

Attachment to CP 324: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention— Add-on Insurance and Extended Warranties) Instrument 2019/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2019

[CONSULTATION DRAFT – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention—Add-on Insurance and Extended Warranties) Instrument 2019/XX*.

2 Commencement

This instrument commences on the later of:

- (a) [*insert date*]; and
- (b) the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1023D(3) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means *Corporations Act 2001*.

add-on insurance product means any of the following:

- (a) a consumer credit insurance product;
- (b) a guaranteed asset protection insurance product;
- (c) a loan or lease termination insurance product;
- (d) a mechanical breakdown insurance product;
- (e) a purchase price protection insurance product;
- (f) a tyre and rim insurance product.

consumer credit insurance product means a contract or part of a contract that has the following characteristics:

- (a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of:
 - (i) the death of the insured person; or
 - (ii) the insured person contracting a sickness or disease; or

- (iii) the insured person sustaining an injury; or
- (iv) the insured person becoming unemployed;
- (b) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a motor vehicle loan or a motor vehicle lease to which the insured person is a party.

deferral period, in relation to a purchase or lease of a motor vehicle by a retail client from an intermediary, means a period:

- (a) commencing at the time the intermediary makes the online consumer roadmap available to the retail client; and
- (b) ending at the start of the fourth day after the period commences.

extended warranty product means:

- (b) a contract between the purchaser or lessee of a motor vehicle and another person (the **third party**), not being the person from whom the purchaser or lessee acquired the vehicle, under which the third party promises to rectify, or to arrange for another person to rectify, defects with the motor vehicle; or
- (b) a contract between the purchaser or lessee of a motor vehicle and the person (the **dealer**) from whom the purchaser or lessee acquired the vehicle, under which the dealer promises to rectify, or to arrange for another person to rectify, defects with the motor vehicle;

but does not include a manufacturer warranty or statutory warranty.

guaranteed asset protection insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between:

- (a) in connection with a motor vehicle loan—the amount owing by a borrower under the loan and the amount covered by a motor vehicle insurance product; or
- (b) in connection with a motor vehicle lease—the amount payable by a lessee under the lease and the amount covered by a motor vehicle insurance product.

intermediary means a person who offers to arrange for the issue of an add-on insurance product or an extended warranty product to a retail client in connection with the purchase or lease of a motor vehicle.

lease, in relation to a motor vehicle, includes a proposed lease.

loan or lease termination insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between:

- (a) in connection with a motor vehicle loan—the amount owing by a borrower under the loan and the market value of the motor vehicle; or
- (b) in connection with a motor vehicle lease—the amount payable by a lessee under the lease and the market value of the motor vehicle.

mechanical breakdown insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the cost of repair or replacement of parts of a motor vehicle.

mechanical risk product means:

- (a) a mechanical breakdown insurance product; or
- (b) an extended warranty product.

motor vehicle means a vehicle that is designed:

- (a) to travel by road; and
- (b) to use volatile spirit, steam, gas, oil, electricity or any other power (not being human power or animal power) as its principal means of propulsion; and
- (c) to carry passengers;

and includes a motor cycle.

motor vehicle insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

- (a) loss of, or damage to, a motor vehicle;
- (b) liability for loss of, or damage to, property caused by or resulting from impact of a motor vehicle with some other thing.

motor vehicle lease means a lease, whether or not regulated by the National Credit Code, of a motor vehicle.

motor vehicle loan means the provision of credit, whether or not regulated by the National Credit Code, in connection with the purchase of a motor vehicle.

National Credit Code has the same meaning as in subsection 5(1) of the *National Consumer Credit Protection Act 2009*.

online consumer roadmap, in relation to an add-on insurance product or an extended warranty product made available to a retail client by or through an intermediary, means an online portal that:

- (a) includes a facility by which the client can choose to:
 - (i) apply for or acquire a product;
 - (ii) decline to apply for or acquire a product;
 - (iii) request further information about a product;
- (b) does not permit the client to use the facility unless the following information is disclosed or made available through the portal:
 - (i) a prominent statement, displayed to the client immediately on first accessing the portal, to the effect that a consumer is not obliged to buy any add-on insurance product or extended warranty product;
 - (ii) general information about each type of add-on insurance product or extended warranty product that the intermediary is permitted to make available through the portal;
 - (iii) for each add-on insurance product or extended warranty product that the intermediary is permitted to make available through the portal—the cost of each product, including any difference in cost depending on the method chosen to pay for each product;
 - (iv) for all add-on insurance products or extended warranty products that the intermediary is permitted to make available through the portal—the total cost of the products, including any difference in the total cost depending on the method chosen to pay for the products;
 - (v) links to the websites of issuers of any add-on insurance products or extended warranty products that the intermediary is permitted to make available through the portal; and
 - (vi) a link to ASIC’s MoneySmart website, including a reference to ASIC’s “MoneySmart Cars” app.

Note: An intermediary must not make available an add-on insurance product or extended warranty product, or option of cover within the product, through the online consumer roadmap to a retail client that the intermediary reasonably believes falls within an unsuitable class: see subsection 6(2).

product issuer means a person who issues or offers to issue an add-on insurance product or an extended warranty product to a retail client in connection with the purchase or lease of a motor vehicle.

purchase, in relation to a motor vehicle, includes a proposed purchase.

purchase price protection insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the difference between the amount covered by a motor vehicle insurance product and the purchase price of a motor vehicle.

tyre and rim insurance product means a contract or part of a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) for the cost of repair or replacement of damaged tyres and rims of a motor vehicle.

warranty administrator, in relation to an extended warranty product, means a person who provides administration services in relation to the extended warranty product.

Part 2—Order

5 Prohibitions

Intermediaries

- (1) An intermediary must not, in connection with the purchase or lease of a motor vehicle by a retail client, arrange for the client to apply for or acquire an add-on insurance product or an extended warranty product except in accordance with the conditions in Part 3.

Product issuers

- (2) A product issuer must not, in connection with the purchase or lease of a motor vehicle by a retail client, issue an add-on insurance product or an extended warranty product to the client as a result of an intermediary arranging for the client to apply for or acquire the add-on insurance product or an extended warranty product except in accordance with the conditions in Part 3.

Exceptions

- (3) The prohibitions in subsections (1) and (2) do not apply in any of the following circumstances:
 - (a) the add-on insurance product or extended warranty product is to be issued by the product issuer for no consideration;
 - (b) where the arranging or issuing of the add-on insurance product or extended warranty product occurs following the provision of personal advice in relation to the product by a person who is licensed or authorised to give such advice or is exempt from the requirement to be licensed or authorised to give such advice;
 - (c) where the arranging or issuing of the add-on insurance product or extended warranty product occurs as a consequence of an extension to the term of a motor vehicle loan or motor vehicle lease.

Part 3—Conditions

6 Online consumer roadmap

- (1) The intermediary must not make the online consumer roadmap available to a retail client unless the retail client has:
 - (a) entered into a contract to purchase or lease a motor vehicle; or
 - (b) applied for a motor vehicle loan or motor vehicle lease.

- (2) The intermediary:
 - (a) for each add-on insurance product or an extended warranty product, or option of cover within the product, that is made available by or through the intermediary—must identify each class (*unsuitable class*) of retail clients for whom the intermediary reasonably believes would not benefit from acquiring the add-on insurance product or extended warranty product or option of cover within the product; and
 - (b) must not make available the product or option of cover through the online consumer roadmap to a retail client that the intermediary reasonably believes falls within the unsuitable class; and
 - (c) must keep a record of the date the online consumer roadmap was made available to the retail client.

7 Deferral period

- (1) The retail client must have expressed an intention to apply for or acquire the add-on insurance product or the extended warranty product by using the facility in the online consumer roadmap before the end of the deferral period.
- (2) The intermediary must not initiate any contact with the retail client about an add-on insurance product or extended warranty product during the deferral period.
- (3) The deferral period must have ended in relation to the retail client.

8 Unconscionable conduct or manipulation

- (1) The intermediary must not, in relation to an add-on insurance product or an extended warranty product, engage in conduct that involves a technique that should not in good conscience have been used in relation to the retail client or which manipulates the client.
- (2) Without limiting subsection (1), the intermediary must not:
 - (a) make any representation to the retail client to the effect that if the client chooses not to acquire or apply for an add-on insurance product or extended warranty product then the client might be required to make payment from their own monies instead of claiming under the product;
 - (b) require the retail client to sign an acknowledgment to that effect.

9 Data collection and reporting

Add-on insurance products

- (1) A product issuer of an add-on insurance product must, if requested by ASIC, provide a written statement to ASIC in the manner and form specified, within 30 days of making the request or such longer period as agreed by ASIC, containing specified information about the administration of the product.

Extended warranty products

- (2) A product issuer of an extended warranty product must:
 - (a) to the extent the product issuer does not outsource the administration (or part of it) of the product to a warranty administrator—if requested by ASIC, provide a written statement to ASIC in the manner and form specified, within 30 days of making the request or such longer period as agreed by ASIC, containing specified information about the administration (or part of it) of the product;
 - (b) to the extent the product issuer outsources the administration (or part of it) of the product to a warranty administrator:
 - (i) ensure that any outsourcing agreement requires the warranty administrator to, if requested by ASIC, provide a written statement to ASIC in the manner and form specified, within 30 days of making the request or such longer period as agreed by ASIC, containing specified information about the administration (or part of it) of the product; and
 - (ii) give to the warranty administrator any information and reasonable assistance that the administrator reasonably requests to enable the administrator to comply with the request made by ASIC.

Note: ASIC has the power to give directions to financial services licensees to provide information to ASIC about the financial services provided by the licensee, and to make reasonable requests for assistance from licensees who are obliged to comply with such requests: see sections 912C and 912E of the Act.

10 Mechanical risk products

The terms of a mechanical risk product:

- (a) must not overlap with the period or terms of coverage of any manufacturer warranty or statutory warranty;
- (b) must not have a maximum individual claim amount of less than \$2,000;
- (c) must confer on the holder of the product a right to cancel the product at any time during the period of coverage and, if the right is exercised, to

oblige the product issuer to refund any monies paid by the holder to the product issuer on a pro-rata basis that corresponds to the remaining period of coverage that would have applied but for the cancellation;

- (d) must not include a requirement for the motor vehicle to be serviced by the person from whom the vehicle was purchased or leased or any of their associates;
- (e) for new motor vehicles or used motor vehicles less than 10 years old—must not include a requirement for the vehicle to be serviced that is more onerous (including more frequently) than that specified in the manufacturer’s warranty that covered the vehicle.