



ASIC

Australian Securities &
Investments Commission

REGULATORY GUIDE 168

Disclosure: Product Disclosure Statements (and other disclosure obligations)

July 2022

About this guide

This is a guide for persons responsible for Product Disclosure Statements (PDSs) and other disclosure obligations (i.e. AFS licensees, authorised representatives and product issuers).

It gives policy guidance on preparing a PDS that complies with the PDS requirements in the Corporations Act. It sets out good disclosure principles and explains how ASIC will monitor the use of PDSs and enforce the PDS requirements.

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

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.

Document history

This guide was issued in July 2022 and is based on legislation and regulations as at the date of issue. The note on the front cover was inserted on 27 July 2020.

Previous versions:

- Superseded Regulatory Guide 168, issued September 2010 and October 2011
- Superseded Policy Statement 168, issued November 2001, May 2005, May 2007, rebadged as a regulatory guide 5 July 2007

Disclaimer

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

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Under the *Corporations Act 2001* (Corporations Act), a retail client may receive a number of disclosure documents before acquiring a financial product.

We have published some Good Disclosure Principles to help product issuers and other professionals in preparing a Product Disclosure Statement (PDS). They will also be useful when preparing other disclosure documents for retail clients.

The Corporations Act facilitates the use of shorter, simpler PDSs by allowing Short-Form PDSs and incorporation by reference, and by applying a tailored disclosure regime to some products.

ASIC has procedures in place to monitor and assess PDSs once issued.

Disclosure to retail clients acquiring financial products

RG 168.1 Retail clients may receive a number of different documents providing disclosure before the issue of a financial product. Each document has its own purpose and relates to a different stage of the investment process. This purpose can be characterised, from the perspective of a consumer, as set out in Table 1.

Table 1: Disclosure required at each stage of investment process

What service am I getting?	Disclosure is in a Financial Services Guide (FSG)
What advice am I getting?	Disclosure is in a Statement of Advice (SOA) if the advice is personal
What product am I buying?	Disclosure is in a PDS and can be in a Short-Form PDS

RG 168.2 For more information on disclosure to retail clients, see Section B.

Good Disclosure Principles

RG 168.3 We have set out our Good Disclosure Principles in Section C. These principles are designed to help product issuers comply with the disclosure requirements and promote good disclosure outcomes for consumers. We

encourage product issuers to consider these Good Disclosure Principles when preparing a PDS.

- RG 168.4 While these principles focus on PDSs, they may also be useful for advisers who must produce other disclosure documents to give to retail clients and for those producing promotional publications about financial services and products.
- RG 168.5 The Good Disclosure Principles are:
- (a) disclosure should be timely;
 - (b) disclosure should be relevant and complete;
 - (c) disclosure should promote product understanding;
 - (d) disclosure should promote product comparison;
 - (e) disclosure should highlight important information; and
 - (f) disclosure should have regard to consumers' needs.
- RG 168.6 Product issuers are responsible for making sure that a PDS meets the requirements set out in Div 2 of Pt 7.9 of the Corporations Act and related regulations (PDS requirements). Generally, we will not vet any PDS before its release to consumers unless there are exceptional circumstances.
- RG 168.7 The PDS requirements are drafted to apply flexibly to any financial product. This means that we do not provide specific guidance about how the requirements apply to each and every financial product supplied to retail clients.

Shorter, simpler PDS disclosure

- RG 168.8 The Corporations Act facilitates the use of shorter, simpler PDSs by allowing Short-Form PDSs and incorporation by reference, and by applying a tailored disclosure regime to some products.

Note: For more information, see Section D.

Short-Form PDSs

- RG 168.9 A Short-Form PDS is a document that summarises the key information in a PDS (e.g. information about the issuer, benefits, risks, costs, return, dispute resolution and cooling off) and complies with Div 3A of Pt 7.9 of the Corporations Act (as inserted by Sch 10BA to the *Corporations Regulations 2001* (Corporations Regulations)). A Short-Form PDS can be given instead of a PDS for all products except for those that are subject to a tailored PDS regime: see RG 168.11–RG 168.13.

Incorporation by reference

- RG 168.10 A person who is responsible for a PDS can include certain statements or incorporate information ‘by reference’ if it is in writing and publicly available in a document other than the PDS or a Short-Form PDS: see RG 168.114–RG 168.124.

Note: For those products that are subject to a tailored regime, incorporation by reference is only permitted in certain circumstances—see RG 168.27–RG 168.30.

Tailored PDS regime for general insurance products

- RG 168.11 There is a tailored PDS regime for general insurance products that:
- (a) removes certain PDS content requirements for general insurance products;
 - (b) removes certain PDS content requirements where the information is disclosed by the product issuer in another document (e.g. policy terms and conditions); and
 - (c) specifies how a product issuer is to disclose significant characteristics or features of a general insurance product and the rights, terms, conditions and obligations attaching to the product.

Note: See regs 7.9.15E and 7.9.15F of the Corporations Regulations.

Shorter, simpler PDS regime for specified products

- RG 168.12 The Corporations Regulations provide for shorter or ‘tailored’ PDS regimes for specified products, including:
- (a) standard margin lending facilities (Sch 10C);
 - (b) superannuation products (other than a product that is solely a defined benefit scheme) (Sch 10D);
 - (c) simple managed investment schemes (Sch 10E); and
 - (d) simple sub-fund products (Sch 10F).

Note: For further information on the shorter PDS regimes for superannuation and simple managed investment schemes introduced by the *Corporations Amendment Regulations 2010 (No 5)*, see [Information Sheet 155](#) *Shorter PDSs—Complying with requirements for superannuation products, simple managed investment schemes and simple sub-fund products* (INFO 155).

- RG 168.13 These tailored PDS regimes:
- (a) remove some PDS requirements (in particular, the content requirements in s1013D) and modify others, substituting prescribed, product-specific content requirements; and
 - (b) require a maximum page length for a PDS.

Note: See Sch 10C–10F of the Corporations Regulations and [INFO 155](#).

Additional information for superannuation product PDSs

- RG 168.14 The trustee of a superannuation fund must include in its PDS information about the significant benefits, risks, features and costs of each investment option associated with the superannuation product.

How we monitor and assess PDSs

- RG 168.15 We will monitor PDSs issued across all industry sectors. We use a risk-based approach to determine whether disclosure to consumers can be improved by the provision of further guidance. This monitoring and review process will be ongoing. Any proposed guidance may include:
- (a) more detailed guidance about desired disclosure outcomes; or
 - (b) disclosure examples in areas:
 - (i) that give rise to the greatest concern for consumers; or
 - (ii) where the importance of better disclosure becomes more apparent.
- RG 168.16 When considering whether to further develop our policy, we will pay particular attention to the objectives of the legislation to, among other things, provide investors with information so that they may compare a range of financial products and understand their risks.

Note: For example, ASIC has issued the following product-specific guidance: [Regulatory Guide 45 Mortgage schemes—Improving disclosure for retail investors](#) (RG 45) and [Regulatory Guide 46 Unlisted property schemes—Improving disclosure for retail investors](#) (RG 46).

- RG 168.17 For more information on how we monitor and assess PDSs, see Section E.

B Disclosure to retail clients acquiring financial products

Key points

Retail clients may receive a number of different disclosure documents in the process of acquiring a financial product: RG 168.18–RG 168.20.

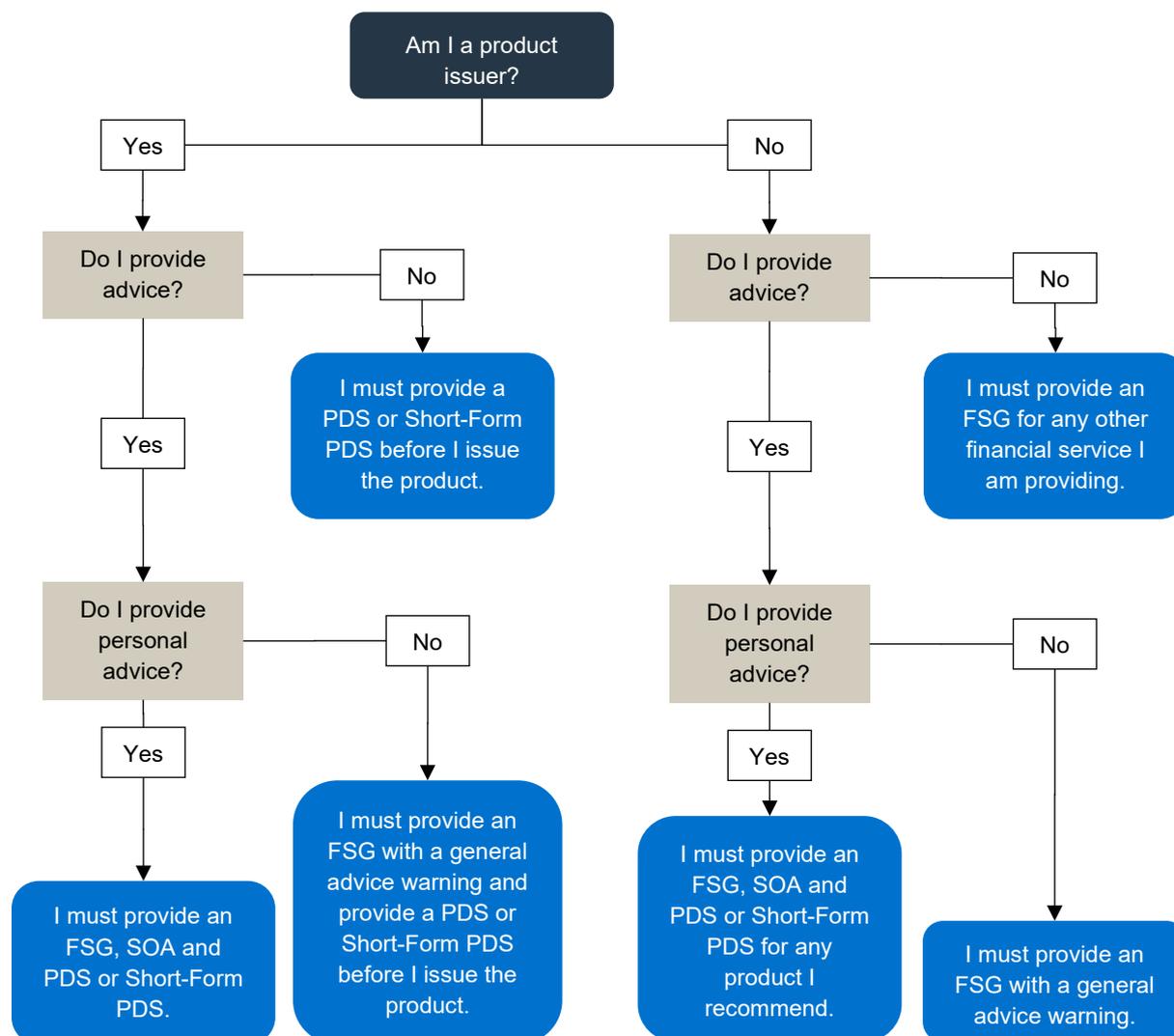
An FSG is prepared by the person providing advice and must contain information so that consumers can make an informed decision about whether to acquire a financial service: RG 168.21–RG 168.27.

An SOA is prepared by the financial adviser who provides personal advice and must contain information so that a retail client can make an informed decision about whether to act on the advice: RG 168.28–RG 168.37.

A PDS is prepared by or on behalf of the issuer or seller of the financial product and must contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product: RG 168.38–RG 168.56.

Disclosure in the investment process

- RG 168.18 Retail clients may receive a number of different disclosure documents before the issue of a financial product. Each document has its own purpose and relates to a different stage of the investment process:
- (a) when a client wants a financial service, disclosure is in the form of an FSG;
 - (b) when a client is seeking financial advice, disclosure is in the form of an SOA; and
 - (c) when a client wishes to buy a financial product, disclosure is in the form of a PDS (or Short-Form PDS).
- RG 168.19 Each of these disclosure documents must be worded and presented in a clear, concise and effective manner.
- Note: See s942B(6A) and 942C(6C) (FSG); s937B(6) and 947C(6) (SOA); and s1013C(3) (PDS).
- RG 168.20 The flowchart at Figure 1 illustrates the operation of the disclosure framework.

Figure 1: Flowchart of investment process and disclosure documents required

Note: For the process in this flowchart, see Table 2 (accessible version).

When a client wants a financial service

RG 168.21 An FSG must be prepared by the person who will provide a financial service: see Div 2 of Pt 7.7 of the Corporations Act. It must contain information so that consumers can make an informed decision about whether to acquire a financial service.

RG 168.22 An FSG includes information such as:

- (a) who will provide the service;
- (b) the kinds of financial services offered;
- (c) information about who the service provider is acting for when providing the financial service;

- (d) information about the means by which the service provider is remunerated for the services being offered to the retail client including details of commissions; and
- (e) details of any associations or relationships that might be expected to influence a service provider in providing the service.

Note: See s942B and 942C.

RG 168.23 Regulations may provide further detail about what information an FSG is required to contain: see Div 2 of Pt 7.7 of the Corporations Regulations.

When a client must receive an FSG

RG 168.24 Generally, a service provider must give a client an FSG before providing the financial service: see s941D(1). If ‘time critical’ criteria are met, then the service provider may give certain information verbally before providing the service without giving the full FSG: see s941D(2) and 941D(3). However, the provider must give the client the full FSG within five days after giving the verbal statement, or sooner if practicable: see s941D(4).

When an FSG is not needed

RG 168.25 Certain offers of financial services do not require an FSG: see s941C and s1241L. For example, the services provider does not need to give the client an FSG if the client has already received:

- (a) an FSG that contains all information relevant to the client (see s941C(1)); and
- (b) a PDS and a ‘statement’ that together contain all of the information a new FSG would have had to contain (see reg 7.7.02A).

RG 168.26 An FSG may be combined with a PDS or Short-Form PDS in certain circumstances, provided conditions are met: see reg 7.7.08A of the Corporations Regulations.

Note: Section 1017K applies s942DA, 1013M and reg 7.7.08A to the Short-Form PDS.

RG 168.27 An FSG may not be combined with a PDS for a superannuation product, simple managed investment scheme, simple sub-fund product or standard margin lending facility: see reg 7.7.08A.

When a client seeks financial advice

RG 168.28 An SOA must be prepared by the financial adviser who provides personal advice: see Div 3 of Pt 7.7 of the Corporations Act. It must contain information about the personal advice so that a retail client can make an informed decision about whether to act on that advice.

- RG 168.29 An SOA includes information such as:
- (a) a statement setting out the advice and an explanation of the basis on which it was given, including a warning if the advice is based on incomplete or inaccurate information;
 - (b) who has provided the advice;
 - (c) any remuneration or other benefit that a service provider or an associate may receive in connection with the advice that could influence the service provider;
 - (d) any other interests of the service provider or an associate that could influence the service provider; and
 - (e) any associations or relationships between the service provider or an associate and product issuers that could influence the service provider.

Note: See s947B and 947C.

- RG 168.30 Regulations may provide further detail about what information an SOA is required to contain: see Div 3 of Pt 7.7 of the Corporations Regulations.

When a client must receive an SOA

- RG 168.31 Generally, a financial adviser must provide the SOA to the client when, or as soon as practicable after, they provide their advice. In any event, the adviser should give the client the SOA before they provide the client with any further financial service that arises out of or is connected with the advice: see s946C(1).

- RG 168.32 If the financial adviser does not give the client an SOA when they provide the advice, they must inform the client verbally of certain matters. These matters include information about potential conflicts of interest and information about significant consequences that may accrue from replacing an existing financial product if a change of product is recommended: see s946C(2).

- RG 168.33 If the adviser does not give the client an SOA and the client requires a further financial service, the adviser must give the client the SOA within five business days after providing that further service (or sooner if practicable). If the further service is providing a financial product and a cooling-off period will apply, the adviser must give the client the SOA before the start of the cooling-off period (or sooner if practicable): see s946C(3).

Note: For information on when the cooling-off period starts, see s1019B(3).

When an SOA is not needed

- RG 168.34 An SOA is not required in certain situations when specific conditions are met and the advice is further advice: see s946B. However, in these

circumstances, the financial adviser must still give the client the information set out in RG 168.29(c)–RG 168.29(e).

Note: For further details about relevant conditions, see regs 7.7.09, 7.7.10AC, 7.7.10AD, 7.7.10AG, 7.7.10B, 7.7.10C and 7.7.10D.

- RG 168.35 An SOA is not required for advice about small investments and where the advice does not recommend the purchase or sale of products, when specific conditions are met: see s946AA, 946B and reg 7.7.09A.
- RG 168.36 An SOA is not required for some specified products—for example, basic deposit products, related non-cash payment facilities, travellers’ cheques, cash management trusts or general insurance products: see reg 7.7.10.
- RG 168.37 The service provider does not need to give the client an SOA if the advice provided is only *general* advice. If the service provided by an Australian financial services (AFS) licensee or authorised representative to a retail client is general advice, the licensee or authorised representative must warn the client about the limitations of the advice in these circumstances: see s949A for further details.

Note: For further information about giving financial product advice, see [Regulatory Guide 36 Licensing: Financial product advice and dealing](#) (RG 36) and [Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure](#) (RG 175).

When a client buys a financial product

- RG 168.38 A PDS is to be prepared by or on behalf of the issuer or seller of the financial product: see s1013A and, for a security in a corporate collective investment vehicle (CCIV) sub-fund, s1241Q. A PDS must contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product: see s1013D.

Note: Securities in a CCIV are referable to one and only one sub-fund. Accordingly, the information contained in a PDS for a CCIV would generally relate to the sub-fund to which those securities are referable. However, the PDS would also be required to contain relevant information about the CCIV as a whole: see the Explanatory Memorandum to the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 at paragraph 9.30.

- RG 168.39 The broad objectives of PDS disclosure are to help consumers compare and make informed choices about financial products. To achieve these objectives, the legislation requires that all information contained in a PDS must be worded and presented in a clear, concise and effective manner.
- RG 168.40 The content requirements of a PDS for financial products other than those that are subject to a tailored regime (see RG 168.11–RG 168.13) are set out in Subdiv C of Div 2 of Pt 7.9 of the Corporations Act. Briefly, a PDS must include information such as:
- (a) fees payable for a financial product;

- (b) risks of a financial product;
- (c) benefits of a financial product; and
- (d) significant characteristics of a financial product.

Note 1: For further details, see s1013C, 1013D, 1013DA, 1013E of the Corporations Act and Div 4 of Pt 7.9 of the Corporations Regulations.

Note 2: If a CCIV proposes to engage in cross-investment, the PDS for securities in a sub-fund of a CCIV must also include a statement that it intends to engage in cross investment: see s1241T. The PDS must also include information about any fees that may be charged to members in respect of any cross-investment activity.

Note 3: For notified foreign passport funds, please refer to [Regulatory Guide 138](#) *Foreign passport funds* (RG 138). Additional PDS content requirements apply to foreign passport fund products: see s1013GA.

Application form

RG 168.41 An application form must be attached to, accompany or be derived from a PDS: see s1016A. The application form must contain the applicant's name, date of birth and address. The address must be that of the actual applicant and cannot be the address of the AFS licensee or authorised representative advising the applicant: see reg 7.9.74(1). This is so the product issuer can identify the client. It is also consistent with the requirement that a PDS be 'given' to a client. The additional provision of a licensee's address for correspondence purposes is not prohibited—however, it is preferable for correspondence to also be sent to the client's own address.

RG 168.42 For all financial products except those that are subject to a tailored regime (see RG 168.11–RG 168.13), where a regulated person (defined in s1021B—see 'Key terms') must give another person a PDS, the regulated person can give a Short-Form PDS instead, provided that certain conditions are met: see Div 3A of Pt 7.9 (as inserted by Sch 10BA to the Corporations Regulations).

Note: For further information about Short-Form PDSs, see RG 168.111–RG 168.113.

When must a client receive a PDS?

RG 168.43 Generally, a regulated person should give a retail client a PDS at or before the time the person makes:

- (a) a recommendation to buy a financial product;
- (b) an offer to issue or arrange the issue of a financial product; or
- (c) an offer to sell the product, if that sale requires disclosure.

Note: See s1012A, 1012B and 1012C.

RG 168.44 For some superannuation and RSA products, the regulated person may give the client the PDS later if certain conditions are met: see s1012F and reg 7.9.04.

RG 168.45 Where ‘time critical’ criteria are met for products specified by s1012G(1), the person responsible at the point of sale may give certain information to the client verbally before providing the product without giving the full PDS: see s1012G. However, they must provide the full PDS to the client as soon as reasonably practicable and, in any event:

- (a) no later than five days after they issue or sell the product; or
- (b) when they comply with the confirmation requirement (see s1012G).

Note: For more detail about the conditions that must be met, see regs 7.9.80C and 7.9.80D.

RG 168.46 For general insurance products, the giving of a quote for the premium payable on the product may in some cases be an invitation to the client to apply for the quoted product and so be an ‘offer to issue’ the product. For example, the quote may be for a final premium amount calculated on the basis of detailed information provided by the client. 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. In this instance, the provision of the quote is likely to be an ‘offer to issue’ the quoted product.

Note: As an offer to issue a general insurance product can only be made by a person who has capacity to bind the general insurer to issue the product, a quote will only be an ‘offer to issue’ if it is given by the general insurer or an intermediary that has been authorised by the general insurer to make offers on its behalf (such as insurance brokers that act under a binder given by the general insurer).

RG 168.47 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. We have given relief to allow an offer to be made during a telephone call, by or at the same time as giving a requested quote to a client, without the regulated person being required to give the client a PDS at or before the time the quote is given. This relief only applies in some circumstances. This relief does not apply where the telephone call is an unsolicited telephone call. A regulated person who relies on this relief will need to:

- (a) give the client certain information verbally during the telephone call;
- (b) ask the client whether they want a PDS to be given as soon as practicable after the time the quote is given; and
- (c) if the client indicates that they do want a PDS to be given to them at that time, give the PDS as soon as practicable after the quote has been given.

Note: See [ASIC Corporations \(PDS Requirements for General Insurance Quotes\) Instrument 2022/66](#).

When a PDS is not needed

- RG 168.48 The regulated person is not required to give a client a PDS if:
- (a) the client already holds a financial product of the same kind; and
 - (b) the regulated person has reasonable grounds to believe that the client has received or had access to all of the information that the PDS would have been required to contain (see s1012D(2)).
- RG 168.49 A regulated person can establish that they have reasonable belief that the client has access to the required information by bringing the identity and location of each of the documents relied on to provide the required disclosure to their client's attention. Creating a list of documents and providing this list to the client would be a means to show reasonable grounds for believing that client was aware of the documents being relied on.
- RG 168.50 Access to the documents being relied on must be reasonable, convenient and inexpensive for the client. If accessing the material would require material involvement by a third party (such as going to an internet cafe or a library to access an electronic version) or the proposed access is inconvenient or expensive, then it may be difficult to believe on reasonable grounds that the client had access to the information.

Basic deposit products

- RG 168.51 Certain offers of financial products (e.g. basic deposit products) do not require a PDS: see s1012D and 1012E of the Corporations Act and Div 2C of Pt 7.9 of the Corporations Regulations.

Self-managed superannuation funds

- RG 168.52 An issuer or adviser is not required to give a client a PDS if:
- (a) the financial product is an interest in a self-managed superannuation fund (SMSF); and
 - (b) the issuer or adviser believes on reasonable grounds that the member joining the fund has received, or has (and knows they have) access to all of the information that the PDS would be required to contain (see s1012D(2A)).
- RG 168.53 Each member of an SMSF must be either a trustee or a director of the SMSF (if the trustee is a body corporate) and, as such, has an obligation to know about the fund in order to fulfil their duties. However, this does not, in itself, give an issuer or adviser reasonable grounds to believe that a prospective member has, or has access to, all of the information required.
- RG 168.54 The issuer or adviser needs to make a decision about each prospective member and actively consider whether they have received, or have (and know they have) access to, all of the information that the PDS would need to contain.

Group life insurance products

- RG 168.55 When a superannuation fund obtains a group insurance policy, the insurer does not have to give a PDS for the insurance product to a member of the fund under s1012H. This is because the insurer issues the policy to the trustee of the superannuation fund and not the member. The trustee must, however, ensure in its PDS for the superannuation product that the nature of fund benefits secured by group insurance arrangements and the identity of the external insurer are clearly and fully communicated to members.
- RG 168.56 This situation must be distinguished from the obligation to confirm a transaction. We take the view that the acceptance of an insurance election is a transaction that must be confirmed under s1017F.

General insurance products

- RG 168.57 We have provided relief to allow an insurer to make an offer during a telephone call, either by or at the same time as giving a requested quote to a retail client, without a PDS being given. This relief only applies in some circumstances. This relief does not apply where the telephone call is an unsolicited telephone call. A regulated person will not need to give a PDS if they have:
- (a) given the client certain information verbally during the telephone call;
 - (b) asked the client whether they want a PDS to be given as soon as practicable after the time the quote is given; and
 - (c) the client has indicated that they do not want a PDS to be given to them at that time.

Note: See [ASIC Instrument 2022/66](#). If the retail client subsequently applies for the general insurance product under the quote, the insurer must give the client a PDS before the client becomes bound to acquire the product (under s1012B(4)) or as soon as practicable after the issue of the product (if s1012G applies).

CCIVs

- RG 168.58 The CCIV, rather than the corporate director, is generally responsible for providing a PDS in relation to securities in a sub-fund of a CCIV: see the Explanatory Memorandum to the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 at paragraph 9.29.
- RG 168.59 As the issuer of securities in a sub-fund of a CCIV, the CCIV is a ‘regulated person’: see s1241Q and ‘Key terms’.
- RG 168.60 There are a number of exceptions to the requirement to give a PDS for securities in a sub-fund of a CCIV. These include where:
- (a) a client holds a financial product ‘of the same kind’. A security in a CCIV is only ‘of the same kind’ as another security in the CCIV if the first security is referable to the same sub-fund and issued on the same

- terms and conditions as the other security (see s1012C, 1012D and 1241R of the Corporations Act);
- (b) no consideration is required for the issue or sale of a security in a CCIV that is not an option (see s1012D(5)(b) and 1241S(1));
 - (c) the client is associated with the CCIV (see s1012D, 1241S(2) and 1241S(3));
 - (d) a fully paid share in a CCIV is offered or issued under a dividend reinvestment plan or bonus share plan (see s1012D and 1241S(4));
 - (e) an offer of securities in a sub-fund of a CCIV is made under a compromise or arrangement under Pt 5.1 of the Corporations Act (see s1241S(5));
 - (f) a rights issue is made in relation to a security in a sub-fund of a CCIV (see s1012DAA, 1241S(6) and 1241S(7)); and
 - (g) a small scale offer is made in relation to a security in a sub-fund of a CCIV (see s1012E and 1241S(8)).

C Good Disclosure Principles

Key points

We have developed our Good Disclosure Principles to help in preparing a PDS—however, the principles will also be useful when preparing other disclosure documents and promotional publications given to retail clients.

The principles are:

- disclosure should be timely (see RG 168.65–RG 168.68);
- disclosure should be relevant and complete (see RG 168.69–RG 168.75);
- disclosure should promote product understanding (see RG 168.76–RG 168.92);
- disclosure should promote product comparison (see RG 168.93–RG 168.95);
- disclosure should highlight important information (see RG 168.96–RG 168.102);
- disclosure should have regard to consumers' needs (see RG 168.103–RG 168.110).

Our approach to the development of the principles

- RG 168.61 We have developed the Good Disclosure Principles, having in mind:
- (a) the PDS requirements and related provisions of Pt 7.9 (including the regulations made for the purposes of those provisions and the legislative objectives of these provisions);
 - (b) our own regulatory experience;
 - (c) past and current point-of-sale disclosure practices;
 - (d) relevant overseas regulatory analogies; and
 - (e) the results of relevant Australian and overseas research (including the results of relevant consumer research and user testing).
- RG 168.62 The Good Disclosure Principles are outcome focused. The key outcomes that we seek to achieve are to help consumers make better decisions and to help consumers compare financial products.
- RG 168.63 While the Good Disclosure Principles do not replace any legal requirements about product disclosure under the legislation, we consider that applying them to any process for preparing a PDS will improve the quality of disclosure, which in turn should help consumers make better decisions about

financial products. The issue of quality of disclosure is reflected in a number of the PDS requirements and related provisions—in particular:

- (a) the requirement that the information included in the PDS must be worded and presented in a clear, concise and effective manner (see s1013C(3)); and
- (b) prohibitions on misleading or deceptive conduct or statements (e.g. see s1041E and 1041H). In some circumstances, confusing disclosure may be misleading.

RG 168.64 This means that product issuers should focus not only on the technical content requirements that apply to PDSs, but also the quality of the information being provided to consumers.

1 Disclosure should be timely

RG 168.65 In general, the Corporations Act requires a product issuer to provide a PDS to a consumer before that consumer applies for a financial product: see s1016A.

Note: The product issuer may provide the PDS later for certain superannuation products—see s1012F and reg 7.9.04. The product issuer is also allowed to provide a PDS later in certain other situations—see s1012G and regs 7.9.80C and 7.9.80D.

RG 168.66 We encourage product issuers to establish distribution procedures that maximise the time that a consumer has to read a PDS before making an application. This gives consumers the information they need at a time when it may influence their purchasing decision.

RG 168.67 A PDS must also be kept up to date. A product issuer should regularly review its PDS to make sure the information in it is current. An application by a consumer based on an out-of-date PDS may give rise to a right of refund under s1016E.

RG 168.68 We have granted limited relief from the requirement to update a PDS where the new information does not include any materially adverse information and where the new information is made available to consumers free of charge by some other means (e.g. through a website or a toll-free telephone service): see [*ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055*](#).

2 Disclosure should be relevant and complete

RG 168.69 The information in a PDS should be relevant to a consumer who is deciding whether to buy the financial product. It should also be complete.

- RG 168.70 The content obligations of the PDS requirements set out broadly what categories of information will be relevant in a PDS. These include information about significant benefits and risks, the cost of the product, factors affecting returns, significant tax implications, and what dispute resolution procedures are available if there is a problem.
- RG 168.71 Information in a PDS about contact details, cooling-off rights and access to external dispute resolution schemes should be clear and accessible. This is particularly important where there are multiple product issuers in one PDS and different information applies to each product issuer, or where an investor-directed portfolio-like service (IDPS) affects the cooling-off rights applicable to an underlying product.
- RG 168.72 When determining what information will be relevant and useful to a consumer for the purposes of decision making, a product issuer should consider:
- (a) the information needs of reasonable consumers of the class to whom the PDS is directed;
 - (b) the contractual or other arrangements under which the consumer holds a particular product;
 - (c) any relevant regulatory or other obligations applicable to the product (e.g. taxation);
 - (d) the most important information that consumers need, including, but not limited to, risk disclosure (this information should be highlighted—see also Good Disclosure Principle 5 at RG 168.96–RG 168.102);
 - (e) making sure that all relevant information is presented together or is effectively cross-referenced; and
 - (f) if disclosure is contained in more than one document (i.e. where the PDS consists of two parts or where there is a supplementary PDS that must be read together with the PDS), making sure that the information that makes up the PDS is clearly identified and linked.
- RG 168.73 A consumer will want to easily find and understand information on the cost of a financial product and the risks and benefits associated with the financial product. For example, if a product is described as ‘guaranteed’, the PDS should set out the nature and extent of the guarantee, who provides the guarantee, and the probability of the guarantee not being met.
- RG 168.74 The level of risk disclosure in a PDS will vary from product to product. In general, complex products that are not well understood need sufficient explanation of their risks to ensure consumers understand how the products work. Industry participants should not assume that consumers understand the risks involved in complex product offerings.

- RG 168.75 Disclosure that is not complete may constitute misleading or deceptive conduct or breach the content requirements of Pt 7.9 of the Corporations Act.

3 Disclosure should promote product understanding

- RG 168.76 The information included in a PDS ‘must be worded and presented in a clear, concise and effective manner’: see s1013C(3). We consider that preparing PDSs that attempt to promote financial product understanding by consumers will help issuers comply with their obligation to present a PDS in a clear, concise and effective manner.
- RG 168.77 We may issue a stop order for a PDS that is not clear, concise and effective: see s1020E(1)(a)(ia).

Using a range of communication tools

- RG 168.78 We encourage product issuers, when preparing a PDS, to consider using communication tools (e.g. text, tables, diagrams and graphs) that promote product understanding and comparability. Navigational aids, such as tables of contents and clear signposting, can help consumers to find information in the PDS more effectively. Product issuers should not, however, use communication tools in such a way that they are likely to confuse consumers.

Industry and legal jargon

- RG 168.79 Where possible, product issuers should try to avoid using industry and legal jargon in a PDS. If this cannot be avoided, then they should explain its meaning—for example, by including a glossary of technical terms. Product issuers should use plain language and, if necessary, illustrate explanations by providing simple examples.

Complexity of the product

- RG 168.80 Even where product issuers present information in plain language, the complexity of what is being described may create a barrier to consumers’ understanding.
- RG 168.81 For example, if a product issuer is offering multiple or ‘bundled’ financial products in a single PDS, the issuer may need to pay particular attention to this principle so that consumers are not misled or confused by any material in the PDS.
- RG 168.82 A product issuer may also need to provide a greater level of disclosure if the product is not generally understood by consumers (e.g. if it is new or complex): see s1013F(2).

RG 168.83 In some extreme instances, a product issuer may need to consider simplifying the item or system being described, as well as how information about it is disclosed. For example, some fee arrangements may be so complex that they are difficult to describe in a manner that is clear, concise and effective.

Extraneous information

RG 168.84 If product issuers want to include extraneous material in a PDS, they should consider the overriding requirement that the information in the PDS must be worded and presented in a clear, concise and effective manner. Extraneous material includes advertising or promotional material by the product issuer or by a third party (e.g. advertising about other products, including financial products) or immaterial benefits associated with acquisition of the product that is the subject of the PDS.

RG 168.85 If a product issuer includes extraneous material in a PDS, there are risks that:

- (a) a consumer may not read, or may disregard or not understand the importance of, other information in the PDS; and
- (b) a consumer might otherwise be misled or deceived.

RG 168.86 To diminish these risks, we expect product issuers will consider methods to ensure that extraneous material in a PDS is:

- (a) clearly distinguishable from other information; and
- (b) no more prominent than other information.

Disclosing fees, charges and returns

RG 168.87 We consider that the need for clear, concise and effective disclosure is most relevant for the disclosure of fees and charges and, in the case of investment-based products, the disclosure of returns. Information about fees, charges and investment returns is a key consideration for consumers when making decisions about financial products. Research shows that this information is also often the most difficult information for consumers to understand.

RG 168.88 Under the dollar disclosure provisions, various costs, fees, charges, expenses, benefits and interests must be stated as amounts in dollars in SOAs, PDSs and periodic statements (including exit statements). For further information about complying with the dollar disclosure provisions, see [Regulatory Guide 182 Dollar disclosure](#) (RG 182).

Note: See also [ASIC Corporations \(Disclosure in Dollars\) Instrument 2016/767](#).

RG 168.89 PDSs for superannuation products, managed investment products and securities in a sub-fund of a CCIV must include a fees and costs template (although for superannuation products, simple managed investment schemes and simple sub-fund products a simplified version of the template must be

used in the PDS, with the full template incorporated by reference): see Divs 4C–4D of Pt 7.9 and item 8 of Sch 10D, Sch 10E and Sch 10F to the Corporations Regulations.

- RG 168.90 The regulations include standard descriptions and calculation methods for fees and costs. These measures are designed to assist with clear, concise and effective disclosure of information about fees and costs, and to allow for easier comparability of fees and costs information in PDSs for investment products. The enhanced fee disclosure regulations also apply to periodic statements for superannuation products, managed investment products and securities in a sub-fund of a CCIV.
- RG 168.91 The types of product information that a consumer should be able to easily understand and compare include:
- (a) what the fees and charges are, the amount of fees (expressed as an amount in dollars where this is required), who the fees are paid to, what the fees are for, how and when the fees are paid, and how the fees affect returns;
 - (b) whether fees are variable and, if so, how and when they vary, including through negotiation or the impact of rebates or discounts (e.g. group life rebates);
 - (c) how returns are calculated and whether they are shown on a consistent basis. For example, if historical returns are disclosed for various investment strategies over different periods of time (e.g. 1, 3, 5 and 10 years), then, for each investment strategy, consumers should be able to understand whether or not the returns are shown on a consistent basis for each period. Generally, returns for financial products (including for different investment strategies of a financial product) covered by a PDS should be calculated on a consistent basis wherever possible; and
 - (d) typical and material factors that may affect returns, including risks.
- RG 168.92 If information about fees, charges and returns is not clear, concise and effective, comparability of products is harder to achieve.

4 Disclosure should promote product comparison

- RG 168.93 We consider that the clarity and effectiveness of PDS disclosure is also improved by being drafted in a way that makes it easier for consumers to make comparisons between:
- (a) two or more competing financial products; and
 - (b) options that may be available to them under the terms of a particular financial product. For example, where a consumer has the option to pay fees in two different ways, a comparison might be given to show the

relative charges made for each option after various durations (e.g. 1, 3, 5 and 10 years).

- RG 168.94 Consumers (particularly less experienced consumers) will not always be able to identify what particular pieces of information (e.g. information about fees and returns) are designed to assist with comparison of product options or different financial products. Comparative information should be clearly identified so that consumers are better able to use it.
- RG 168.95 Product issuers can also facilitate comparability by complying with relevant industry standards and practices designed to harmonise approaches to certain key items of disclosure. In some cases, if a product issuer fails to follow industry practices that consumers would expect it to follow, it may mislead or deceive consumers.

5 Disclosure should highlight important information

- RG 168.96 A PDS may contain all the relevant information that a consumer needs to decide whether to buy a financial product, but consumers (particularly less experienced consumers) may still:
- (a) miss important points because of the way it is presented; or
 - (b) misunderstand the purpose of the information.
- RG 168.97 To minimise the risk that a PDS is misleading or deceptive because of the way that it is presented, the product issuer should consider giving prominence to:
- (a) key information about the financial product to reflect the relative importance of the information to consumers (e.g. information about benefits and risks should have similar prominence in the PDS). In the case of PDSs for capital protected products, it is particularly important to provide disclosure relating to events that could cause the capital protection to cease;
 - (b) ‘warnings’ associated with particular items of information—for example, when:
 - (i) past performance information is shown, the PDS should include a warning that this information should not be relied on as indicative of future performance; and
 - (ii) prospective financial information is included, it should be accompanied by prominent disclosure on underlying assumptions, limits and risks (see [Regulatory Guide 170](#) *Prospective financial information* (RG 170));
 - (c) information about significant unusual product features (e.g. non-standard features or features not normally associated with a particular

type of product in the marketplace, such as some exclusions in the case of risk insurance claims that a particular product has but that are not common for other products of that type);

- (d) information about significant product features which, while they are not unusual, may lead to a significant financial impact for a consumer (e.g. the costs to a consumer of early termination or sale of an investment-based financial product (break costs), especially where the product may be sold to consumers with short-term investment objectives. To the extent that break costs cannot be calculated, an indication of the factors that may affect the amount of those costs should be included);

Note: Clear, concise and effective disclosure about early termination or sale is particularly important in the case of PDSs for capital protected products, given the usual effect of such events is that capital protection ceases—see [Report 201 Review of disclosure for capital protected products and retail structured or derivative products](#) (REP 201).

- (e) other significant details (e.g. information about who is going to provide any ongoing services for the product or particular aspects of the product, and how to contact them); and
- (f) key information about the financial product in a summary at the front of the PDS.

RG 168.98 As discussed in REP 201, retail investors need to be provided with sufficient information in the PDS to adequately assess counterparty risk, and disclosure should be sufficiently prominent to reflect the nature of the risk.

RG 168.99 In assessing whether a PDS contains sufficient disclosure to enable a retail investor to make an assessment of counterparty risk, we will consider a range of things including:

- (a) how information is disclosed in the PDS about the financial position and performance of the issuer (or, for over-the-counter (OTC) issuers, whether an undertaking has been included in their PDS that the latest financial statements will be provided to any potential investors on request);

Note: For the disclosure of information about financial position and performance, we have granted limited relief from the requirement to update a PDS where the new information does not include any materially adverse information and where the new information is made available to consumers free of charge by some other means (e.g. through a website or a toll-free telephone service): see [ASIC Instrument 2016/1055](#).

- (b) the risk management and compliance systems of the issuer;
- (c) the criteria used by the issuer to choose hedging counterparties; and
- (d) where there is only a very small number of hedging counterparties, the identities of those hedging counterparties.

RG 168.100 Where the issuer holds client money, we consider that an AFS licensee needs to clearly and prominently disclose in its PDS how it deals with client

money. This includes when, and on what basis, it makes withdrawals from client money, and the nature of the counterparty risk for client money used for derivatives: see [Regulatory Guide 212](#) *Client money relating to dealing in OTC derivatives* (RG 212).

- RG 168.101 The size of the typeface, the layout, the use of colour and graphics, the order in which information is presented, as well as the location and boldness of information, are all relevant to whether a consumer's attention is likely to be drawn to the information they most need. Product issuers should consider these issues when making sure that a PDS is clear, concise and effective.
- RG 168.102 Where a PDS is made up of several documents, we expect that the product issuer will give particular attention to helping consumers find the information most relevant to their decision and how this is linked to relevant information in other documents.

6 Disclosure should have regard to consumers' needs

- RG 168.103 The person responsible for preparing the PDS (responsible person) should take into account the information and communication needs of consumers when preparing a PDS. This will help the responsible person to meet both:
- (a) the content obligations of the PDS requirements (see s1013D(1)); and
 - (b) the 'clear, concise and effective requirement' (see s1013C(3)).
- RG 168.104 This might include:
- (a) monitoring carefully the class of consumers to whom the PDS is directed;
 - (b) producing a PDS that is based on a format that has been consumer tested;
 - (c) producing a PDS that has taken into account feedback (including complaints) from consumers about past or current point-of-sale offer documents used by the product issuer;
 - (d) personalising the information contained in the PDS for the consumer; or
 - (e) improving the quality of the disclosure in the PDS to promote product understanding by consumers (e.g. drafting a PDS to improve the comparability of competing financial products—see also Good Disclosure Principle 4 at RG 168.93–RG 168.95).

Consumer testing

- RG 168.105 Consumer testing may identify areas of the PDS that are potentially misleading and deceptive or confusing, or it may identify additional information that consumers need.

RG 168.106 Consumer testing can occur at an industry level as a basis for developing an industry standard for individual products or classes of product. In some cases, however, product issuers may need to consider consumer testing of the actual PDS proposed for consumers. Consumer testing may be particularly useful for complex products.

Consumer feedback and complaints

RG 168.107 Regardless of whether consumer testing is undertaken prior to the issue of a particular PDS, the ongoing review of a PDS (e.g. to determine whether supplementary information is needed) should take into account any feedback and, in particular, any complaints from consumers about the PDS (or relevant aspects of earlier kinds of point-of-sale offer documents used by the product issuer).

RG 168.108 Complaints, including those resolved internally and those referred for external resolution, are an important source of information about any consumer problems with, or misunderstandings caused by, the information in a PDS.

Personalised information

RG 168.109 Research has generally found that personalised information is more widely read and retained by consumers because it is seen as more important and relevant. An example of personalised information is using customer-specific information as a basis for projections associated with life insurance products.

RG 168.110 We envisage that there is greater opportunity for tailoring a PDS, or using personalised information, where:

- (a) electronic technology (including interactive technology) is used to provide the PDS to consumers; or
- (b) relevant personal details of the consumer are known by the product issuer prior to the provision of the PDS.

D Shorter, simpler Product Disclosure Statements

Key points

The Corporations Act facilitates the use of shorter, simpler PDSs by allowing Short-Form PDSs and incorporation by reference, and by applying a tailored disclosure regime to some products.

A Short-Form PDS can be given for some financial products, provided that certain conditions are met: see RG 168.111–RG 168.113.

Certain information that must be included in a PDS may be ‘incorporated by reference’: see RG 168.114–RG 168.124.

Some products (including general insurance and standard margin lending facilities) are subject to tailored PDS regimes: see RG 168.125–RG 168.133.

For most PDSs, a supplementary PDS can be used to correct misleading or deceptive statements or omissions, and/or to update information, contained in the original PDS: see RG 168.134–RG 168.135.

Short-Form PDSs

RG 168.111 For all financial products except those that are subject to a tailored regime, where a regulated person must supply a PDS to a client, the regulated person can give a Short-Form PDS instead, provided that certain conditions are met: see reg 7.9.61AA and Div 3A of Pt 7.9 (as inserted by Sch 10BA to the Corporations Regulations).

Note: PDS requirements for general insurance products are discussed at RG 168.125–RG 168.130. PDS requirements under the shorter, simpler PDS regime for standard margin lending facilities are discussed at RG 168.132–RG 168.133.

RG 168.112 The Short-Form PDS is intended to help product issuers avoid the problem of lengthy and complex product disclosure documents by allowing them to present a summary document rather than a full-length PDS. In general, a Short-Form PDS summarises the key information in a PDS (e.g. information about the issuer, benefits, risks, costs, return, dispute resolution and cooling off) and complies with Div 3A of Pt 7.9 (as inserted by Sch 10BA to the Corporations Regulations).

RG 168.113 Where a regulated person must give another person a PDS for a financial product, they can instead give the other person a Short-Form PDS unless (s1017H(1)):

- (a) the other person requests a (full) PDS (s1017H(2)); or

- (b) the financial product is a general insurance product (s1017H(4)).

Note: For further guidance on preparing a PDS, or Short-Form PDS, combined with an FSG, see [RG 175](#). A Short-Form PDS cannot be combined with an SOA—see s1017K, which applies s947E to the Short-Form PDS.

Incorporation by reference

Products *not* subject to a shorter, simpler PDS regime

- RG 168.114 For all financial products, except those that are subject to the shorter, simpler PDS regime (see RG 168.132), the responsible person can decide not to include in the PDS certain statements or information that would otherwise be required to be included: see reg 7.9.15DA. This statement or information can be ‘incorporated by reference’ if it is in writing and is publicly available in a document other than the PDS, including electronic sources such as the internet. The information cannot be incorporated from a Short-Form PDS.
- RG 168.115 Incorporation by reference is designed to help product issuers reduce the length of disclosure documents. It allows some of the required information to be incorporated by providing a reference in the PDS to another document, instead of including the information in full in the PDS.
- RG 168.116 A PDS can incorporate information by reference if the PDS:
- (a) refers to the information;
 - (b) provides sufficient details about the information to enable a person to:
 - (i) identify, by a unique identifier, the document or part of the document that contains the information;
 - (ii) locate the information; and
 - (iii) decide whether or not to read, or obtain a copy of, the information; and
 - (c) states that a copy may be obtained from the responsible person, on request, at no charge.
- RG 168.117 If a client requests a copy of the information, the responsible person must provide it as soon as practicable at no charge.
- RG 168.118 Any information that is incorporated by reference into the PDS is taken to be included in the PDS and is therefore subject to all provisions relating to a PDS. This means that the incorporated information must be clear, concise and effective and must not be misleading or deceptive.
- RG 168.119 The following information must be included in a PDS and cannot be incorporated by reference (reg 7.9.15DA(4)):
- (a) a description, in summary, of the key features of the product (including significant benefits and significant characteristics of the product);
 - (b) a description, in summary, of the key risks of the product;

- (c) the name and contact details of the issuer of the product and, if applicable, the seller of the product;
- (d) information about the dispute resolution system that covers complaints by holders of the product and how to access it;
- (e) information about any cooling-off regime;
- (f) the fees and costs with worked examples;
- (g) an explanation of adviser remuneration with worked examples; and
- (h) the consumer advisory warning.

RG 168.120 The PDS and information incorporated by reference must be kept by the responsible person for seven years. If the PDS must be lodged with ASIC, the information incorporated by reference must also be lodged.

Products that are subject to a shorter, simpler PDS regime

RG 168.121 For those products that are subject to more highly prescribed PDS content requirements (see RG 168.132), incorporation by reference is only permitted in certain circumstances: see regs 7.9.11E, 7.9.11P and 7.9.11X.

RG 168.122 A PDS can incorporate information by reference if the PDS:

- (a) includes a concise description of the matter; and
- (b) ensures that the reference to the matter is clearly distinguishable from the other contents of the PDS.

RG 168.123 The incorporated document must be:

- (a) in writing;
- (b) clearly distinguishable from any other matters that are not applied, adopted or incorporated;
- (c) publicly available in a document other than the PDS; and
- (d) identifiable (by including the date on which the version was prepared in a prominent position at or near the front of the version) so that a person who, at a particular time, is considering the product can identify the version that is relevant to the product at that time.

RG 168.124 The incorporated material must be accessible by the client reasonably easily and reasonably quickly.

The PDS framework for general insurance products

RG 168.125 The Corporations Regulations provide for a tailored PDS regime for general insurance products by:

- (a) removing certain PDS content requirements for general insurance products;

- (b) removing certain PDS content requirements where the information is disclosed by the product issuer in another document (e.g. policy terms and conditions);
- (c) specifying how a product issuer is to disclose significant characteristics or features of a general insurance product and the rights, terms, conditions and obligations attaching to the product; and
- (d) removing the requirement for some significant benefits of general insurance products to be stated in dollar terms.

PDS content requirements that apply to a PDS for a general insurance product

- RG 168.126 The *Insurance Contracts Act 1984* (Insurance Contracts Act) imposes a number of disclosure requirements, including disclosure to a person of the risks associated with holding a general insurance product. The purpose of removing certain PDS content requirements is to reduce the duplication of information between the PDS and the policy terms and conditions for general insurance products.
- RG 168.127 A PDS for a general insurance product must include the certain more detailed information to satisfy the requirement in s1013D(1)(f) (i.e. to disclose information about any other significant characteristics or features of the product): see reg 7.9.15E. That is:
- (a) the terms and conditions of the policy document (within the meaning of the Insurance Contracts Act); and
 - (b) any information that the product issuer would have to provide to the person under s35(2) or 37 of the Insurance Contracts Act before the contract of insurance has been entered into.
- RG 168.128 Some significant benefits must be stated in dollar terms, but can only be determined after the PDS has been produced—for example, because the product issuer (usually the insurer) must assess the risk of the applicant, or the applicant has not yet nominated desired levels of insurance cover. When this is the case, the information can be stated in the PDS in at least one of the following formats:
- (a) as a range of amounts in dollars;
 - (b) as a percentage of a matter that is mentioned in the statement; or
 - (c) as a description (see regs 7.9.15C(4) and (5)).
- The applicant must also be given a document stating the dollar amount of the cost or benefit within five business days of the product being issued.
- RG 168.129 We have granted relief under [ASIC Instrument 2016/767](#) for circumstances where the amount of costs or benefits cannot be stated for the client within five business days (i.e. when it is still unknown).

PDS content requirements that do not apply to a PDS for a general insurance product

RG 168.130 A PDS for a general insurance product does not have to include information about:

- (a) amounts deducted from a common fund (s1013D(1)(d)(iii));
- (b) commissions or other similar payments that might impact on returns (s1013D(1)(e));
- (c) any significant taxation implications of financial products of that kind (s1013D(1)(h));
- (d) how the client can access any other information about the financial product that might be available (s1013D(1)(j));
- (e) the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (s1013D(1)(l));
- (f) any significant risks associated with holding the product (s1013D(1)(c)); and
- (g) other information that might materially influence a decision to acquire the product (s1013E).

Note: See reg 7.9.15D.

Bundled insurance products

RG 168.131 If there is more than one insurer for a bundled insurance product, each insurer is responsible to the holder of the bundled insurance product for some or all of the risks or obligations covered by the product: see s764A(1A). All insurers will therefore be joint issuers of the product under s1013A(3A), and are responsible for all of the statements made in the PDS.

Shorter, simpler PDS regime for specified products

RG 168.132 The Corporations Regulations provide for tailored PDS regimes for specified products, including:

- (a) standard margin lending facilities (Sch 10C);
- (b) superannuation products (other than a product that is solely a defined benefit scheme) (Sch 10D);
- (c) simple managed investment schemes (Sch 10E); and
- (d) simple sub-fund products (Sch 10F).

Note: This guide does not cover the tailored PDS regimes for superannuation products, simple managed investment schemes and simple sub-fund products: see [INFO 155](#).

The PDS framework for standard margin lending facilities

- RG 168.133 The tailored PDS regime for standard margin lending facilities:
- (a) removes the usual PDS content requirements for financial products in s1013D;
 - (b) substitutes new PDS content requirements, which are more prescriptive and specifically address the key information a person acquiring a superannuation product would wish to know (Sch 10C); and
 - (c) requires a maximum page limit of four A4 pages (or equivalent) for the PDS, with an expectation that the person responsible for the PDS will make substantial use of incorporation by reference to provide additional information for clients.

Supplementary PDSs

- RG 168.134 A supplementary PDS is a document by which a person who has prepared a PDS can, among other things, correct misleading or deceptive statements or omissions, and/or update information contained in the original PDS: see s1014A. However, in some cases, issuing a new PDS may be better than issuing a supplementary PDS to correct a misleading or deceptive statement.

Note: For the disclosure of information about financial position and performance, we have granted limited relief from the requirement to update a PDS where the new information does not include any materially adverse information and where the new information is made available to consumers free of charge by some other means (e.g. through a website or a toll-free telephone service): see [ASIC Instrument 2016/1055](#).

- RG 168.135 A supplementary PDS is not available in the case of a PDS for a product that is subject to a tailored regime mandating the maximum length of the PDS. If the responsible person needs to update information contained in the original PDS, or correct a misleading or deceptive statement or omission, they must issue a new PDS.

E How we monitor and assess PDSs

Key points

We will conduct selective compliance reviews of PDSs to determine whether they comply with the PDS requirements.

We may review PDSs that we think are open to compliance risk. We also may review PDSs as part of a targeted project, in response to a complaint or at random.

Our general approach

- RG 168.136 Our approach to monitoring PDSs and enforcing the PDS requirements is underpinned by two key principles:
- (a) promoting compliance with the PDS requirements and achievement of their objectives; and
 - (b) providing certainty and transparency in the processes that we will adopt in fulfilling our regulatory responsibilities.

Lodging PDSs with ASIC and in-use notices

- RG 168.137 PDSs for managed investment products or securities in a sub-fund of a CCIV that state or imply that the product will be able to be traded on a financial market must be lodged with ASIC before their release to consumers: see s1015B(1) and s1241V. We must be notified about other PDSs as soon as practicable after a copy of the PDS is first given to consumers and, in any event, no less than five business days after it is first given to someone in a recommendation, issue or sale situation: see s1015D(2). We do not require notification in advance of a PDS being given to consumers.

Note: The requirement to lodge a PDS with ASIC also applies to a managed investment product of an Australian passport fund and a foreign passport fund product (see s1015B(1)(ba)(i) and (ii)) and to a CCIV security referable to a sub-fund that is an Australian passport fund (see s1241V(1)(c)). For Australian passport funds, there is also a requirement to lodge a copy of the PDS when applying to register as a passport fund: see s1212 and [Regulatory Guide 131 Funds management: Establishing and registering a fund](#) (RG 131) for further information.

- RG 168.138 Making a material change to a PDS has the effect of making it a new PDS, so that a new notification to ASIC must be made. Material changes may include:
- (a) the correction of a misleading or deceptive statement in the earlier PDS;

- (b) the addition of material required but omitted from an earlier PDS; or
- (c) an update or addition to, or removal of, information contained in the earlier PDS.

RG 168.139 Immaterial changes to a PDS may include:

- (a) a minor change to presentation; or
- (b) a trivial change to content (e.g. the correction of typographical errors).

RG 168.140 However, a change to a PDS will only be immaterial if:

- (a) the amended PDS remains clear, concise and effective; and
- (b) the amended PDS is not defective—that is, it does not include a misleading or deceptive statement, nor is there an omission from the PDS of information required to be included in it.

Compliance reviews

RG 168.141 We will conduct selective compliance reviews of PDSs to determine whether they comply with the PDS requirements.

RG 168.142 We may review certain PDSs:

- (a) that we consider as open to compliance risk (e.g. products marketed to vulnerable consumer groups or products that are highly complex);
- (b) if we receive credible information from external sources (e.g. consumer complaints) about a PDS that warrants undertaking a review; or
- (c) at random.

RG 168.143 We will determine compliance risk for a product or class of products from time to time, having regard to the financial services environment that prevails at a particular time, trends in consumer complaints we receive and our general regulatory experience.

RG 168.144 This approach is consistent with our overall surveillance and enforcement philosophy and seeks to strike a balance between our regulatory responsibilities and finite resources.

RG 168.145 We may conduct a review on:

- (a) an individual PDS (individual assessment);
- (b) a number of PDSs for a particular class of product or products (product-based assessment); or
- (c) PDSs of a particular product issuer or conglomerate including a number of product issuers (institutional assessment).

RG 168.146 While a PDS has no expiry date, issuers must keep a PDS up to date. We may take enforcement action if changes in circumstances mean that the PDS becomes misleading or incomplete.

Note: For further information about up-to-date PDSs, see s1016E, reg 7.9.13A and [ASIC Instrument 2016/1055](#).

Assessing misleading and deceptive conduct

RG 168.147 When assessing whether a PDS appears to be misleading or deceptive, we will pay particular attention to:

(a) statements about future matters such as forecasts (they should have reasonable grounds);

Note: For further guidance on statements about future matters in PDSs, see [RG 170](#).

- (b) statements about past performance;
- (c) statements of opinion (they should be formed honestly and reasonably);
- (d) the likely overall impression of the PDS;
- (e) the use of illustrations or examples to highlight an aspect of the disclosure being provided;
- (f) the use of disclaimers;
- (g) ambiguous statements;
- (h) whether statements draw inaccurate, unfair or inappropriate comparisons;
- (i) the currency of information; and
- (j) how information is set out and the prominence given to particular pieces of information.

Statements about future matters

RG 168.148 A statement about any future matter is misleading or deceptive if the maker does not have reasonable grounds for making it. For example, a statement about prospective financial information based on a number of hypothetical assumptions is unlikely to be based on reasonable grounds.

Note: For further guidance on disclosure of prospective financial information, see [RG 170](#).

Statements about past performance

RG 168.149 The responsible person should take care when showing past performance information—in particular, they should consider whether any misleading or deceptive representation may arise from:

- (a) the currency of past performance information (e.g. does the information need to be updated, including by means of a supplementary PDS?)—for

more information, see [Regulatory Guide 53](#) *The use of past performance in promotional material* (RG 53) at paragraphs 10.1–10.7;

- (b) the length of time a product or investment strategy has been in existence or the investment period selected;
- (c) the periods for which past performance information is shown (e.g. different sub-periods in the life of any past performance information may produce entirely different past performance figures);
- (d) whether the past performance information is shown in accordance with any industry standards;
- (e) any explicit or implicit suggestion of a link between past performance and future prospects;
- (f) the use of hypothetical or reconstructed past performance figures;
- (g) changes in the state of the market such that returns in the short to medium term are likely to be significantly less than the past performance being quoted; and
- (h) changes in the method or mechanism by which the investment strategy is implemented (e.g. appointment of a new investment manager).

RG 168.150 A statement about past performance should be accompanied by a prominent warning that past performance is not necessarily a guide to future performance.

Statements of opinion

RG 168.151 A statement of opinion that amounts to a representation may be misleading or deceptive in the following circumstances:

- (a) an opinion may be a statement about a future matter, in which case it must be based on reasonable grounds. If this is not the case, the expression of opinion may be regarded as misleading or deceptive;
- (b) an opinion may convey that there is a basis for the opinion, that it is honestly held, and when expressed as the opinion of an expert that it is honestly held on rational grounds involving the application of the relevant expertise. If this is not the case, the expression of opinion may be regarded as misleading or deceptive (see *Bateman v Slayter* (1987) ATPR 40–762); and
- (c) a statement of opinion involving a state of mind may convey the meaning (expressly or by implication) that the maker had the particular state of mind when the statement was made and, commonly, that there was a basis for having that state of mind. If this is not so, such a statement may constitute misleading or deceptive conduct (see *Stanton v ANZ Banking Group* (1987) ATPR 40–755).

- RG 168.152 A statement of opinion may become misleading or deceptive if it continues to be published when the maker no longer holds the opinion or the grounds on which it was made have substantially changed.
- RG 168.153 A PDS may only include a statement made by a person, or information based on a statement made by a person, if that person has consented to its inclusion in the PDS: see s1013K.

Overall impression of PDS

- RG 168.154 In assessing the overall impression conveyed by a PDS, we will:
- (a) identify the relevant section of the public to whom the offer was made; and
 - (b) consider the range of people within that section of the public.

The PDS should be intelligible to reasonable members of the class to whom it is directed: see *Fraser v NRMA Holdings Ltd* (1995) 15 ASCR 590.

- RG 168.155 Consumer testing documents may help issuers identify whether people are or are not actually misled by a document (although it is not necessary to prove that someone has been actually misled to establish misleading and deceptive conduct).

Illustrations or examples

- RG 168.156 Illustrations or examples should be provided on a consistent basis and be accompanied by a clear explanation of:
- (a) the facts and assumptions on which they are based (e.g. an illustration of the effect of fees on the actual returns of an investment should indicate what fees are included in any calculation); and
 - (b) their purpose (e.g. an illustration of the effect of fees on returns is not a forecast of the end benefit payable).

Disclaimers

- RG 168.157 Disclaimers about statements may not be effective if they are not sufficiently prominent to clearly counterbalance the effect of a misrepresentation clearly made. A disclaimer should generally be able to be seen and understood by those who otherwise might be misled: see *Lezam Pty Ltd v Seabridge Australia Pty Ltd* (1992) 35 FCR 535.

Ambiguous statements

- RG 168.158 Ambiguity may constitute misleading or deceptive conduct if one or more of the reasonably possible meanings is misleading or deceptive.

Comparisons

- RG 168.159 The comparison of the performance of a product to a benchmark or a competitor should be done in a careful manner. For example, comparison of a financial product against a benchmark assuming that returns are reinvested may be misleading or deceptive if, in fact, it is not possible to reinvest returns. Also, comparison of returns for different investment strategies may be misleading or deceptive if the returns for each investment strategy are not calculated and shown on a consistent basis, or there is no explanation of the basis on which returns information is being provided.

What we do when there are disclosure concerns

- RG 168.160 When we detect or are made aware of valid *prima facie* disclosure concerns about a PDS, we may notify the issuer of our concerns before serving an interim stop order.
- RG 168.161 However, if delay could be prejudicial to the public interest, we may impose an interim stop order without consulting the issuer, pending resolution of our concerns at a hearing.
- RG 168.162 Our approach to issuing stop orders during the exposure period under Ch 6D of the Corporations Act is set out in [Regulatory Guide 254](#) *Offering securities under a disclosure document* (RG 254) at RG 254.335–RG 254.351. PDSs that are not required to be lodged, and to which no exposure period applies, may be subject to a stop order at any time.
- RG 168.163 In deciding whether to take enforcement action on a particular PDS, we will consider whether the PDS appears to:
- (a) be misleading or deceptive;
 - (b) contain all relevant information;
 - (c) meet the other general and specific content requirements of Pt 7.9; and
 - (d) be worded and presented in a clear, concise and effective manner.
- RG 168.164 In making our assessment, we will also take into account:
- (a) any changes that have occurred since the date of the PDS that could make it deficient;
 - (b) the circumstances surrounding the preparation of the PDS;
 - (c) the extent to which the Good Disclosure Principles in Section C have been followed;
 - (d) the circumstances in which the PDS was given to the consumer; and
 - (e) whether the PDS adheres to any industry standards or codes.

- RG 168.165 When determining the scope or terms of a stop order, we will consider the nature of the financial product and the potential impact of the order on the interests of consumers (e.g. the impact on renewals for general insurance).

Defective PDSs

- RG 168.166 Where the responsible person (in most cases the issuer) becomes aware that a PDS has become defective in a way that materially adversely affects retail clients, the issuer must generally take remedial action: see s1016E.
- RG 168.167 Remedial action can include:
- (a) refunding any money received;
 - (b) giving the applicant a supplementary PDS or new PDS and one month to withdraw their application; or
 - (c) giving the applicant a supplementary PDS or new PDS as well as one month to return the product and receive a refund.
- RG 168.168 If a client has applied for a product on the basis of an out-of-date or otherwise defective PDS that is contrary to s1016E, they are entitled to return the product and obtain a refund: see s1016F.

Note: If a person is issued or sold securities in a sub-fund of a CCIV under a defective PDS, the person has the right to return the securities and have the money they paid for the securities returned to them. This is the case even if the CCIV or the CCIV's corporate director is being wound up. The directors of the corporate director are personally liable to repay the money: see s1241Y.

- RG 168.169 An investor can only exercise this right within one month of the date of issue of the product. An investor may not realise within that timeframe that their application was made under a defective PDS.

Appendix: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying information for the figures presented in this guide.

Table 2: Flowchart of investment process and disclosure documents required

Step	Description
1	Am I a product issuer? <ul style="list-style-type: none"> • If yes, go to step 2. • If no, go to step 4.
2	Do I provide advice? <ul style="list-style-type: none"> • If yes, go to step 3. • If no, I must provide a PDS or Short-Form PDS before I issue the product. End of process.
3	Do I provide personal advice? <ul style="list-style-type: none"> • If yes, I must provide an FSG, SOA and PDS or Short-Form PDS. End of process. • If no, I must provide an FSG with a general advice warning and provide a PDS or Short-Form PDS before I issue the product. End of process.
4	Do I provide advice? <ul style="list-style-type: none"> • If yes, go to step 5. • If no, I must provide a FSG for any other financial service I am providing. End of process.
5	Do I provide personal advice? <ul style="list-style-type: none"> • If yes, I must provide an FSG, SOA and PDS or Short-Form PDS for any product I recommend. End of process. • If no, I must provide an FSG with a general advice warning. End of process.

Note: This table shows the process in Figure 1.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Instrument 2016/1055	An ASIC legislative instrument (in this example numbered 2016/1055)
CCIV	A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act Note: This is a definition contained in s9 of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
dollar disclosure provisions	Provisions of the Corporations Act and Corporations Regulations that require various costs, fees, charges, expenses, benefits or interests to be stated as amounts in dollars unless ASIC grants relief: see s947B(2)(h), 947C(2)(i), 947D(2)(d), 1013D(1)(m), 1017D(5A) and regs 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.9.15A–7.9.15C, 7.9.19A–7.9.19B, 7.9.20A–7.9.20B, 7.9.74A–7.9.75 and 7.9.75C–7.9.75D
fees	Costs that a consumer will pay for a product or service. These include commissions and, unless the context requires otherwise, all government charges
financial product	Generally, a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D). Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.

Term	Meaning in this document
FSG	<p>A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
INFO 155 (for example)	An ASIC information sheet (in this example numbered 155)
Insurance Contracts Act	<i>Insurance Contracts Act 1984</i>
managed investment product	<p>Has the meaning given in s761A of the Corporations Act</p> <p>Note: A notified foreign passport fund is a managed investment scheme for the purpose of the Corporations Act: see s1213E.</p>
OTC	Over the counter
PDS	<p>A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
PDS requirements	The requirements set out in Div 2 of Pt 7.9 and related regulations
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9)
reg 7.7.02A (for example)	A regulation of the Corporations Regulations (in this example numbered 7.7.02A), unless otherwise specified
regulated person	<p>A person who is:</p> <ul style="list-style-type: none"> • an issuer of the financial product; • a seller of the financial product if the sale takes place in circumstances described in s1012C(5), (6) or (8) (secondary sales that require a PDS); • any AFS licensee; • any authorised representative of an AFS licensee; • any person who is not required to hold an AFS licence because the person is covered by: <ul style="list-style-type: none"> – s911A(2)(j); – an exemption in regulations made for the purposes of s911A(2)(k); or – an exemption specified by ASIC for the purposes of s911A(2)(l); or • any person who is required to hold an AFS licence but who does not hold such a licence. <p>Note: See s1011B for the exact definition, and s1241Q in relation to CCIVs.</p>

Term	Meaning in this document
responsible person	The person who, or on whose behalf, a PDS for a financial product is required to be prepared Note: See s1013A(3) for the exact definition.
retail CCIV	A CCIV that satisfies the retail CCIV test in s1222K of the Corporations Act or is notified as a retail CCIV under s1222L of the Corporations Act Note: This is a definition contained in s1222J.
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 175 (for example)	An ASIC regulatory guide (in this example numbered 175)
s1013D (for example)	A section of the Corporations Act (in this example numbered 1013D), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2D and Schs 10C, 10D, 10E and 10F of the Corporations Regulations, which prescribe the content and length of the PDS for margin loans, superannuation products simple managed investment schemes and simple sub-fund products.
Short-Form PDS	Short-Form Product Disclosure Statement—a PDS that complies with the requirements set out in Div 3A of Pt 7.9 of the Corporations Act, which were introduced by the <i>Corporations Amendment Regulations 2005 (No. 5)</i> , and which provide issuers with the option of giving retail clients a Short-Form PDS (unless excluded) as long as a full PDS is available on request: see s1017H as inserted by Sch 10BA of the Corporations Regulations
simple managed investment scheme	A registered scheme that invests at least 80% of its assets in a bank account where funds can be withdrawn within three months, or in arrangements where the investments can be realised at market value within 10 days: see reg 1.0.02 of the Corporations Regulations
simple sub-fund product	A security in a sub-fund of a retail CCIV, where at least 80% of the assets are invested in a bank account where the funds can be withdrawn within three months, or in arrangements where the investments can be realised at market value within 10 days: see reg 1.0.02 of the Corporations Regulations
SMSF	A self-managed superannuation fund

Term	Meaning in this document
SOA	<p>A Statement of Advice—a document that must be given to a retail client for the provision of personal advice in accordance with Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
sub-fund	<p>Has the meaning given in s1222Q of the Corporations Act</p> <p>Note: A sub-fund is established on the day on which it is registered: see s1222T.</p>

Related information

Headnotes

financial products, Financial Services Guide (FSG), Good Disclosure Principles, industry standards or codes, misleading or deceptive conduct, PDS requirements, Product Disclosure Statement (PDS), Short-Form Product Disclosure Statement (Short-Form PDS), promotions, Statement of Advice (SOA)

Legislative instruments

[*ASIC Corporations \(Disclosure in Dollars\) Instrument 2016/767*](#)

[*ASIC Corporations \(PDS Requirements for General Insurance Quotes\) Instrument 2022/66*](#)

[*ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055*](#)

Regulatory guides

[*RG 36 Licensing: Financial product advice and dealing*](#)

[*RG 45 Mortgage schemes—Improving disclosure for retail investors*](#)

[*RG 46 Unlisted property schemes—Improving disclosure for retail investors*](#)

[*RG 53 The use of past performance in promotional material*](#)

[*RG 131 Funds management: Establishing and registering a fund*](#)

[*RG 138 Foreign passport funds*](#)

[*RG 169 Disclosure: Discretionary powers*](#)

[*RG 170 Prospective financial information*](#)

[*RG 175 Licensing: Financial product advisers—Conduct and disclosure*](#)

[*RG 182 Dollar disclosure*](#)

[*RG 212 Client money relating to dealing in OTC derivatives*](#)

[*RG 254 Offering securities under a disclosure document*](#)

Legislation

Corporations Act, Ch 6D; Pt 5.1, Pt 7.7 Div 2 Div 3, Pt 7.9 Div 2 Div 3A; s764A, 937B, 941C, 941D, 942B, 942C, 942DA, 946AA, 946B, 946C, 947B, 947C, 947E, 949A, 1012A–1012DAA, 1012E–1012H, 1013A, 1013C, 1013D, 1013DA, 1013E, 1013F, 1013GA, 1013K, 1013M, 1014A, 1015B, 1015D, 1016A, 1016E, 1016F, 1017F, 1017H, 1017K, 1019B, 1020E, 1021B, 1041E, 1041H, 1212, 1241L, 1241Q, 1241R, 1241S, 1241T, 1241V, 1241Y

Corporations Regulations, Pt 7.7 Div 2 Div 3, Pt 7.9 Div 2C Div 4 Divs 4C–4D; regs 7.7.02A, 7.7.08A, 7.7.09, 7.7.09A, 7.7.10, 7.7.10AC, 7.7.10AD, 7.7.10AG, 7.7.10B, 7.7.10C, 7.7.10D, 7.9.04, 7.9.11E, 7.9.11P, 7.9.11X, 7.9.13A, 7.9.15C, 7.9.15D, 7.9.15DA, 7.9.15E, 7.9.15F, 7.9.61AA, 7.9.74, 7.9.80C, 7.9.80D; Schs 10BA, 10C–10F

Insurance Contracts Act, s35, 37

Cases

Bateman v Slayter (1987) ATPR 40–762

Fraser v NRMA Holdings Ltd (1995) 15 ASCR 590

Lezam Pty Ltd v Seabridge Australia Pty Ltd (1992) 35 FCR 535

Stanton v ANZ Banking Group (1987) ATPR 40–755

Reports

[REP 201](#) *Review of disclosure for capital protected products and retail structured or derivative products*

Information sheets

[INFO 94](#) *Notification requirements for Product Disclosure Statements*

[INFO 155](#) *Shorter PDSs—Complying with requirements for superannuation products, simple managed investment schemes and simple sub-fund products*