



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Hawking—Life Risk Insurance and Consumer Credit Insurance) Instrument 2019/839

This is the Explanatory Statement for *ASIC Corporations (Hawking—Life Risk Insurance and Consumer Credit Insurance) Instrument 2019/839* (the **instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (ASIC).

Summary

1. The instrument prohibits a person making an offer to issue or sell a life risk insurance product or consumer credit insurance (**CCI**) product to a retail client in the course of, or because of, an unsolicited telephone call unless the person, or another person acting on their behalf, has provided personal advice to the client in relation to the product.

Purpose of the instrument

2. ASIC makes this instrument to address consumer harms it has identified in the unsolicited telephone “sales” of direct life insurance and CCI products. The purpose of the instrument is to prevent unsolicited telephone sales of these products when no advice or general advice is given.
3. Subsection 992A(3) of the *Corporations Act 2001* (the **Act**) prohibits a person from making an offer to issue or sell a financial product to a retail client in the course of, or because of, an unsolicited telephone call to the retail client, unless the retail client has been:
 - (a) contacted only during the hours prescribed by the regulations and only if the client is not listed on the “No Contact/No Call” register in relation to the person making the contact; and
 - (b) given an opportunity to:
 - (i) register on a “No Contact/No Call register maintained by the person making the contact at no cost to that person;
 - (ii) select the time and frequency of any future contacts; and

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- (c) given a Product Disclosure Statement before becoming bound to acquire a financial product; and
 - (d) clearly informed of the importance of using the information in the Product Disclosure Statement when making a decision to acquire a financial product; and
 - (e) given the option of having the information in the Product Disclosure Statement read out to that person.
 4. ASIC is concerned that unsolicited telephone sales of life insurance and CCI without personal advice increase the risk of consumers acquiring products they cannot afford or that do not meet their needs, notwithstanding the requirements in paragraphs 992A(3)(a)—(e) of the Act.
 5. “Direct” life insurance refers to life risk insurance products sold directly by an insurer or a distribution partner, providing only general advice or no advice. ASIC’s inquiries into direct life insurance have generally found:
 - (a) higher rates of declined claims for life insurance sold through the direct sales channel than for policies sold through a financial adviser, generally providing personal advice (retail life insurance) and policies provided through a group arrangement such as superannuation (group life insurance);
 - (b) high rates of short-term cancellations (i.e. within the first three years) even though life insurance is a product designed to be held longer term;
 - (c) outbound sales calls have been associated with sales conduct that increases the risk of poor consumer outcomes (e.g. pressure selling); and
 - (d) firms engaging in sales conduct that increases the risk of consumers buying a product that they do not want, cannot afford, do not understand or that does not meet their needs.
 6. In relation to the sale of CCI, ASIC has generally found:
 - (a) CCI products are poor value for money, particularly for credit cards; and
 - (b) consumers have often been sold CCI products when they were ineligible to claim or when they were unlikely to benefit from the product.

Consultation

7. ASIC released Consultation Paper 317 in July 2019 on the proposal to ban unsolicited telephone sales of life insurance and CCI sold without personal advice, to provide interim protection for consumers ahead of law reform by the Commonwealth Government in response to recommendations made by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission).

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8. We received 15 non-confidential responses from stakeholders including industry bodies and participants, community legal centres, community organisations, financial counselling services and a complaints authority.
 9. There was broad support for ASIC's proposed ban of unsolicited telephone sales of direct life insurance and CCI. Submissions included accounts of aggrieved consumers who had purchased unsuitable CCI and life risk insurance products. No submissions took the view that the ban should not be implemented.

Operation of the instrument

10. The instrument applies in relation to two classes of financial products—life risk insurance products and CCI products. A life risk insurance product is defined in paragraph 764A(1)(e) of the Act. CCI has the same meaning as in regulation 7.1.15 of the *Corporations Regulations 2001*.
11. The instrument notionally modifies subsection 992A(3) of the Act for the offer of life risk insurance products and CCI products only. The instrument does not affect the operation of subsection 992A(3) of the Act in relation to any other class of financial product.
12. The instrument prohibits a person making an offer to issue or sell a life risk insurance or CCI product in the course of, or because of:
 - (a) an unsolicited telephone call to another person unless the other person has been provided with personal advice in relation to the financial product by the person who made the offer or a person acting on behalf of that person; or
 - (b) unsolicited contact with another person in another way that is prescribed by the regulations unless all the requirements under paragraphs 992A(3)(a)—(e) of the Act are satisfied.
13. The effect of the instrument is that unsolicited telephone sales of direct life insurance and CCI are prohibited unless the consumer has been provided with personal advice by the offeror or a person acting on the offeror's behalf.
14. The instrument preserves the requirements under paragraphs 992A(3)(a)—(e) of the Act if the offer to issue or sell a life risk insurance or CCI product was in the course of, or because of, unsolicited contact with another person in another way that is prescribed by applicable regulations.
15. Conduct in contravention of subsection 992A(3) of the Act, as notionally modified by the instrument, is a criminal offence.
16. The instrument commences on the later of 13 January 2020 and the day after it is registered on the Federal Register of Legislation.

Legislative authority

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17. ASIC makes the instrument under subsection 992B(1) of the Act. Paragraph 992B(1)(c) of the Act provides that ASIC may, among other things, declare that Part 7.8 of the Act applies in relation to a class of financial products, as if specified provisions of that Part were omitted, modified or varied as specified in the declaration.
 18. Subsection 992B(5) of the Act provides that if conduct of a person would not have constituted an offence if a particular declaration under paragraph 992B(1)(c) had not been made, that conduct does not constitute an offence unless, before the conduct occurred, the text of the declaration was made available by ASIC on the internet. ASIC will register this instrument on the Federal Register of Legislation, which is made available on the internet.
 19. The instrument is a disallowable instrument.

Statement of Compatibility with Human Rights

20. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. The instrument prohibits a person from making an offer to issue or sell life risk insurance or consumer credit insurance products to a consumer in the course of, or because of an unsolicited telephone call unless the person or another person acting on their behalf, have provided personal advice to the consumer.
2. The instrument is intended to reduce consumer harms that have resulted and are likely to continue from the unsolicited “pressure selling” of such products.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.