



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66

ASIC Corporations (Repeal) Instrument 2022/65

This is the Explanatory Statement for *ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66* and *ASIC Corporations (Repeal) Instrument 2022/65*.

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

Summary

1. *ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66 (the relief instrument)* provides relief to general insurers and their intermediaries which was previously provided under ASIC Class Order [CO 11/842] (**the class order**).
2. Quotes for general insurance products are often sought by retail clients during telephone calls to help the clients compare products. The relief is given to address practical difficulties in giving a Product Disclosure Statement (**PDS**) at or around the time that a quote is given during telephone calls.
3. The relief instrument modifies the requirement to give a PDS to enable a quote for a general insurance product to be given to a retail client in the course of, or because of, a telephone call that is not unsolicited contact (within the meaning of section 992A of the Act) by applying the requirement differently depending on a decision by the client about whether the client wants a PDS to be given at this stage of the sale process. Under the relief, the client can choose to receive the PDS, and, if they do, the general insurer or intermediary must give a PDS as soon as practicable after the quote is given. This means that the PDS can be given after the telephone call.
4. *ASIC Corporations (Repeal) Instrument 2022/65 (the repeal instrument)* repeals the class order, which was due to automatically repeal on 1 April 2022. ASIC has granted declaratory relief in the relief instrument on substantially similar terms to that previously granted in the class order.

Purpose of the relief instrument

5. The purpose of the relief instrument is to modify the requirement to give a PDS to enable a quote for a general insurance product to be given to a retail client in the course of, or because of, a telephone call that is not unsolicited contact where the client does not give an instruction or take action that would enable reliance by the regulated person on either subsection 1012D(9J) (as inserted by regulation 7.9.07E of the *Corporations Regulations 2001*) or section 1012G of the *Corporations Act 2001* (**the Act**).
6. This will assist industry by giving greater certainty that the quote stage of the sales process can be completed during a telephone call without provision of a PDS until after the telephone call in which the quote has been given.
7. The relief instrument seeks to balance the consumer protection goal of requiring provision of the PDS with industry concern about compliance costs by applying the requirement differently depending on a decision by the client about whether the client wants a PDS to be given at this stage of the sale process.
8. Under subparagraph 1012B(3)(a)(i) of the Act, a regulated person must give a person a PDS for a financial product if the regulated person offers to issue the financial product to the person, and the financial product is to be issued to the person as a retail client. The PDS must be given at or before the time when the regulated person makes the offer.
9. Under paragraph 1010C(2)(a) of the Act, a reference to offering to issue a financial product includes a reference to inviting an application for the issue of the financial product.
10. In some circumstances, the provision of a quote for the premium on a general insurance product may be an invitation to a retail client to apply for the issue of that particular general insurance product on the terms specified in the quote, and therefore an ‘offer to issue’ that product. For example, where the quote is for a final premium amount calculated on the basis of detailed information provided by the client and the client can accept the quote (immediately or at a later time) by making an application for the product on the basis of the information provided to obtain the quote, the provision of the quote may be an ‘offer to issue’ the quoted product.
11. A quote that is an offer to issue a general insurance product may be given by a regulated person who is a general insurer or an intermediary that is authorised by the general insurer to make offers on its behalf. Where the regulated person is an intermediary, they may, by giving the quote, make both an ‘offer to issue’ the product on behalf of the insurer and an ‘offer to arrange for the issue of’ the product.
12. Quotes for general insurance products are often provided to retail clients during telephone calls and are often requested by clients for the purpose of comparing general insurance products. There are practical difficulties in giving a PDS during a telephone call.

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13. There are some existing legislative concessions from the PDS provisions that facilitate provisions of risk insurance products during telephone calls. In particular:
- (a) section 1012G of the Act extends the time for giving a PDS for a risk insurance product to after the issue of the product if the client expressly instructs that they require the product to be issued immediately or within a specified time, and it would not be reasonably practicable to comply with the ordinary requirement to give a PDS while complying with that instruction; and
 - (b) subsection 1012D(9J) of the Act (as inserted by regulation 7.9.07E of the *Corporations Regulations 2001*) relieves the regulated person of the requirement to give a PDS if the client immediately declines the offer and no financial product is issued as a result of the offer.
14. However, ASIC considers that these provisions do not cover the situation where a quote is given to a retail client for the purpose of comparison with other general insurance products, because the client does not make an immediate decision to either decline the offer or acquire the product (and give the requisite instruction for issue of the product).

Purpose of the repeal instrument

15. The repeal instrument repeals the class order ahead of its automatic repeal on 1 April 2022 in accordance with section 50 of the *Legislation Act 2003*.

Consultation

Original consultation on relief

16. Before the introduction of the class order, ASIC received submissions from the general insurance industry that the requirement to give a PDS at, or before, the time of making an invitation to apply for the issue of a financial product was not appropriate.
17. In October 2010, ASIC sought submissions from consumers, product issuers and financial service professionals on the relief proposed in Consultation Paper 144 *Giving a PDS in telephone sales of general insurance products (CP 144)*.
18. Following receipt of submissions to CP 144, and further direct consultation with each of the organisations and persons that made submissions as well as Treasury, ASIC determined to give the relief in the class order to address the potential gap in the existing legislative concessions, and enables the continued provision of quotes to retail clients during solicited telephone calls.

Consultation for remaking ASIC Class Order [CO 11/842]

19. In November 2021, ASIC sought public submissions from interested parties on ASIC's proposal, to remake the class order in the form of a legislative instrument without significant changes to the settings of the relief but reflecting

current drafting practice, in Consultation Paper 349 *Remaking ASIC class order on PDS requirements where a general insurance quote is given: [CO 11/842] (CP 349)*. Contemporaneously, ASIC also contacted a number of industry associations and consumer advocates seeking feedback.

20. The submission received from the Insurance Council of Australia indicated that the general insurance industry agreed that the rationale for relief provided by the class order remains unchanged, and that general insurers agreed that the relief continues to operate effectively and efficiently and in accordance with the original intent. ASIC did not receive any other public submissions and is not aware of any mischief having arisen from the relief provided by the class order.
21. ASIC did not specifically or separately consult on the repeal instrument, as ASIC has granted declaratory relief in the relief instrument on substantially similar terms as the class order ahead of its automatic repeal date of 1 April 2022. The repeal of the class order in this case is consistent with ASIC's proposal to remake the relief without significant changes.

Operation of the relief instrument

22. The relief instrument declares that Part 7.9 of the Corporations Act applies in relation to regulated persons as if Part 7.9 were modified to include a new notional section 1012GA.
23. Section 1012GA applies where the regulated person:
 - (a) makes an offer to issue, or an offer to arrange for the issue of, a general insurance product in the course of, or because of, a telephone call by or at the same time as giving a quote to the client; and
 - (b) has orally communicated the following information to the client:
 - if the insurance cover under the general insurance product is subject to exclusions or limitations – that the cover is subject to exclusions and limitations and that information about the exclusions and limitations is contained in a PDS for the general insurance product; and
 - that the level of insurance cover under the general insurance product may be different to the level of insurance cover under other general insurance products; and
 - (c) has asked the client whether the client would like a PDS to be given for the product but does not influence the client's decision to elect to be given the PDS.
24. Section 1012GA does not apply to a quote given in the course of, or because of, a telephone call to the client that is unsolicited contact (within the meaning of section 992A).

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25. Under section 1012GA, if, after being provided with the information specified above, the client states that they:
- (a) want to be given a PDS – the regulated person need not give the PDS at or before the time when the offer is made, but must instead give the client the PDS as soon as practicable after that time;
 - (b) do not want to be given a PDS – the regulated person is exempt from the requirement to give a PDS.
26. If the client then decides, in the course of the telephone call or subsequently, to apply for the general insurance product after receiving the quote, or is issued the product, the regulated person may be required to give the PDS for the product under section 1012B (as affected by section 1012G).

Operation of the repeal instrument

27. The repeal instrument repeals the whole of the class order: see section 4 and item 1 of Schedule 1.
28. The repeal instrument commences on the day after it is registered on the Federal Register of Legislation.

Legislative instrument and primary legislation

30. The relief provided by the relief instrument aims to balance the consumer protection goal of requiring provision of the PDS with industry concern about compliance costs and the accessibility of obtaining quotes for the purpose of comparison by retail clients. Feedback from public consultation indicates that the rationale remains extant as there is a continued preference by a not insignificant proportion of retail clients to engage with regulated persons over the telephone before purchasing a general insurance product. Changes and advances in technology have not made the rationale for the relief obsolete.
31. The subject matter and policy implemented by the relief instrument is notionally more appropriate for a legislative instrument rather than primary legislation because:
- (a) the relief instrument utilises powers given by Parliament to ASIC that allow ASIC to modify or affect the operation of the Act to provide a tailored and flexible regulatory environment that is fit for purpose for certain financial products; and
 - (b) the matters contained in the relief instrument are a specific amendment designed to ensure the application of primary legislation remains flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the primary legislation.

Legislative authority

32. ASIC makes the relief instrument under paragraph 1020F(1)(c) of the Act. It commences on the day after it is registered on the Federal Register of Legislation and continues in force for five years until 1 March 2027.
33. ASIC makes the repeal instrument under paragraph 1020F(1)(c) of the Act. Subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act) provides that where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
34. As legislative instruments, the relief instrument and repeal instrument are disallowable under section 42 of the *Legislation Act 2003*.

Appropriate duration of the relief instrument

35. ASIC considers that the appropriate duration for the relief instrument is five years due to the consumer and business uncertainty that would result if there was a shorter period. Quotes are regularly provided to and requested by retail clients during telephone calls for the purposes of comparing products. Business would be required to invest in systems and align their market and operational practices with compliance models if the relief ceased or changed. Similarly, some retail clients would need to adjust their behaviour when comparing products or may be inhibited from doing so efficiently and effectively.
36. ASIC considered a shorter duration for the relief instrument but determined this would impose unnecessary burdens on those affected by the relief instrument. Further, the original relief provided by the class order operated effectively for ten years without any feedback that indicated that the relief enabled any mischief or otherwise had perverse outcomes.
37. ASIC understands that the Government will consider making future amendments to the Act as part of the review process before the relief instrument is repealed in 2027. A five-year duration gives Treasury and ASIC time to undertake a review of the relief instrument and, if required, progress amendments to the primary law or regulations. This type of review is likely to be complicated and may need to commence a year or more before the relief instrument is repealed. A shorter duration may also increase business uncertainty.

Statement of Compatibility with Human Rights

38. 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*.

ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66

ASIC Corporations (Repeal) Instrument 2022/65

Overview

1. *ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66 (the relief instrument)* provides relief to general insurers and their intermediaries. The purpose of this instrument is to modify the requirement to give a PDS to enable a quote for a general insurance product to be given to a retail client during a solicited telephone call where the client does not give an instruction or take action that would enable reliance by the regulated person on either existing statutory exemptions.
2. Quotes for general insurance products are often provided to retail clients during telephone calls, and are often requested by clients for the purpose of comparing general insurance products. There are practical difficulties in giving a PDS during a telephone call. ASIC considers that the existing legislative concessions from the PDS provisions do not cover the situation where a quote is given to a retail client for the purpose of comparison with other general insurance products.
3. The relief instrument modifies requirement to give a PDS to enable a solicited quote for a general insurance product to be given to a retail client during a solicited telephone call by applying the requirement differently depending on a decision by the client about whether the client wants a PDS to be given at this stage of the sale process. Under the relief, the client can choose to receive the PDS, and, if they do, the general insurer or intermediary must give a PDS as soon as practicable after the quote is given. This means that the PDS can be given after the telephone call.
4. *ASIC Corporations (Repeal) Instrument 2022/65 (the repeal instrument)* repeals the ASIC Class Order [CO 11/842] (**the class order**), which was due to automatically repeal on 1 April 2022. ASIC has granted declaratory relief in the relief instrument on substantially similar terms to that previously granted in the class order.

Assessment of human rights implications

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5. The relief instrument and repeal instrument do not engage any of the applicable rights or freedoms.

Conclusion

6. The relief instrument and repeal instrument are 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*.