# Submission on
# Retail Life Insurance Advice Reform
# ASIC Consultation Paper

January 2016

National Seniors Australia

# About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect people aged 50 years and over. It is the largest membership organisation of its type in Australia.

**We give our members a voice** – we listen and represent our members' views to governments, business and the community on the issues of concern to the over-50s.

**We keep our members informed** – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

**We provide a world of opportunity** – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

**We help our members save** – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and tours designed for the over-50s and provide our members with affordable, quality insurance to suit their needs.

## Contact

**Head Office**

National Seniors Public Affairs, Level 18, 215 Adelaide Street Brisbane QLD 4001

P: 1300 765 050  F: (07) 3211 9339

E: policy@nationalseniors.com.au

W: www.nationalseniors.com.au

## Introduction

National Seniors appreciates the opportunity to provide feedback on ASIC's consultation paper regarding retail life insurance advice reform.

We maintain a firm view that the provisions set out in the exposure draft legislation and ASIC's approach to give effect to these provisions as discussed in this consultation paper are insufficient to safeguard consumers from inappropriate life insurance advice.

National Seniors has called on the Federal Government to strengthen the provisions in the exposure draft legislation to prevent the switching of life insurance policies where there is no consumer benefit. Similarly, we believe that ASIC should adopt a more rigorous approach to establishing the conditions for payment of commissions and clawback arrangements.

## Upfront and ongoing commissions

National Seniors considers the proposed ASIC instrument places too much emphasis on the cost implications for industry to the detriment of consumer outcomes. We believe the:

- the proposed 60 per cent commission cap is substantial and disproportionate to the risks consumers face from conflicted advice; and
- the two year period allowed to reach the 60 per cent commission cap is overly generous and open to misuse.

National Seniors does not support arrangements that allow commissions to be paid to life insurance advisers. We believe the mere existence of an ASIC instrument that sets a maximum level of upfront and ongoing commissions will perpetuate the adoption of a commission model by life insurers to advisers and conflicts of interest will continue.

ASIC's proposed approach to set a commission level at a maximum of 60 per cent of the premium in the first year of the policy is a very light-handed response. It is disproportionate to the risks identified in ASIC's review of retail life insurance advice. ASIC's own investigation found high insurance lapse rates and unacceptable levels of poor quality advice, with 45 per cent of advice failing to comply with the law when an adviser was paid under an up-front commission model.[1]

The reduced 60 per cent cap, while down from the current 130 per cent commission rates, is still substantial. We highlight there will be a strong incentive for life insurance advisers to upsell policies to maximise the benefits under the new 60 per cent capped commission level. This together with potential for using fees to offset some of the commission reduction would leave consumers exposed to higher costs for the same conflicted advice. There is limited incentive under the proposed ASIC instrument for life insurers to develop and offer fee-for-service products to advisers choosing to operate on a fee-for-service basis.

National Seniors questions the rationale for a two year adjustment period under the ASIC instrument that would allow upfront commissions of a maximum of 80 per cent of the first year premium from

[1] ASIC (2014), REP 412 *Review of retail life insurance advice*, http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-413-review-of-retail-life-insurance-advice/

July 2016, reducing to 70 per cent in 2017 before reaching the proposed 60 per cent cap in July 2018.

The high upfront commission allowed during this period will prolong the churn issue and expose consumers to inappropriate life insurance advice. It also allows an extended period of time for advisers to potentially manipulate arrangements given there are provisions under the exposure draft legislation for commissions and volume-based payments to continue for pre-existing policies.

A 1 July 2016 commencement date is achievable, especially given the proposed 60 per cent cap only tweaks the existing model rather than overhauling remuneration structures altogether. We believe an extended transitional period only valid in the context of a more holistic change to the remuneration structures as recommended in the Trowbridge and Financial System Inquiry reports.

Overall, National Seniors is disappointed that the proposed ASIC instrument simply replicates the reform package as developed by industry, despite ASIC having discretion to determine the final form of the ASIC instrument. We consider there is scope even within the current draft exposure legislation for the requirements of the ASIC instrument to be much more stringent.

As the independent regulating body, ASIC should take a leadership role to implement genuine change and steer the life insurance sector toward a fee-for-service remuneration model.

We suggest the ASIC instrument set a 60 per cent cap on upfront commissions from 1 July 2016. The ASIC instrument should also encourage a gradual move to a level commission model with 20 per cent upfront commissions, equal to the proposed maximum 20 per cent cap for annual commission payments over the duration of the life insurance policy. For example, imposing additional reporting obligations on those insurers operating on an upfront commission model would create an incentive to shift to a level commission and ultimately a fee-for-service remuneration structure.

National Seniors understands that there are costs in providing life insurance advice and re-writing life insurance policies. However, it is up to industry to streamline how this advice is delivered to reduce administrative costs on advisers while also maintaining affordability for consumers.

***National Seniors recommends that the ASIC instrument:***

- **set a 60 per cent cap on upfront commissions from 1 July 2016; and**
- **encourage industry to adopt a 20 per cent level commission model and ultimately move to a fee-for-service remuneration model.**

## Clawback arrangements

National Seniors considers the proposed terms of the ASIC instrument for clawback arrangements to be lenient. While we support the 100 per cent claw back of the upfront commission if a consumer is moved out of the product or the policy is changed within the first year, a clawback of only 60 per cent after 12 months is not sufficient to deter the current practice of switching.

We recognise the two year clawback period is currently specified in the exposure draft legislation and the proposed ASIC instrument is intended to give effect to this provision. As part of our response to the exposure draft, we called for a three year retention period (with 100 per cent, 80 per cent and 60 per cent repayment of the commission in each respective year) given upfront commissions are permitted.

Irrespective of the retention period specified in legislation, ASIC will still have discretion to set the amount of repayment. We suggest the ASIC instrument specify clawback provisions that require repayment of 100 per cent of the commission on the first year's premium and at least 80 per cent repayment in the second year, including ongoing commission received in that year.

**National Seniors:**

- **prefers a minimum three year clawback period, with 100 per cent, 80 per cent and 60 per cent repayment of the upfront commission and ongoing commission in each respective year; and**
- **suggests repayment of 100 per cent and at least 80 per cent of the commissions if the clawback period is reduced to two years.**

## Information requirements

National Seniors supports the proposed information requirements for ongoing reporting to ASIC every six months starting July 2016, which will capture data on life insurance policies (including premium rates), remuneration, lapse rates and clawback amounts.

Retirees on limited fixed income are extremely sensitive to premium increases and struggle to maintain life insurance cover, especially in cases where there are stepped premiums that increase with age. We are concerned about older consumers paying higher premiums for life insurance policies that do not reflect their needs. There will be a strong incentive for advisers to upsell to existing clients to maximise commissions and volume-based payments that are allowed for pre-existing policies.

We think there is merit in capturing information at an adviser level where an upfront commission remuneration structure exists. The additional reporting obligations for those operating on a commission model would create an incentive for insurers to develop fee-for-service product offerings as a means of minimising administrative costs.

The reporting obligations should also capture historical data, with all information requirements going back at least five years. It is important that the historical data is comprehensive to accurately inform the scheduled ASIC review of the life insurance sector in 2018. As the requirements set out in the proposed ASIC instrument are linked to the premiums, it makes sense for premium data to be reported regularly and for historical data on premiums to be captured.

As part of our feedback on the exposure draft legislation, National Seniors suggested including an additional provision for ASIC to monitor premiums to determine if the cost reduction achieved from reduced adviser commission is passed onto consumers.

**National Seniors recommends detailed reporting obligations on life insurers, including historical data and collection of data at an adviser level where commission remuneration structures exist, which will better inform the 2018 ASIC review.**