



ASIC

Australian Securities &
Investments Commission

REPORT 695

Response to submissions on CP 339 on the deferred sales model for add-on insurance

July 2021

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 339](#) *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance* (CP 339) and details our responses to those issues.

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.

Disclaimer

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

This report does not contain ASIC policy. Please see Regulatory Guide 275 *The deferred sales model for add-on insurance* (RG 275).

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A Overview

- 1 On 10 December 2020, the Australian Parliament passed the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* to implement an industry-wide deferred sales model for add-on insurance in response to Recommendation 4.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). The deferred sales model will apply from 5 October 2021.
- 2 On 11 March 2021, ASIC released [Consultation Paper 339](#) *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance* (CP 339) with an attached draft Regulatory Guide 000 *The deferred sales model for add-on insurance* (draft RG 000).
- 3 In CP 339, we consulted on our proposed approach to implementing the deferred sales model for add-on insurance. This included:
 - (a) our general approach to providing guidance in draft RG 000;
 - (b) our approach to determining exemption applications under s12DY of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); and
 - (c) the content, form and manner of provision of the prescribed information that must be given to a customer to trigger the start of the deferral period (prescribed Customer Information).
- 4 This report highlights the key issues that arose out of the submissions received on CP 339 and our responses to those issues.
- 5 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 339. We have limited this report to the key issues raised and the significant changes we have made to draft RG 000 and the prescribed Customer Information in response to feedback from stakeholders.

Responses to consultation

- 6 The consultation on [CP 339](#) was open for a period of six weeks, from 11 March 2021 to 23 April 2021. Several respondents requested and were granted an extension to the due date.
- 7 We received six confidential and 12 non-confidential written responses to CP 339. Respondents included insurers, product distributors, industry groups and associations, and consumer representatives. We are grateful to respondents for taking the time to send us their comments.

- 8 For a list of the non-confidential respondents, see the appendix to this report. Copies of these submissions are available on the ASIC website under [CP 339](#).
- 9 ASIC also held consultation meetings with some key stakeholders, including:
- (a) a roundtable with consumer representatives on 26 March 2021 to obtain initial feedback on CP 339 (as well as broader feedback on conduct issues and concerns);
 - (b) two meetings with members of ASIC’s Indigenous Outreach Program panel of consumer representatives on 26 and 27 May 2021 to gain the perspective of Aboriginal and Torres Strait Islander consumers on the proposed Customer Information; and
 - (c) bilateral meetings with several industry responders to clarify key points made in written submissions and obtain further information.
- 10 The main issues raised by respondents in the consultation related to:
- (a) clarification of the products that fall within the definition of ‘add-on insurance product’ under the deferred sales model;
 - (b) guidance on when the deferral period starts;
 - (c) guidance on how the customer-initiated contact provisions operate;
 - (d) guidance on the interaction of the deferred sales model with the hawking prohibition in s992A of the *Corporations Act 2001* (Corporations Act);
 - (e) alternatives to our proposed approach to determining exemption applications under s12DY of the ASIC Act;
 - (f) alternatives to our proposal for the prescribed Customer Information; and
 - (g) matters beyond our guidance and proposal for the Customer Information (e.g. priorities for businesses as they prepare to comply with the deferred sales model and for ASIC’s supervision of conduct after commencement).
- 11 We passed on to Treasury non-confidential submissions and any issues raised with us about policy, legislative design or the exemption of classes of products from the deferred sales model.

B Complying with the deferred sales model

Key points

This section outlines the feedback we received on Proposals B1–B2 of [CP 339](#) on our proposed general approach to guidance in draft RG 000.

Submissions indicated that the guidance should clarify the scope of the deferred sales model in relation to certain insurance products offered or sold with home loans, complimentary insurance, and offers and sales by insurance brokers.

Respondents also asked for further guidance on the start of the deferral period, responding to customer-initiated contact, and the interaction of the deferred sales model with the hawking prohibition.

We have amended our guidance in relation to:

- coverage of certain insurance products offered or sold with home loans;
- the scope of the exclusion of comprehensive car insurance;
- when an offer or sale will be ‘in connection with’ the principal product or service;
- complimentary insurance;
- sales of insurance by insurance brokers; and
- when a customer commits to acquire a car with a car loan.

Our general approach to guidance

- 12 As the deferred sales model is prescriptive, and there are significant consequences for breaching the requirements, we proposed to publish detailed regulatory guidance. We attached draft RG 000 to [CP 339](#), and asked for stakeholder feedback on our general approach to the guidance.

Stakeholder feedback

- 13 We specifically asked stakeholders whether they agreed with our approach of providing detailed guidance, and if they thought we could provide less guidance in some parts.
- 14 Stakeholders generally agreed with our approach of providing detailed guidance on the deferred sales model, or did not comment. Some industry stakeholders responded that we should provide less guidance on the data that should accompany an exemption application.

ASIC's response

We have retained our approach of providing detailed guidance. We have amended or added to the guidance in response to specific stakeholder feedback on the content of draft RG 000.

Content of our proposed guidance

- 15 We proposed to publish a regulatory guide on the deferred sales model covering:
- (a) the scope of the deferred sales model;
 - (b) what we expect providers to do to comply; and
 - (c) how we will approach applications for exemption.

Stakeholder feedback

- 16 We asked stakeholders whether they agreed with the proposed guidance, what guidance we should provide on the prescribed Customer Information, and whether there were other matters on which we should provide guidance.
- 17 Some stakeholders responded that ASIC's guidance could be clearer on what is within the scope of the deferred sales model, particularly in relation to:
- (a) insurance products offered or sold with a home loan;
 - (b) complimentary or bundled insurance;
 - (c) the offer and sale of insurance by insurance brokers; and
 - (d) the extent of the exclusion of comprehensive car insurance from the deferred sales model.
- 18 Stakeholder feedback also pointed to the need for further clarification on the operation of the deferred sales model, including:
- (a) the start of the deferral period when a car is sold subject to finance;
 - (b) how to comply with the provisions on customer-initiated contact; and
 - (c) the interaction of the deferred sales model with the hawking prohibition in s992A of the Corporations Act.

Insurance products offered or sold with a home loan

- 19 We received feedback that the guidance should clarify whether lenders mortgage insurance, and life insurance and home insurance offered or sold with a home loan, would be add-on insurance products under s12DO of the ASIC Act.
- 20 In draft RG 000.29, we stated that a financial product with benefits aimed at remedying the risk of default on a credit contract may be an add-on insurance product, even if the benefits were paid to the customer rather than the lender.
- 21 Some respondents submitted that this could be interpreted to mean that lenders mortgage insurance is covered by the deferred sales model. They submitted that, if this were the case, it could significantly disrupt home lending practices.

22 In relation to life insurance, we received feedback that the guidance should provide greater certainty about whether a life insurance product sold with a home loan is an add-on insurance product and within the scope of the deferred sales model.

23 Some respondents submitted that the guidance should clarify whether home insurance sold with a home loan is within the scope of the deferred sales model. After ASIC's consultation on [CP 339](#) closed, the Treasurer announced that home building, home building and contents, and landlord insurance will be exempt from the deferred sales model as product classes. These exemptions will be made in the regulations under s12DX.

ASIC's response

The statement in draft RG 000.29, referred to in paragraph 20, was intended to refer to consumer credit insurance and not lenders mortgage insurance.

We have amended our guidance to clarify that lenders mortgage insurance is not an add-on insurance product under s12DO of the ASIC Act because it is not offered or sold to a consumer and the consumer is not a policyholder or beneficiary of the insurance.

We have also amended our guidance to clarify that a life insurance product will generally not manage financial risk relating to the principal product or service, and will therefore not be an add-on insurance product. However, the design of a particular product will determine whether or not it falls within the scope of the deferred sales model.

We identify consumer credit insurance offered with a loan as an example of a product that manages financial risk relating to the loan. If a life insurance product was designed in a similar way to consumer credit insurance so that, for example, it managed a financial risk relating to the purchase of a loan, then it could be seen to be managing a financial risk relating to a principal product or service.

We have removed references to home building and home building and contents insurance from our guidance as the Government will exempt these products from the deferred sales model by regulations made under s12DX of the ASIC Act.

Complimentary and bundled insurance

24 In relation to the guidance on complimentary and bundled products, stakeholders requested clarification about whether the deferred sales model applies to complimentary insurance that commences at the time of sale of the principal product or service, which the customer can later convert to paid insurance (e.g. after 60 days).

25 Respondents also sought clarification about whether the deferred sales model extends to liability and personal accident insurance included in the cost of local sporting club membership fees. It was submitted that the guidance should clearly distinguish the sale of sporting club memberships as a scenario where there is not a separate offer or sale of add-on insurance to the customer with the local

sporting club membership; rather, the sporting club membership and insurance are a bundled product.

- 26 Respondents also questioned how the guidance aligned with the example in the Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (Explanatory Memorandum) of travel insurance provided on a complimentary basis with a credit card, as the cost of the insurance is factored into the cost of the credit card to the consumer.

ASIC's response

To provide further clarity, we have added to our guidance two examples of complimentary insurance products with an offer to purchase the paid products: one where the sale would fall within the deferred sales model, and one where it would not.

We have clarified that the default inclusion of liability and personal accident insurance with a local sporting club membership would generally not fall within the scope of the deferred sales model. This is because we do not consider it manages a financial risk relating to the principal purchase, which is the membership.

We have amended our guidance on complimentary products to better align it with the example of complimentary travel insurance provided with a credit card in the Explanatory Memorandum.

The guidance provides that complimentary insurance is unlikely to be subject to the deferred sales model as it is generally not offered or sold to a customer. Whether the product is subject to the deferred sales model is determined on a case-by-case basis. There may be circumstances where a product marketed as 'complimentary' is actually offered or sold to a customer, and is therefore subject to the deferred sales model.

Offer and sale of insurance by insurance brokers

- 27 A respondent submitted that offers and sales of insurance by insurance brokers are not covered by the deferred sales model, because the insurance does not manage a financial risk of the principal service provided by the insurance broker, which is general risk advice and/or insurance advice.

ASIC's response

It cannot be conclusively stated that offers and sales of products by insurance brokers fall outside the deferred sales model.

We have included additional guidance that whether offers or sales of insurance by insurance brokers are covered by the deferred sales model will depend upon the circumstances (including whether the insurance broker is offering or selling the insurance in accordance with an arrangement with the provider of the principal product or service) and if the insurance product offered or sold satisfies the definition of an add-on insurance product.

We have clarified in the guidance that the exception in s12DU for financial advisers will only apply to brokers if they satisfy all the requirements of 12DU (including that the insurance relates to a principal product or service that is provided by the broker).

Scope of exclusion of comprehensive car insurance

- 28 We received a request to clarify whether the exclusion in s12DW of the ASIC Act for comprehensive motor vehicle insurance includes insurance for attachments or accessories that cannot be removed (e.g. sunroofs and leather seats), and optional line items (e.g. windscreen glass cover).

ASIC's response

We consider that whether the s12DW exclusion applies to such cover will depend on the circumstances and providers should obtain independent legal advice.

We have not amended our guidance.

Meaning of 'in connection with' a principal product or service

- 29 We received feedback on the guidance about the meaning of 'in connection with' a principal product or service. One respondent stated that the guidance was complex and confusing. In particular, the respondent considered the reference at RG 000.19(a) (requiring the transaction be 'around the same time') to be confusing, given that under the deferred sales model an add-on insurance product cannot be sold at the same time as the principal product.
- 30 The respondent suggested deleting this section or reducing it to one paragraph stating that 'in connection with' takes its ordinary meaning and noting that if a third party's opportunity to sell add-on insurance arises because of the purchase of the principal product, that this may meet the requirement.

ASIC's response

We have clarified in our guidance that 'in connection with' takes its ordinary meaning and explained the circumstances in which this requirement is likely to be satisfied.

Commitment to acquire a principal product or service

- 31 Several respondents submitted that the guidance should be clearer on when the customer is taken to have entered into a commitment to acquire the principal product, which is a prerequisite for the deferral period to start.
- 32 One submission indicated that the commitment to acquire should be a legal commitment to acquire. Another suggestion was that where there are two principal products (e.g. a car and a loan) which are both offered with respective add-on insurance products, the deferral periods relating to each of the car and the loan should start simultaneously at the time the customer places an order for the car subject to finance.

- 33 Such a position would require a change to draft reg 3B of the Australian Securities and Investments Commission Regulations 2001 (ASIC Regulations), which currently provides that the customer enters into a commitment to acquire a loan for the purchase of a motor vehicle at the time the consumer is informed in writing of the approval of the credit facility.

Note: The Government has announced that it intends to amend the ASIC Regulations to define the time at which a consumer is taken to have entered into a commitment to acquire certain classes of principal products and services: see draft reg 3B in [Exposure Draft of the Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Regulations 2020: Deferred sales model for add-on insurance](#), Sch [4.3] item 1. The final amending regulations are expected to be made before 5 October 2021.

ASIC's response

We have provided additional guidance that where the purchase of a product is subject to finance, there may be two separate principal products—the product and the credit facility used to finance the product. The timing of the commitment to acquire each of the principal products is likely to be different.

We have included an example of the two times at which a customer enters into a commitment to acquire a principal product when they purchase a car subject to finance:

- when the customer signs the contract to purchase the car subject to finance; and
- when the customer is notified in writing of approval of the finance, in accordance with the intended amendment to the ASIC Regulations under draft reg 3B, noting that this intended amendment had not come into effect at the time of first release of RG 275.

Customer-initiated contact

- 34 Some stakeholders submitted that we should clarify that if, during the pre-deferral period, a customer asks to be contacted later, a provider can communicate with the customer in the manner requested, including by telephone, during the post-deferral period. This would constitute 'customer-initiated contact' for the purposes of the deferred sales model.

ASIC's response

We have clarified in our guidance that the relevant customer-initiated contact must occur during the deferral or post-deferral period. This is consistent with the Explanatory Memorandum (see paragraphs 3.75–3.80 and Examples 3.9 and 3.10).

Interaction with the hawking prohibition

- 35 We received feedback that we should provide guidance on whether and how the hawking prohibition in s992A of the Corporations Act applies to add-on products that are exempt from the deferred sales model.
- 36 It was also submitted that Figure 1 in draft RG 000, which is a timeline of the three periods within the deferred sales model, should be amended to indicate that the hawking prohibition applies before the pre-deferral period.

ASIC's response

We have amended Figure 1 in our guidance to make it clear that the hawking prohibition applies before the pre-deferral period.

In the context of an insurance product, provided on a complimentary basis for an initial period, that the provider later offers to the customer as a paid ongoing product, we have provided guidance on when the hawking prohibition will apply instead of the deferred sales model.

We have retained the general guidance that if a product is not an 'add-on insurance product' under the deferred sales model, the hawking prohibition in s992A of the Corporations Act applies. For further guidance on the hawking prohibition, see [Regulatory Guide 38](#) *The hawking prohibition* (RG 38).

C Exemptions from the deferred sales model

Key points

This section outlines the feedback we received on Proposal C1 in [CP 339](#). Stakeholders submitted that our guidance should be changed or expanded in relation to:

- the exemption factors in s12DY(2) of the ASIC Act and our proposed approach of only granting exemptions in ‘exceptional circumstances’;
- the product metrics ASIC will have regard to when assessing an application;
- non-insurance components of add-on insurance products; and
- ASIC’s process for determining exemption applications.

In our guidance, we have:

- clarified our general approach to relief;
- explained that the specific data and information outlined in the appendices is not mandatory, but that it is the responsibility of an applicant to consider and include the relevant information in support of an application;
- reduced the duration of time that data should cover to demonstrate a product is ‘historically good value for money’; and
- elaborated on the guidance about ‘well understood by consumers’ and ‘high risk of underinsurance or non-insurance’ exemption factors.

Proposed guidance on exemptions

- 37 In [CP 339](#), we proposed to provide guidance on:
- (a) how to apply for an exemption;
 - (b) how we will apply each of the factors that we must have regard to when considering whether to grant an exemption; and
 - (c) the types of product data and other information that will help us determine an exemption application.
- 38 We sought feedback on our proposed guidance on exemptions, specifically whether:
- (a) we should provide further guidance on our interpretation of the exemption factors in s12DY(2);
 - (b) there are any other matters that we should consider under s12DY(2)(e);
 - (c) it would be useful to include any additional data and indicators in Appendix 2 of draft RG 000 and the data template; and
 - (d) there are any additional matters that are relevant to exemptions on which we should consider providing guidance.

Stakeholder feedback

39 Of the 18 respondents, 11 provided feedback on our proposal. This included six industry groups, three consumer groups and two individual entities.

40 Respondents were generally supportive of the detailed guidance in draft RG 000 on the exemption factors in s12DY(2) of the ASIC Act. Two respondents were in favour of further examples in the guidance to help industry interpret the exemption factors.

Further guidance on the exemption factors in s12DY(2)

41 In draft RG 000, we proposed that, to show a product has been ‘historically good value for money’ under s12DY(2)(a), applicants should provide information showing the value of the product over the past 10 years.

42 One respondent submitted that information showing product value should only cover three to five years, because there may be significant changes to the product, and financial records must be kept for only seven years under the Corporations Act.

43 Four respondents suggested that ASIC should set out minimum standards or benchmarks for indicators of historical value such as a specific claims ratio or withdrawal rate. One submission recommended that ASIC adopt a minimum claims ratio requirement of 89%.

44 Two respondents were in favour of including further examples in the guidance to help industry interpret the exemption factors.

45 One respondent suggested ASIC should provide further guidance as follows:

- (a) The absence of a standalone market should not be immediately accepted as a significant concern for the risk of underinsurance or non-insurance (s12DY(2)(b)). The respondent submitted that add-on sales practices may have made a standalone market unviable, but that, if genuine demand exists for a product, a competitive standalone market is likely to establish itself after the deferred sales model comes into effect.
- (b) Higher claims acceptance rates, lower denial and withdrawal rates, and less variation in products in the market (in particular, the cover, definitions and exclusions in products) indicate the product is well-understand by consumers (s12DY(2)(c)).
- (c) If there are similar, better-value insurance products available on the market, the application is likely to be refused (s12DY(2)(d)).
- (d) Products with high rates of complaints and disputes are unlikely to be exempted from the deferred sales model.

ASIC's response

We have amended our guidance to state that applicants should submit data to show the historical value of the product over seven years (where such data is available) to align our guidance with the record-keeping requirements under the Corporations Act.

We consider that this duration is appropriate as short-term fluctuations or seasonal events may distort the data over a shorter period so that it does not provide a true reflection of how the product performs, or highlight any underlying patterns.

We have not included a minimum standard or benchmark for product value in our guidance (e.g. a specific claims ratio or withdrawal rate). We have also not added any further examples to illustrate how the exemption factors apply. This is because ASIC must have regard to all the exemption factors in s12DY(2) and consider the particular facts, circumstances and merits of each application.

In our guidance, we have:

- stated that we do not consider the current absence of a standalone market for the insurance product necessarily means that a high risk of underinsurance or non-insurance will result if an exemption is not granted; and
- included additional indicators that may show that an add-on insurance product is well understood by consumers.

Any other matters ASIC should consider

- 46 In [CP 339](#), we asked for feedback on the proposed guidance on other matters that ASIC considers relevant under s12DY(2)(e) of the ASIC Act in considering whether to grant an exemption.
- 47 Most feedback focused on the following factors stated in the proposed guidance as relevant matters under s12DY(2)(e):
- (a) the Government's expressed intention in the Explanatory Memorandum that exemptions for a class of products be granted under the ASIC Regulations only in 'exceptional circumstances'; and
 - (b) the fact that ASIC does not have a general class exemption power, which indicates that Parliament intended that ASIC only make exemptions in specific, limited circumstances.
- 48 Two respondents stated that ASIC should not take into account these factors. They submitted that applications should be considered on a case-by-case basis according to their merit. Three submissions supported ASIC's exemption power being exercised only in extraordinary and limited circumstances.
- 49 One respondent suggested that we include guidance that ASIC will consider rates of disputes, issues raised, time taken to resolve claims and their outcomes.

ASIC's response

We have retained the proposed guidance on factors we consider relevant matters within s12DY(2)(e).

In considering whether to make an exemption, we will take into account the scope of ASIC's exemption powers and have regard to Parliament's intention concerning the scope of the class exemption powers. This is one matter we will take into account, balanced with other relevant considerations that apply in the particular circumstances of each application.

To remove any doubt, we have included an express statement in our guidance that, in accordance with ASIC's general approach to relief set out in [Regulatory Guide 51 Applications for relief](#) (RG 51), we will consider the facts, circumstances and merits of each application.

We have also included complaints information about the product as an additional relevant matter under s12DY(2)(e).

Additional data and indicators

- 50 Two respondents submitted that the product data referred to in Appendix 2 of draft RG 000 and the data template should be condensed, as with Treasury's class exemption process, stating that it is not practically feasible for insurers to supply the data described in those appendices with an application for relief.
- 51 It was submitted that, because 'add-on insurance product' is a new definition, insurers have not historically collected data specific to add-on insurance products, and applicants should be able to provide data for 'intermediated sales' of a product, not just specifically for the add-on insurance product.
- 52 One respondent strongly supported ASIC requiring applicants to provide claims ratios, noting that insurers are required to regularly report to the Australian Prudential Regulation Authority (APRA) on similar metrics.
- 53 Another respondent supported the rigorous process set out in draft RG 000 for considering exemption applications. The respondent submitted that where insufficient evidence is provided in support of an exemption, the application should be refused.
- 54 Some respondents suggested that ASIC should expand the data template to include:
- (a) the time it takes for claims to be assessed, resolved and paid out; and
 - (b) qualitative data such as customer experience metrics, technical support, speed of service, enhanced or additional service channels.

ASIC's response

We have not reduced the metrics set out in our guidance as proposed by some stakeholders.

We have clarified that it is not mandatory to provide the specific data and information outlined in Appendix 2 or the data template. We have also clarified that neither the information described in Appendix 2 nor the data template is necessarily an exhaustive statement of information that may be relevant to an application.

We consider that data relevant to showing evidence of the factors we must have regard to under s12DY(2) is data specific to the insurance product sold as an add-on product.

We have not expanded the data template to include the specific qualitative information suggested by some respondents, as this template focuses on quantitative information. The type of qualitative information that is relevant will depend on the particular add-on insurance product. We state in the guidance that both qualitative and quantitative information should be provided to support each exemption factor.

We have not included further claims data in the template beyond the key claims data. We will assess on a case-by-case basis if more detailed information on claims is needed.

Additional guidance

55 Respondents suggested that ASIC provide guidance on the following additional matters:

- (a) whether non-insurance contracts that 'manage financial risk' fall within the definition of add-on insurance products;
- (b) where a product includes both insurance and non-insurance components, how ASIC intends applicants to use the data template; and
- (c) the confidentiality of supplied data.

ASIC's response

Whether a product satisfies the definition of an add-on insurance product under s12DO(1) will be determined on a case-by-case basis.

We have clarified in our guidance that the data template sets out the information about the add-on insurance product that ASIC considers most relevant to the assessment of whether an application meets the factors in s12DY(2).

It is not mandatory to provide a completed template with an exemption application. The application should only provide information to the extent that it is relevant to the application.

Applicants do not need to include items that do not apply to the product that is the subject of the application. Applicants are also free to provide any other information they consider relevant to their application.

We have not included guidance in RG 275 on ASIC's obligations in relation to the release of confidential information. Specific ASIC guidance on this issue is set out in [Regulatory Guide 92 Procedural fairness to third parties](#) (RG 92) and [Regulatory Guide 103 Confidentiality and release of information](#) (RG 103).

Other feedback on exemptions

- 56 One respondent recommended that ASIC should provide, in relation to each exemption application:
- (a) a specific timeframe for assessment of the application;
 - (b) if requested by the applicant, a no-action letter for the duration of the period that ASIC is considering the application;
 - (c) detailed reasons for our decisions, including an assessment of the metrics submitted by the applicant, and how those metrics affected our decision on whether to provide an exemption, or to impose conditions; and
 - (d) a reasonable opportunity for the applicant to review information provided to us by 'other sources', and to provide responses as appropriate.
- 57 It was also submitted that ASIC should publish information for consultation where we propose to exempt a product or class of product, similarly to the information we publish before exercising our product intervention powers.

ASIC's response

Our approach to applications for exemptions from the deferred sales model reflects ASIC's general approach to relief applications as set out in [RG 51](#):

- We cannot provide specific timeframes for assessing applications. Exemption applications under s12DY(1) of the ASIC Act will (at least initially) tend to raise complex or new policy issues. In these circumstances, we aim to give applicants an interim response to inform them of our progress as stated in RG 51.88.
- If a relief application is refused, we will give the applicant a letter briefly setting out the reasons for the decision as stated in RG 51.46. Applicants have a right to seek review of the decision by the Administrative Appeals Tribunal and a written statement of reasons within 28 days of notification of the decision: see [Information Sheet 9 ASIC decisions: Your rights](#) (INFO 9).
- We must consider procedural fairness obligations when exercising our discretionary powers: see [RG 92](#).
- ASIC does not publicly consult on individual relief applications.

In relation to requests for no-action letters, we will assess each request and apply our policy in [Regulatory Guide 108 No-action letters](#) (RG 108). This involves a separate decision-making process to assessing the exemption application.

D Customer Information

Key points

This section outlines the feedback we received on Proposals D1–D5 in [CP 339](#). Stakeholders submitted views on:

- the tone and messaging of the Customer Information content and the desirability of some product-specific details;
- the inclusion of the Australian Government logo;
- technological neutrality and flexibility for legibility prescriptions and the opt-out mechanism;
- the option for an 'in-person' customer to elect to receive Customer Information in hardcopy format as well as receiving it electronically;
- the delay that would arise from postal delivery of the hardcopy Customer Information; and
- appropriate timing for provision of the Customer Information relative to the customer's commitment to acquire the principal product or service.

In prescribing the Customer Information, we have:

- adjusted the expression of the 'not compulsory' message;
- included limited product-specific details;
- removed the Australian Government logo from the hardcopy format;
- adopted more technologically neutral approaches to legibility and the opt-out mechanism; and
- created an exception for entirely digital add-on insurance products from the requirement to give an in-person customer the option to elect to receive the Customer Information in hardcopy format.

Responses on the Customer Information

- 58 Twelve submissions responded to our proposals for the prescribed Customer Information.
- 59 Most stakeholders supported electronic delivery as the default delivery method, and the flexibility of a non-prescriptive electronic delivery method. Respondents suggested ways to improve the technological neutrality of the electronic format and the opt-out mechanism. Stakeholders noted that the inclusion of some product-specific information would assist providers with record keeping and the practical operation of the Customer Information.
- 60 Industry stakeholders and consumer representatives held differing views on the overall tone and message of the content of the Customer Information, and when it should be provided.

61 We received minimal feedback relating to the hardcopy format. One industry association noted practical implications for any customers who would have to receive the Customer Information via postal mail.

Content of the Customer Information

62 In [CP 339](#), we proposed that the content of the prescribed Customer Information, in both electronic and hardcopy format, should include:

- (a) for hardcopy format only—the Australian Government logo;
- (b) a prominent message that the customer can say ‘no’ and that the add-on insurance ‘is not compulsory’;
- (c) a statement about the four-day deferral period;
- (d) information on opting out of being contacted about add-on insurance and a mechanism for customers to opt out;
- (e) two questions for customers to ask themselves as prompts with accompanying text;
- (f) a link to ASIC’s Moneysmart website; and
- (g) a statement explaining why the customer has been given the Customer Information.

63 We did not propose to include product-specific information, such as the product or insurer name, as part of the content of the Customer Information.

64 We asked specifically whether stakeholders considered that we should prescribe any product-specific content or tailor the content to suit particular methods of electronic delivery.

Stakeholder feedback

65 Industry stakeholders considered that the tone and message of the Customer Information should be ‘neutral’, whereas consumer representatives supported the proposed tone and message. Both industry stakeholders and consumer representatives considered that including product-specific information would have practical operational benefits.

66 We did not receive any submissions that suggested ASIC should tailor content to suit particular methods of electronic delivery.

Tone and message of the Customer Information

67 Stakeholders commented on the following two elements of the proposed Customer Information:

- (a) the line ‘You can say no to being sold insurance. It is not compulsory’; and

- (b) the ‘context statement’ at the bottom of the Customer Information that ‘This Customer Information is prescribed as a requirement of the *Australian Securities and Investments Commission Act 2001* to reduce the number of poor-quality insurance products being sold in Australia’.

68 Consumer representatives were supportive of:

- (a) the plain language and simple layout;
- (b) the message that insurance ‘is not compulsory’;
- (c) the sequence in which content was presented;
- (d) the explanation of why the Customer Information is being prescribed, because it alerts the reader to the issue of poor-value insurance products; and
- (e) the prominence of the opt-out feature.

69 Feedback from industry stakeholders included the following:

- (a) Requiring a subject line may mean providers avoid providing the Customer Information by email.
- (b) There is a risk that people will not read past the subject line and/or will not buy insurance that they may need.
- (c) The message that the Customer Information is provided to reduce the sale of ‘poor-quality’ products is not relevant to good-value products.
- (d) The statement that the add-on product ‘is not compulsory’ may be misleading, as some insurance may be required under legislation or as a matter of commercial practice. However, stakeholders did not identify any circumstances where a specific add-on product being offered was ‘compulsory’.

70 Members of ASIC’s Indigenous Outreach Program suggested the alternative line ‘It’s okay to walk away’, based on the [National Indigenous Consumer Strategy](#) campaign.

ASIC’s response

No evidence-based views were advanced to support any change to the overall tone or messaging of the Customer Information.

We have made one amendment in response to feedback. The statement is now, ‘You can say no to being sold this insurance. It is not compulsory’, with the addition of ‘this’ to make it clear that the specific add-on insurance product on offer is not compulsory.

We have retained the wording of the ‘context statement’. The wording is intended to address the behaviour and products that led to the Royal Commission’s recommendation. The Government has legislated for an industry-wide deferred sales model that covers all add-on insurance products irrespective of their value (subject to specific exemptions).

Product-specific information

- 71 Stakeholders had divided views on whether the Customer Information should include product-specific information.
- 72 Those in favour of the proposal in [CP 339](#) for generic Customer Information without product-specific information included some industry stakeholders and one consumer representative. They favoured this approach because it allowed for a consistent industry approach.
- 73 However, more stakeholders—again representing both industry and consumer representatives—supported some tailoring of the Customer Information to at least identify the product and product provider.
- 74 Two stakeholders suggested that further product-specific information be included. One suggested including the claims ratio or a prescribed warning if the claims ratio is lower than a certain threshold. The other stakeholder suggested information on the product’s key features, benefits and limitations as well as industry average metrics against which the customer could benchmark the offered add-on insurance product.

ASIC’s response

We have added the add-on insurance product name and the contact details of both the principal product/service provider and the add-on insurance product provider to the content of the Customer Information.

Including the contact details will give the customer flexibility in how they opt out of further communication.

Including the add-on insurance product name will clarify which product the Customer Information relates to. This is particularly important where a customer is offered multiple add-on insurance products. (The customer must be given the Customer Information for each add-on insurance product.) If the customer wishes to opt out of further communication about an add-on insurance product, it will be clear which product their opt-out relates to.

We have also added a line to explain that the customer can opt out of all add-on insurance products as extras to their primary purchase by contacting the principal product or service provider.

We are not including any further product-specific information. We consider that the Customer Information should give concise and relevant information that customers are not likely to otherwise receive as part of the sales process, while appropriately balancing the regulatory burden on providers.

We are not prescribing the inclusion of a claims ratio as this was not a widely held view and the findings of the BETA consumer research noted in [CP 339](#) revealed that claims ratio information was poorly understood.

Australian Government logo

- 75 Consumer representatives strongly supported including the Australian Government logo on the hardcopy of the Customer Information, stating that it offered authority.
- 76 However, consumer representatives were also alert to the risk of the logo being used to build confidence in the product or salesperson. One industry submission noted it would be ‘confusing’ for customers.

ASIC’s response

We have removed the Australian Government logo from the hardcopy format as a result of the decision to include the customer’s name, the add-on insurance product name and provider contact details.

Because the content in the Customer Information will be edited by providers of add-on insurance products, it will no longer be a static document. This weighs against inclusion of the Australian Government logo.

Research has shown that there is a risk that reference to the government or a government agency and/or inclusion of symbols or logos may confuse some consumers, particularly when included in information provided by a third party.

For example, there may be a risk that the inclusion of an official government logo in the information provided by add-on product providers may be taken to be an endorsement of the product, rather than the intended signalling of independence and authority of the content being communicated.

Removing the Australian Government logo also aligns the hardcopy format with the electronic format. We did not propose to include the logo in the electronic format because it is not a static document.

Opt-out mechanism

- 77 Stakeholder feedback highlighted issues with the opt-out mechanisms—a hyperlink in the electronic format, and a check box in the hardcopy format.
- 78 Responses included that the opt-out mechanism should be ‘tech neutral’, principles based and less prescriptive and that the proposed hardcopy format did not contain a unique customer identifier for use when the customer ticked the check box and returned the document to the provider.

ASIC’s response

We are not prescribing the use of a particular opt-out mechanism (such as via a hyperlink) on the electronic format of the Customer Information.

However, the opt-out mechanism should satisfy the following principles:

- be easy to use;
- be frictionless; and
- have continued availability during the deferral period and post-deferral period.

We have prescribed that both the electronic and hardcopy formats of the Customer Information must be individually addressed to the customer so that providers can identify which customer is opting out.

Form of the Customer Information

- 79 In [CP 339](#), we set out how we would prescribe the form in which the Customer Information must be provided to a customer.
- 80 For the electronic format, we proposed not to prescribe a specific form, due to the wide range of digital media through which the Customer Information may be given. However, we did propose to prescribe that:
- (a) the content must be set out in a specific sequence (as shown in the appendix to CP 339);
 - (b) the content must be displayed in a size that is not smaller than it would appear if using Arial font in 10 point size;
 - (c) the content must appear in the body of the communication and not be placed in a link or attachment; and
 - (d) if sent via a digital medium that has a subject line (e.g. email)—the subject line must be ‘You can say no to being sold insurance’.
- 81 For the hardcopy format, we proposed to prescribe the design and layout of the Customer Information. We also proposed to make the Customer Information available as a download from the ASIC website, so that providers could print and provide it in hardcopy format.

Stakeholder feedback

- 82 We asked for specific feedback on whether stakeholders:
- (a) supported the proposals for the Customer Information, in electronic and hardcopy formats; and
 - (b) foresaw any issues in complying with the proposed requirements of the form for both the electronic and hardcopy formats.
- 83 The feedback from most stakeholders focused on the practical implementation of the electronic format and a ‘tech neutral’ approach. Feedback on the hardcopy format was minimal.

- 84 We asked stakeholders whether they foresaw any issues in complying with the proposed form requirements for the electronic and hardcopy formats. We did not receive submissions identifying specific issues in complying with the proposed requirements for either form.
- 85 Some of the feedback on the proposed form for the electronic format of the Customer Information included that:
- (a) providers should be able to choose the format;
 - (b) the font should be ‘tech neutral’ and not a prescribed size;
 - (c) it should be easy for the customer to access until the end of the post-deferral period;
 - (d) it should be able to be tracked (e.g. by a receipt confirming that the email had been opened); and
 - (e) it should be individually addressed to avoid spam filters.
- 86 Feedback from consumer representatives asked us to consider:
- (a) accessibility; and
 - (b) the inclusion of graphics to help consumers with low literacy.
- 87 There were diverging views on how we should prescribe electronic provision of the Customer Information. Responses included that the content should be in the main body of an email, in a link or attachment, or bundled with the Product Disclosure Statement (PDS).

ASIC’s response

Rather than prescribing font and font size, we have prescribed that the Customer Information must be presented in a way that meets the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA. This is consistent with the requirements that Australian Government agencies must meet.

We have prescribed that the electronic format must allow a customer to have convenient and repeat access to the Customer Information throughout the deferral period and the post-deferral period.

We have not prescribed the use of graphics because not all electronic delivery methods support the inclusion of fixed graphics. We consider that the flexibility of delivery method and the prescribed accessibility requirements will help consumers to engage with the content.

We have retained our position that the Customer information must be provided in the main body of a communication, rather than as a link or attachment or included as part of a PDS. We consider this maximises the likelihood of customers reading and acting on the Customer Information.

Manner of provision: How to provide the Customer Information

- 88 In [CP 339](#), we proposed to prescribe that:
- (a) the default method of providing the Customer Information would be electronic, but we would not prescribe exhaustively the available methods for electronic provision;
 - (b) if the customer does not confirm that they can access the Customer Information electronically, the provider must provide it in hardcopy format, otherwise the Customer Information will not have been given for the purpose of s12DP(1) of the ASIC Act;
 - (c) if the Customer Information is sent via post, 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 in recording when the Customer Information was given; and
 - (d) where the customer makes the commitment to acquire the principal product or service in person, the provider must provide the Customer Information electronically and must also give the customer the option of receiving the Customer Information in hardcopy format.

Stakeholder feedback

- 89 We requested specific feedback on whether:
- (a) stakeholders agreed that the Customer Information should be provided electronically by default;
 - (b) we should prescribe that a hardcopy format must be provided if the customer cannot receive it electronically, or requests the hardcopy format in person;
 - (c) there are any risks or disadvantages of requiring electronic provision as the default, and which customers would be affected;
 - (d) particular methods of electronic provision pose additional risks or disadvantages that ASIC should consider when prescribing the form and manner of provision;
 - (e) ASIC should prescribe permissible and/or impermissible methods of electronic provision;
 - (f) there is anything we should consider regarding provision of the hardcopy format for customers who cannot access the Customer Information in electronic format;
 - (g) there is anything else that should be done to ensure that the Customer Information is accessible to and engaged with by customers; and
 - (h) stakeholders foresee any issues in complying with the proposed requirements for the manner of provision.

Electronic provision

- 90 Respondents had varying feedback on the proposal that the Customer Information must be provided in electronic format by default. Most stakeholders supported the proposal; however, some respondents stated that prescribing any 'default' lacked flexibility. One industry stakeholder submitted that consideration should be given to customers that do not have access to the internet. Respondents did not raise issues about complying with the proposed requirements.
- 91 Feedback from consumer representatives included:
- (a) some electronic delivery methods may not be suitable and a principle-based approach to prescribing the manner of provision may be preferable; and
 - (b) general concern that consumers are unlikely to engage with emails, and that methods where receipt of the message can be tracked would be preferable.
- 92 One industry stakeholder submitted that some electronic delivery methods would not be suitable for some customers who may have difficulty accessing and reading the information, citing webchat as an example.

ASIC's response

We have prescribed electronic provision as the default as proposed in [CP 339](#) without prescribing any permissible or impermissible methods of electronic provision.

We consider that there are electronic methods available to customers who do not have access to the internet, such as SMS, which will still enable those customers to benefit from receiving the Customer Information electronically.

We have prescribed that the electronic format must allow a customer to have convenient and repeat access to the Customer Information throughout the deferral period and the post-deferral period.

Hardcopy provision

- 93 Feedback on hardcopy provision was minimal and centred on practical implementation, such as how to account for postal delivery time and how long hardcopy formats should be retained for compliance purposes.
- 94 It was submitted that providing the Customer Information by post could disadvantage a customer by delaying the start of the deferral period. However, stakeholders did not provide specific evidence of the potential material detriment to customers.

- 95 One stakeholder submitted that an exception should be allowed for add-on insurance products sold on a fully digital basis in response to the proposal that a customer who purchases the principal product or service in person must be given the option to receive the Customer Information in hardcopy, as well as electronically, during that in-person interaction.

ASIC's response

We have retained our proposed approach to hardcopy provision of the Customer Information where the customer cannot receive it electronically.

While we acknowledge a delay in commencement of the deferral period may occur due to postal delivery times, we expect that a hardcopy format will be posted only in very limited circumstances. Respondents did not provide examples or evidence to the contrary.

For add-on insurance products sold on a fully digital basis, we have prescribed an exception from the requirement to offer hardcopy formats of the Customer Information to in-person customers. This is consistent with [Regulatory Guide 221 Facilitating digital financial services disclosures](#) (RG 221), which states:

'For products and services that, as part of their terms and conditions, are sold as digital only, providers need not make printed or printable copies of disclosures available. This is on the basis that at the time of purchasing the product or service, the client was made aware that they would receive communications only in digital form'. (RG 221.29)

Manner of provision: When to provide the Customer Information

- 96 In [CP 339](#), we proposed to prescribe that:
- (a) the Customer Information must be given to the customer only after, not before, they have made a commitment to acquire the principal product or service; and
 - (b) if a customer makes repeat purchases of the principal product or service, the Customer Information must be given each time the customer has entered into a commitment to acquire the principal product or service.

Stakeholder feedback

- 97 We requested specific feedback on whether stakeholders:
- (a) agreed that the Customer Information should be given only after, not before the customer has made a commitment to acquire the principal product or service; and
 - (b) foresaw any issues in complying with the proposed requirements.

- 98 Industry stakeholders and consumer representatives held differing views on the proposed timing of providing the Customer Information. Industry stakeholders stated that requiring it be given only after the customer's commitment to acquire the principal product or service restricted flexibility. They preferred greater flexibility to provide the Customer Information over a broader period of time, ranging from pre-deferral to a 'reasonable time' after the customer has acquired the primary product or service.
- 99 Consumer representatives supported the proposal that customers only receive the Customer Information after the customer's commitment to acquire the principal product or service. One reason given was that customers may feel that if they opt-out before this, it could affect their ability to acquire the primary product or service.

ASIC's response

We have retained our position that the Customer Information must be given to the customer only after, not before, they have made a commitment to acquire the principal product or service. This does not require that it be given immediately after the commitment to acquire, but that it may not be given before it.

We consider that respondents did not provide feedback contrary to the rationale expressed in [CP 339](#).

Appendix: List of non-confidential respondents

- Australian Banking Association
- Australian Finance Industry Association
- Caravan Industry Association of Australia
- Consumer Action Law Centre and Financial Rights Legal Centre (joint submission)
- Customer Owned Banking Association
- Finance Brokers Association of Australia
- Financial Services Council
- Insurance Council of Australia
- Legal Aid NSW
- Legal Aid Queensland
- National Insurance Brokers Association
- NM Insurance Pty Ltd