - B. a Personal Valuables policy to provide cover for loss to that same asset *outside* the home; or
      - C. a different level of cover, such as Specified Contents to ensure the level of protection is sufficient.

Yours sincerely,



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