



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 80

# Group insurance arrangements

May 2007

## What this paper is about

**1** It is common for a variety of organisations, such as sporting and community associations (e.g. football clubs or surf life saving associations), to apply for or arrange risk insurance products (i.e. a general insurance product or a life risk insurance product) for the benefit of their members, that is, to act as ‘group purchasing bodies’. These group purchasing arrangements can provide lower premiums, convenience and greater availability of cover for consumers.

Note: For a full description of what we mean by ‘group purchasing bodies’, see paragraph 1.1.

**2** The provisions of Ch 7 and Ch 5C of the *Corporations Act 2001* (Cth) are designed to protect consumers by imposing obligations on issuers and distributors (sellers) of financial products. On their face, these provisions also apply to group purchasing bodies. However, as the role played by group purchasing bodies in arranging the purchase of these insurance products is in many respects comparable to that of a consumer or purchaser of insurance products (rather than a seller of insurance), we think strict compliance with these provisions may be inappropriate.

Note: Our proposed relief is not directed at insurance brokers.

**3** We are consulting on a proposal to offer conditional ongoing relief for group purchasing bodies from the obligations under Ch 7 to hold an Australian financial services (AFS) licence and under Ch 5C to register certain kinds of managed investment schemes that may be involved in the group insurance arrangements.

**4** A related issue is that s1012H of the Corporations Act requires issuers of group financial products to take reasonable steps to ensure that each member of the group who elects to be covered by a group insurance product receives a product disclosure statement (PDS).

**5** It is uncertain whether s1012H applies to a group financial product even if the person to be covered would not have acquired the financial product as a retail client if the person acquired the financial product directly. For general insurance, arguably a PDS must be given to a person covered by a group insurance arrangement even if the policy is of a kind which is acquired by a wholesale client. We are therefore consulting on a proposal to exempt an issuer from s1012H when the person covered under a group financial product would have acquired the product as a wholesale client if it acquired the financial product directly.

**6** We are seeking your views on our proposals and, particularly, whether or not you consider that our proposals:

(a) adequately define group purchasing;

- (b) prevent commercial sellers and distributors of financial products avoiding their obligations under Chs 7 and 5C;
- (c) maintain appropriate protection for consumers; and
- (d) would or would not have significant regulatory impacts including on compliance costs for industry and group purchasing bodies.

## **Making a submission**

**7** You are invited to comment on our proposals, which are only an indication of an approach we may take and are not our final policy.

**8** As well as responding to the specific proposals and questions, please describe any alternative approaches you think would achieve our objectives. We would also like to hear from you on any related issues you consider important.

**9** As we are particularly keen to fully understand and assess the competitive, financial and other impacts of our proposals and any alternative approaches, we ask you to comment on:

- (a) the likely effect on competition;
- (b) the likely compliance costs; and
- (c) other impacts, costs and benefits.

**10** Where possible, we are seeking both quantitative and qualitative information. Your comments will help us develop our policy on group insurance arrangements. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator report and/or a Regulation Impact Statement: see Section 4.

**11** All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential. However, submissions about the costs and benefits of our proposals (see Q9 in Section 3) will be treated as confidential unless you specifically request that we treat the whole or part of your submission in this area as not confidential.

**12** After the comment period, we plan to publish our final policy by November/December 2007.

---

**Your comments**

Submissions are due by 25 June 2007 and should be sent to:

Group Insurance Arrangements Project  
Regulation Directorate  
Australian Securities & Investments Commission  
GPO Box 9827 Sydney NSW 2001  
Fax: (02) 99112316  
Email: [Insurance\\_arrangers@asic.gov.au](mailto:Insurance_arrangers@asic.gov.au)

You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

---

---

## Contents

<b>What this paper is about .....</b>	<b>2</b>
<b>Making a submission .....</b>	<b>3</b>
<b>Section 1: What insurance arrangements are covered? .....</b>	<b>6</b>
<b>Group purchasing bodies .....</b>	<b>6</b>
<b>Group purchasing arrangements .....</b>	<b>6</b>
<b>Role of the group purchasing body .....</b>	<b>7</b>
<b>Benefits to consumers and the general community .....</b>	<b>7</b>
<b>Discretionary mutual funds (DMFs) and the issue of facilities for managing financial risk.....</b>	<b>8</b>
<b>Section 2: How does the Corporations Act apply? .....</b>	<b>9</b>
<b>What are the legal requirements? .....</b>	<b>9</b>
<b>Is compliance disproportionately burdensome? .....</b>	<b>10</b>
<b>Why are we considering relief? .....</b>	<b>11</b>
<b>Section 3: Our proposed relief.....</b>	<b>12</b>
<b>Summary of our proposed relief .....</b>	<b>12</b>
<b>Proposed conditions of AFS licensing relief for group purchasing bodies .....</b>	<b>12</b>
<b>Risks to consumers .....</b>	<b>14</b>
<b>What alternatives have we considered? .....</b>	<b>15</b>
<b>Section 4: What happens next? .....</b>	<b>20</b>
<b>Regulatory and financial impact .....</b>	<b>20</b>
<b>Development of final policy .....</b>	<b>21</b>
<b>Key terms.....</b>	<b>22</b>
<b>Appendix: Market information for estimating costs and benefits of proposed relief.....</b>	<b>24</b>

# Section 1: What insurance arrangements are covered?

## Group purchasing bodies

**1.1** Outside the mainstream of insurance broking, it is common for a variety of organisations to apply for life or general risk insurance products or facilities for managing financial risk on behalf of, or for the benefit of, their members or other people with a connection to the organisation (see 'Key terms' for a definition of 'members'). In this paper, we refer to organisations that arrange these types of insurance as 'group purchasing bodies'. These organisations include:

- (a) professional associations, industry bodies, community groups or sporting clubs;
- (b) commercial organisations that secure insurance which benefits people and entities outside the organisation but with some connection to it (e.g. construction companies whose policies may extend to subsidiaries, contractors and sub-contractors or shopping centre owners whose policies may cover tenants);
- (c) employers who arrange insurance for employees; or
- (d) commercial organisations that provide services to clients and arrange insurance for clients to cover the cost of additional services if required in certain circumstances.

**1.2** The classes of insurance cover acquired through these group purchasing arrangements vary. Public liability and professional indemnity cover are two of the more common classes of cover.

## Group purchasing arrangements

**1.3** Generally, the group purchasing body enters into a group purchasing arrangement with an insurer on behalf of those who are to have cover (e.g. members or prospective members). These arrangements generally fall into one of the following two categories:

- (a) *Group policies*: These involve a single contract of insurance between the insurer and the group purchasing body. Individuals are covered by the insurance product if they are named or within a class specified in the contract (e.g. a member or prospective member of the group purchasing body). Typically, each member receives the same type and level of cover.
- (b) *Master policies*: These involve a contract between the group purchasing body and the insurer which sets out the agreed terms of insurance cover available to a class of persons who can be covered

(e.g. members or prospective members of the group purchasing body). Typically, individuals must make a separate application for coverage and, in some cases, an individual may obtain a different level of cover depending on their particular circumstances. The group purchasing body may or may not also be insured under the master policy.

**1.4** In some cases, the group purchasing body may only arrange for members of a defined class of people to directly enter into contracts of insurance with the insurer, without any contract between the group purchasing body and the insurer. In some cases the group purchasing body may receive commission or other forms of remuneration or benefit for arranging the insurance.

## **Role of the group purchasing body**

**1.5** Typically, the group purchasing body does some or all of the following:

- (a) engages an insurance broker (i.e. an AFS licensee) to advise on an appropriate insurance policy;
- (b) negotiates via the insurance broker the terms of the insurance policy and the premium to be paid by any individual accepted for coverage under the policy;
- (c) enters an arrangement (a group policy or a master policy) with the interests of its members and prospective members in mind;
- (d) notifies members or clients that they are covered, or are entitled to obtain coverage, under the policy;
- (e) acts as a conduit between the individuals covered and the insurer, which may involve:
  - (i) forwarding application forms (for master policies) and premiums to the insurance broker or insurer; and
  - (ii) forwarding certificates of insurance, policy wordings and renewal notices to members.

**1.6** Generally, the group purchasing body is not involved in the claims process. Even if the individual who is covered is not a party to the insurance contract (for group policies), the individual members typically still make claims directly to the insurer or broker. Claims money is typically directly paid to the individual member by the insurer or broker.

## **Benefits to consumers and the general community**

**1.7** The primary benefits that group purchasing arrangements can provide are:

- (a) *Lower premiums:* The pooling of consumers allows for collective negotiation and lowers distribution and administration costs for insurers because they only need to deal with one counterparty rather than a large number of individual customers.
- (b) *Availability of cover:* Group purchasing makes it easier to obtain insurance cover for specialised or unusual risks and for people or businesses whose business is insufficient in scale for insurers normally to be interested in. This is especially the case in 'hard' market conditions where insurance is otherwise difficult to obtain. In some cases, some people or businesses may only be able to obtain insurance through a group purchasing arrangement.
- (c) *Convenience for consumers:* Consumers do not need to negotiate cover individually. Without group purchasing arrangements, some consumers may not otherwise go to the trouble of negotiating individual cover. This is especially important for liability insurance (e.g. public liability and professional indemnity cover) where the failure to obtain cover may impact on third parties.

## **Discretionary mutual funds (DMFs) and the issue of facilities for managing financial risk**

**1.8** This paper does not apply to the operators of DMFs which issue facilities for managing financial risk, although it does apply to group purchasing bodies which arrange facilities for managing financial risk including those issued by DMFs. Although DMFs often include elements of 'group purchasing', they differ in significant respects because the DMF provider itself issues financial products in the form of a facility for managing financial risk. A facility for managing financial risk may be issued, for example, because there is an arrangement for the group purchasing body to consider paying the excess on one or more insurance policies entered into for the benefit of its members in the event of a claim. Our proposals only apply to group purchasing bodies that do not themselves issue facilities for managing financial risk.

**1.9** Under a group insurance policy, a person covered by the policy may have a right of action against the insurer under s48, 48A or 48AA of the *Insurance Contracts Act 1984* (Cth) (ICA). We do not consider this right to be a facility for managing financial risk or other kind of financial product.



## **Section 2: How does the Corporations Act apply?**

### **What are the legal requirements?**

#### **Chapter 7 of the Corporations Act**

**2.1** Some group purchasing bodies may provide financial services consisting of dealing, providing financial product advice and, where group policies are involved, custodial or depository services.

**2.2** As group purchasing bodies generally do not merely obtain insurance cover for members on a one-off basis, group purchasing bodies may be carrying on a financial services business and therefore require an AFS licence under Ch 7.

**2.3** Ch 7 requires a person who carries on a financial services business in Australia to hold an AFS licence covering the provision of the financial services unless they are an authorised representative of an AFS licensee or otherwise exempted. Holders of an AFS licence are required to comply with a number of conditions, including

- (a) providing retail clients with a financial services guide (FSG) and statements of advice (SOA) in certain circumstances;
- (b) having a dispute resolution system and arrangements for compensating retail clients who suffer loss as a result of breaches of obligations by the licensee or its representatives; and
- (c) meeting obligations relating to compliance arrangements and risk management.

**2.4** Ch 7 also requires that certain protections must be given to clients who are provided with financial services or who are acquiring financial products (e.g. for handling clients' money).

**2.5** Ch 7 promotes confident and informed decision making by consumers of financial products and fairness, honesty and professionalism by the providers of financial services.

#### **Wholesale clients and s1012H of the Corporations Act**

**2.6** Section 1012H imposes an obligation on an insurer to take reasonable steps to ensure a person who elects to be covered by a group insurance or other financial product, is given a PDS. The intention is to ensure that the person electing to be covered has the same level of disclosure as they would have if they had acquired the financial product themselves.

**2.7** Other provisions in Pt 7.9 (which includes s1012H) only require a PDS be given to a retail client. Arguably, this implies that s1012H will only apply when the person electing to be covered is a retail client, but the absence of express provisions leaves this uncertain.

### **Chapter 5C of the Corporations Act**

**2.8** Some group purchasing bodies may enter into arrangements that constitute a managed investment scheme because some of the contributions they receive from persons to obtain cover are pooled to produce financial benefits through payment of premiums or the capacity to negotiate lower premiums. Such a scheme may require registration as a managed investment scheme under Ch 5C, which imposes obligations on the operators of registered schemes to protect members.

**2.9** A registered managed investment scheme must have a constitution and a compliance plan and the responsible entity of the scheme must be a public company that holds an AFS licence authorising it to manage a registered managed investment scheme.

## **Is compliance disproportionately burdensome?**

**2.10** Strict compliance with Chs 7 and 5C is likely to be disproportionately burdensome for the following reasons:

- (a) Costs associated with holding an AFS licence and with registering a managed investment scheme are significant. As group purchasing bodies tend to be either small industry bodies or not-for-profit associations, it is unlikely to be economical for them to obtain an AFS licence or to register a managed investment scheme.
- (b) Becoming an authorised representative of an AFS licensee (the insurer or insurance broker) may put the group purchasing body in a position of conflict between its duties to its clients and to the AFS licensee on whose behalf it is to act.
- (c) If s1012H applies to wholesale clients as well as retail clients, the issuer may have to prepare and distribute a PDS for some products when sold as a group product but not when the same product is sold as an individual product.

**2.11** Increased compliance costs may result in group purchasing bodies being unable to continue to enter group purchasing arrangements for members or clients, or insurers ceasing to offer insurance products designed to cover the interests of groups. This may increase insurance costs for consumers and/or reduce the availability of insurance cover. Where liability insurance is concerned, increased costs or reduced availability would be likely to have a flow-on effect to the wider community.

## **Why are we considering relief?**

**2.12** We are considering licensing relief for group purchasing bodies because the obligations on sellers of financial products (i.e. issuers and distributors) imposed through the licensing and registration requirements in Chs 7 and 5C protect the interests of buyers. Given that the role played by group purchasing bodies is in many respects more like that of a buyer of insurance products rather than a seller, we think strict compliance may be disproportionately burdensome.

**2.13** We consider that the risks to clients and the market for financial services can be adequately addressed by conditions of relief. A number of group purchasing bodies have sought relief from the licensing provisions of Ch 7, usually on the grounds that the benefits to consumers arising from licensing would be disproportionate to the burden imposed by licensing. As other organisations may be operating in similar circumstances, class order relief would relieve them of the need to seek individual relief and would provide more certainty as to whether or not their activities are regulated by Ch 7 or 5C.

**2.14** We are considering relief from s1012H, which imposes the obligation to take reasonable steps to give a PDS to a person who elects to be covered by a group financial product to resolve uncertainty as to whether s1012H applies to all group financial products or only those acquired as a retail client. We consider that the policy of the law is not to impose a greater disclosure obligation on acquisitions through a group arrangement and that the current uncertainty may in itself add to compliance costs.

## Section 3: Our proposed relief

### Summary of our proposed relief

**3.1** We propose to:

- (a) offer conditional ongoing relief for certain group purchasing bodies from the obligations:
  - (i) under Ch 7, to hold an AFS licence for:
    - (A) dealing (other than issuing);
    - (B) providing a custodial or depository service; and
    - (C) providing financial product advice, only to the extent that it is implied by the group purchasing body arranging for a person to acquire or be covered by a financial product; and
  - (ii) under Ch 5C, to register certain kinds of managed investment scheme that may be involved in the arrangements; and
- (b) exempt an issuer from s1012H when the person covered under a financial product would have acquired it as a wholesale client if they had acquired it directly.

**3.2** We propose that this relief would only apply to financial services provided in relation to financial products that are:

- (a) specified in s764A(1)(d) or (e) (i.e. a general insurance product or a life risk insurance product); or
- (b) of a type specified in s763C (i.e. a facility for managing financial risk).

### Proposed conditions of AFS licensing relief for group purchasing bodies

**3.3** We propose that the AFS licensing relief in paragraph 3.1(a) be subject to the following conditions.

Proposed condition	Explanation
<p><b>(a) Independence of the group purchasing body</b></p>	<p>Conditions to ensure that the group purchasing body is effectively only acting in the interests of those to be covered. We are considering achieving this objective by imposing a condition that the group purchasing body must:</p> <ul style="list-style-type: none"> <li>(i) be independent of the insurers and brokers from which it acquires the financial product; and</li> <li>(ii) not receive any form of remuneration (including</li> </ul>
	<p>This condition is to ensure that the group purchasing body is the kind of body for which we think that compliance would be unreasonably burdensome.</p>

Proposed condition	Explanation	
	commission) or other benefit that is related to the group purchasing activity, except for payments by persons who are to be covered (eg fees) or payments that are paid over in full to those who pay for cover (eg rebates).	
<b>(b) Basic information about the product</b>	<p>Before a person is covered, the group purchasing body must disclose:</p> <ul style="list-style-type: none"> <li>(i) the nature of the cover;</li> <li>(ii) any individual amounts payable by the person to obtain cover; and</li> <li>(iii) if the body will receive payments from the issuer or any insurance broker, the amount to be paid to the person to be covered from those amounts (eg the amount of any rebate).</li> </ul>	<p>This condition would ensure that the person who is to be covered has received basic information about the group financial product so they can understand the cover.</p>
<b>(c) Copies of group policy</b>	<p>Where a person covered under a group policy is not the insured, the group purchasing body must provide a copy of the policy to the person free-of-charge on request</p>	<p>This condition would ensure that people covered under a policy can find out their rights.</p>
<b>(d) Sources of advice about the product</b>	<p>Before a person is covered, the group purchasing body must disclose to the person that it:</p> <ul style="list-style-type: none"> <li>(i) does not hold an AFS licence; and</li> <li>(ii) cannot provide any opinions or recommendations about the insurance and that members should contact the relevant issuer or broker directly for further advice or other information.</li> </ul>	<p>This condition would ensure that a person who might be covered by a group financial product is directed to obtain advice about the product from an entity with an AFS licence (i.e. the broker or insurer).</p>
<b>(e) Receipt of money</b>	<p>A condition that is intended to have the effect of s985B in that any money paid by a person for insurance cover is to be taken to be at the insurer's risk when received by the group purchasing body, even though the group purchasing body does not hold an AFS license. To effect this we are considering a condition that the insurer must acknowledge that when the group purchasing body receives payments for insurance cover, the insurer will treat the funds as having been received by it from the insured person.</p>	<p>This condition would ensure persons who pay money for insurance cover are not denied cover because of failure by the group purchasing body to pay the insurer.</p>
<b>(f) Cancellation or non-renewal of cover</b>	<p>A condition that is intended to give comfort that a person covered by insurance will not lose cover as a result of cancellation or non renewal of a policy by an insurer without the person having reasonable notice. To effect this we are considering a condition that the insurer must enter into an obligation, enforceable by each person covered by an insurance contract, that, where it is aware that a person has a s48 right in relation to a group policy, the insurer will take reasonable steps to ensure that the person is notified of the cancellation or non-renewal of the policy as soon as practicable. This would not apply if the insurer believes that the group purchasing body has:</p> <ul style="list-style-type: none"> <li>(i) arranged other similar cover for those persons; or</li> <li>(ii) informed the persons of the cancellation or non-renewal.</li> </ul> <p>Further we are considering a condition that the group</p>	<p>This will ensure that a person covered by a group policy has sufficient notice that insurance cover will not continue to make other insurance arrangements.</p>

Proposed condition	Explanation
<p>purchasing body must promptly notify the insurer of contact information for all the persons it is aware of who were covered by a policy that was cancelled or not renewed and not replaced by similar cover unless it has notified those persons itself of the cancellation or non-renewal.</p>	

## Risks to consumers

**3.4** We have proposed conditions on the AFS licensing relief for group purchasing bodies. We think that these conditions collectively address, in large part, the main risks for clients.

**3.5** If group purchasing bodies were given unconditional relief the main risks for clients would be:

- (a) *Risk to client money:* Group purchasing bodies would not need to comply with the client money requirements in Div 2 of Pt 7.8. This would mean that client money may not be held on trust and would not be subject to the annual audit requirements nor to s985B, which has special rules on the status of money paid to licensees for insurance products that transfer risk to the insurer. The condition proposed at paragraph 3.3(e) helps address this risk.
- (b) *Failure to secure cover:* There is a risk that the insurance might not be renewed or might be cancelled without telling members. The group purchasing body may fail to forward application forms or premiums to the insurer, which may result in no cover. The condition proposed at paragraph 3.3(f) helps address this risk.
- (c) *Unqualified advice:* There is a risk that the group purchasing body may provide advice about the insurance to its members that it is not competent to provide. Because a primary reason for group purchasing appears to be to benefit participants by pooling like risks, there is likely to be at least an implied statement of opinion or recommendation that the cover obtained by the group purchasing body is more affordable and suited to the typical needs of its members. However group purchasing bodies are unlikely to have the knowledge and skills to give advice that goes beyond to that kind of implied advice. The condition proposed at paragraph 3.3(d) helps address this risk.
- (d) *Abuse of 'group purchasing' structures:* There is a risk that insurers or insurance brokers may attempt to structure their distribution channels as group purchasing bodies so as to avoid the responsibilities of an AFS licensee applying to the conduct of a group purchasing body that they effectively control. The condition proposed at paragraph 3.3(a) helps address this risk.

- (e) *External dispute resolution and compensation arrangements:*  
 Consumers who are retail clients would not have the benefit of these protections in relation to the conduct of the group purchasing bodies though they would still apply in relation to conduct of the insurer and insurance broker. The limitations on scope of the proposed exemption and the combination of the conditions helps reduce the potential loss of consumer protection.

**3.6** In our view, if limited relief from s1012H were given to insurers, there would appear to be no additional risks for retail consumers because this would reflect current industry practice and the relief would merely reflect the underlying legislative policy about who should be treated as a retail consumer.

## **What alternatives have we considered?**

**3.7** We have considered a range of options to address the risk that might arise from relief. Some of these are discussed in the feedback questions after paragraph 3.17. We seek comments on any other combination of limitations and conditions that might adequately address the risks. A key consideration it to ensure that the relief is only available to the kind of bodies for which it is intended to avoid undermining the legislative objectives of financial services regulation.

### **Alternatives to limit relief to those intended**

**3.8** We are considering limiting the group purchasing bodies that receive relief to those which are independent and do not receive any form of remuneration from the group purchasing activity: see condition (a) in paragraph 3.3. This reflects the basic concept that the group purchasing bodies are more comparable with buyers than with sellers.

**3.9** If the requirement for independence is seen as unreasonably restrictive, we would consider alternative ways of making this distinction. Some alternatives we have considered include:

- (a) the group purchasing body could be allowed to receive a commission provided it discloses it;
- (b) the group purchasing body need not be independent if it only provides financial services incidentally; or
- (c) the group purchasing body need not be independent if it is not-for-profit.

### **Commission allowed with disclosure**

**3.10** The Corporations Act does not prohibit or limit AFS licensees from receiving commissions, fees or charges unless they seek to be called

independent. Rather the Corporations Act require licensees to disclose their remuneration so that consumers can make an informed decision whether to use their financial services.

**3.11** An alternative approach would be to allow commission or other remuneration from insurers or insurance brokers provided it is disclosed and find another form of condition to distinguish those bodies that effectively represent the interests of consumers to the exclusion of the interests of sellers.

**3.12** This might be seen as having some analogy to the licensing exemption for merely providing referrals if remuneration is disclosed in reg 7.6.01(1)(e) of the *Corporations Regulations 2001*. However, it is not clear that disclosure in itself will ensure that a person is acting on behalf of the persons to be covered and not the insurer.

### **Incidental financial services**

**3.13** ASIC could dispense with the requirement for independence if the group purchasing body only provides financial services incidentally to other activities that do not relate to financial services. However, merely because financial services are incidental does not mean that they are not provided as a form of distribution of financial products, rather than in the role of representing buyers. Further, the potential for conflict of interest arises even if the financial services are provided incidentally.

**3.14** The potential for inadequate management of this conflict of interest is one arguably best regulated by the AFS licensing regime. Many existing types of business currently provide insurance arranging services as insurance distributors incidentally to other business, such as travel agents and real estate agents, under ASIC Class Order [CO 05/1070] *General insurance distributors*.

**3.15** Clients might reasonably expect the protection of the AFS licensing regime to apply to the provision of financial services by commercial organisations who are affectively acting on behalf of the issuer even if it is only incidental.

### **Independent not-for-profit group purchasing body**

**3.16** ASIC could impose conditions that dispense with the requirement for independence if a group purchasing body is a not-for-profit entity. This could be an additional or alternative requirement to the proposed condition (a) in paragraph 3.3.

**3.17** Such a condition would not ensure that the group purchasing body could be seen as representing buyers or that there is no conflict of interest between the not-for-profit body and the consumer. A not-for-profit body



may be motivated to obtain benefits to achieve its more general objectives or the personal interests of its management rather than to pursue the interests of the persons to be covered by the financial product. Again the potential for inadequate management of this conflict of interest is arguably one best regulated by the AFS licensing regime.

---

## Your feedback

---

### AFS licensing relief

- Q1** Is it appropriate for ASIC to give relief to group purchasing bodies from the licensing provisions of Chs 5C and 7? If so, why and if not, why not?
- Q2** We propose that the group purchasing body be independent and not retain any form of remuneration related to the group purchasing activity: see condition (a) in paragraph 3.3. Is this condition appropriate? If so, why and if not, why not? Are there alternative conditions that would better achieve ASIC's policy objectives? For example, though not independent and receiving remuneration from the insurer or broker, would it be sufficient if:
- (a) the remuneration is disclosed? *OR*
  - (b) the financial services are incidental to the other activities of the group purchasing body? *OR*
  - (c) the group purchasing body is a not-for-profit entity (and if so how should this be defined)?
- Q3** Are the other proposed conditions (b) to (f) in paragraph 3.3 appropriate? If so, why and if not, why not?
- Q4** Are there any alternative or additional conditions that should be applied?
- Q5** Are there any other insurance arrangements that you consider should receive relief but would not receive relief under these proposals? If so, please describe the arrangements and explain why you consider that they should receive relief.
- Q6** Do you consider that the proposed condition (e) in paragraph 3.3 is practical (i.e. the insurer acknowledges that when the group purchasing body receives payments for cover by the insurer, the insurer will treat the funds as having been received by it from the insured)? If not, why not and what alternative would you propose? How could the acknowledgement be implemented (e.g. through explicit acknowledgement in the contract)? Are there any alternatives to protect clients against the risk that s985B would provide protection against if the exemption were not given?
- Q7** Do you consider that the proposed condition (f) in paragraph 3.3 is practical (i.e. notification where the policy is or may be cancelled)? If not, why not and what alternative would you propose? How should the

obligation be implemented? Are there any alternatives to protect clients against the risk that they will not be aware that cover no longer applies?

### Relief for insurers from s1012H

**Q8** Is it appropriate for ASIC to give relief to insurers from s1012H for general insurance products that would be acquired as a wholesale client if they were acquired directly? If so, why and if not, why not, and what alternative, if any, would you propose?

### Costs and benefits

**Q9** The Australian Government has made a commitment to improve the quality of its regulation and to reduce the burden of regulation on the community. In part, this requires preparation of a compliance cost estimate. We are therefore seeking quantitative information on the items listed below to help us assess the costs and benefits of this proposal. We also request that you complete the table which is included as an appendix, as this will help ensure that the data collected in the table is consistent and it will provide a basis for estimating the impact of the proposed regulation on the community as a whole. This information will be treated as confidential unless you make a specific request to the contrary. The information requested is:

(a) the numbers, type (e.g. professional indemnity, public liability), sums insured and premiums of insurance products or facilities to manage financial risks that you are a party to that would be affected by this proposal;

Note: If you can provide this information, please complete the table in the Appendix.

- (b) the costs that would be incurred by group purchasing bodies if they had to obtain an AFS licence;
- (c) the benefits which result from the products to which you are a party where a group purchasing body is involved (e.g. amount by which premiums are lower than they would be if there were individual policies, the time saved by individuals by not having to arrange insurance covers individually, the premium value, sums insured and type of policies that would not be available on an individual basis);
- (d) the costs that would be by the insurance arrangers involved in these products if they had to register any managed investment scheme involved in their arrangements;
- (e) if you are a group purchasing body, the incremental costs (as compared with current costs) for all the insurance arrangements you have in place, that you would incur as a result of:

- (i) the proposed condition (a) in paragraph 3.3 (i.e. obligation not to retain any benefits received from issuers or insurance brokers)
  - (ii) the proposed condition (b) in paragraph 3.3 (i.e. obligation to disclose the nature of the insurance cover, any individual amounts payable by them, etc); and
  - (iii) the proposed condition (c) in paragraph 3.3 (i.e. obligation to provide a copy of the policy to a person who may be covered, free-of-charge on request); and
  - (iv) the proposed condition (d) in paragraph 3.3 (i.e. obligation to disclose that you do not hold an AFS licence, etc and will not provide financial product advice);
  - (v) the proposed condition (f) in paragraph 3.3 (i.e. notification of contact information to insurer where the policy is or may be cancelled or not renewed).
- (f) if you are an issuer, the incremental costs (as compared with current costs) that you would incur as a result of:
- (i) the proposed condition (e) in paragraph 3.3 for insurance (i.e. acknowledging that when the group purchasing body receives payments for cover by you, you will treat the funds as having been received from the insured); and
  - (ii) the proposed condition (f) in paragraph 3.3 (i.e. notification where the policy is or may be cancelled or not renewed).

## Section 4: What happens next?

### Regulatory and financial impact

**4.1** We have carefully considered the regulatory and financial impact of the policy proposals in this paper. Based on the information that we currently have, we believe that our proposals strike an appropriate balance between facilitating financial services relating to insurance products and facilities for managing financial risk and the risks to clients and the integrity of the markets for those products and associated financial services.

**4.2** Before settling on our final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:

- (a) considering all feasible options;
- (b) undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy if regulatory options are under consideration;
- (c) consulting with OBPR to determine the appropriate level of regulatory analysis if our proposed option has more than low impact on business and individuals or the economy; and
- (d) conducting the appropriate level of regulatory analysis, that is, completing a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).

**4.3** All BCC reports and RISs are submitted to the OBPR for approval before we make any final decision. Without an approved BCC Report and/or RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

**4.4** To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide feedback as requested in the previous section and generally provide us with as much information as you can for our proposals or any alternative approaches about:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

Note: See 'Making a submission' at the beginning of this paper.

## **Development of final policy**

**4.5** This paper is not ASIC policy. Any application for relief outside existing policy will continue to be considered under the current framework in:

- (a) Policy Statement 136 *Managed investments: Discretionary powers and closely related schemes* [PS 136];
- (b) Policy Statement 167 *Licensing: Discretionary powers* [PS 167];  
and
- (c) Policy Statement 169 *Disclosure: Discretionary powers* [PS 169].

**4.6** We plan to publish policy by November/December 2007, after considering any comments or feedback you send us on these proposals.

## Key terms

In this consultation paper, these terms have the following meaning:

**AFS licence** An Australian financial service licence under s913B that authorises a person who carries on a financial services business.

**ASIC** Australian Securities and Investments Commission.

**Ch 5C (for example)** A chapter of the Corporations Act (in this example numbered 5C).

**Corporations Act** *Corporations Act 2001* including regulations made for the purposes of the Act.

**facility for managing financial risk** A facility through which, or through the acquisition of which, a person manages a financial risk as defined in s763C.

**financial product** A financial product as defined in Div 3 of Pt 7.1.

**financial services guide (FSG)** A Financial Services Guide required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7.

Note: This is a definition contained in s761A.

**group policy** A policy of insurance under which the persons to be covered have rights under s48, s48A or s48AA of the ICA.

**group purchasing body** A person referred to in paragraph 1.1 of this paper.

**ICA** *Insurance Contracts Act 1984*.

**managed investment scheme** a scheme of the kind defined in s9.

**member** A member of a group purchasing body as defined by the constitution or rules of the group purchasing body.

**OBPR** Office of Best Practice Regulation

**Pt 7.6 (for example)** A Part of the Corporations Act (in this example numbered 7.6).

**product disclosure statement** A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Pt 7.9.

**registered scheme** A managed investment scheme registered under Ch 5C of the Corporations Act.

**RIS** A regulation impact statement.

**risk insurance product** A financial product defined in s764(1)(d) or (e).

**s48 right** means the rights conferred on a person to take action to enforce an insurance condition under the s48, s48AA or s48A of the ICA.

**s912A (for example)** A section of the Corporations Act (in this example 912A).

**statement of advice (SOA)** A statement of advice required by s946A to be given in accordance with Subdivisions C and D of Div 3 of Pt 7.7.

Note: This is a definition contained in s910A.

# Appendix: Market information for estimating costs and benefits of proposed relief

(please refer to Q9(a))

Name of entity to which this information relates:										
Address of entity to which this information relates:										
ABN of entity to which this information relates (if applicable):										
Type of entity	General insurer	Life insurer	Broker	Authorised representative	General insurance distributor			Group purchasing body		Other
<i>(please tick box)</i>										
Type of group policy		Homeowners/ householders	Commercial motor vehicle	Domestic motor vehicle	Fire & ISR	CTP motor vehicle	Public & product liability	Professional indemnity	Employers' liability	Other direct classes
Date of reported information										
No. of group policies <sup>1</sup>										
Total sums insured of group policies (\$'000) <sup>1</sup>										
Total premiums of group policies (\$'000) <sup>1</sup>										
Total premiums of group policies if arranged on an individual basis (\$'000) <sup>1</sup>										
Total premiums of group policies if not available on an individual basis (\$'000) <sup>1</sup>										

<sup>1</sup> Group policies that are affected by the proposals for AFS licensing relief.