ASIC

Australian Securities & Investments Commission

REPORT 527

Response to submissions on CP 245 Retail life insurance advice reforms

June 2017

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 245 *Retail life insurance advice reforms* (CP 245) and details our responses to those issues.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy.

Contents

A Overview/Consultation process

1 In Consultation Paper 245 *Retail life insurance advice reforms* (CP 245) we proposed to implement the retail life insurance advice reform package, announced by the Government in November 2015 (reform package), by making an ASIC instrument setting out:

(a) the maximum levels of upfront and ongoing commission payments permitted in relation to life insurance products; and

(b) the amount of upfront commission to be repaid to life insurers under clawback arrangements.

Note: For details of the reform package, see The Hon Kelly O'Dwyer MP, Minister for Small Business and Assistant Treasurer, Media Release No. 024, *Government announces significant improvements to life insurance industry*, 6 November 2015.

We also proposed to collect data from life insurers to inform our proposed review of the impact the reform package (ASIC Review).

2 The reform package followed ASIC's Report 413 *Review of retail life insurance advice* (REP 413), published in October 2014, and the John Trowbridge report, *Review of retail life insurance advice*, published in March 2015. These reports identified the need to better align the interests of advisers and consumers in the life insurance sector. As part of its response to the Financial System Inquiry, the Government announced that it would support a reform package in relation to life insurance advice put forward by industry.

3 The reform package specified the maximum upfront and ongoing commission amounts, and included that:

(a) the level of commissions would be set at a maximum of 60% of the premium in the first year of the policy; and

(b) an ongoing commission for policy renewals would be set at a maximum of 20% of the total of the premium paid for the renewal.

4 Further, a transition period of two years would apply, setting the maximum upfront commission levels as follows:

(a) from 1 July 2016—80% of the premium in the first year of the policy;

(b) from 1 July 2017—70% of the premium in the first year of the policy; and

(c) from 1 July 2018—60% of the premium in the first year of the policy.

5 The reform package also prescribed 'clawback arrangements', by which a certain portion of the upfront commission is paid back to the life insurer by the financial adviser. Clawback occurs in the first two years of a policy if it is cancelled or not continued other than because a claim is made under the insurance policy or because other prescribed circumstances exist.

6 The Government indicated in its November 2015 announcement that, from 1 July 2016, the following clawback arrangements would apply under the reform package:

(a) When a policy lapses or the premium decreases in the first year of the policy, 100% of the commission, or the decrease in commission, on the first year's premium would be clawed back.

(b) When a policy lapses or the premium decreases in the second year of the policy, 60% of the commission, or the decrease in commission, on the first year's premium would be clawed back.

7 In CP 245, we invited feedback on whether there were any considerations ASIC should take into account, when making the instrument, in implementing the proposed upfront and ongoing commission model and the clawback arrangements in the reform package.

8 As part of the reform package, the Government also announced that life insurers would be required to provide ongoing policy replacement data to ASIC, and that we would conduct the ASIC Review in 2018 to determine the impact of the life insurance reforms. In CP 245 we also sought feedback on our proposal to require detailed information on life insurance policies, remuneration, lapse rates and clawback amounts.

Legislation

9 The *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2016* (Life Insurance Remuneration Act), which commences on 1 January 2018, gives effect to the reform package by removing from the *Corporations Act 2001* (Corporations Act) the exemption from the ban on conflicted remuneration for commissions paid on certain life insurance products, and by allowing ASIC to make an instrument setting out maximum commissions and clawback arrangements.

10 The scope of the Life Insurance Remuneration Act is largely the same as the reform package, except:

(a) the reforms have been extended by the Corporations Amendment (Life Insurance Remuneration Arrangements) Regulations 2017 (Life Insurance Remuneration Regulations) to apply to commissions associated with the direct marketing or direct sale of life insurance, as well as advised sales of life insurance; and

(b) the commencement date of the legislation is now 1 January 2018 and, therefore, all the transition dates have been updated (see Table 1). These updated dates are reflected in the instrument.

Table 1: Updated commencement and transition dates for the implementation of the reforms

Event	Date
Commencement date of legislation	1 January 2018
Commencement of maximum total upfront commission set at 80% of premium	1 January 2018
Commencement of maximum total upfront commission set at 70% of premium	1 January 2019
Commencement of maximum total upfront commission set at 60% of premium	1 January 2020
Commencement of ASIC Review	2021

Note: The way of working out the maximum total upfront commission is referred to as the 'acceptable benefit ratio' in the legislation.

Feedback received

11 This report highlights the feedback received on CP 245, and our responses to that feedback.

12 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 245. We have limited this report to the key issues.

13 For a list of the non-confidential respondents to CP 245, see the appendix. Copies of the submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 245.

14 We received 15 responses to CP 245 from insurers, industry associations, advice providers and one special interest group. We are grateful to respondents for taking the time to send us their comments.

15 Since the consultation period closed, we have continued to engage with stakeholders on the data collection process (as noted in Table 1, the timing of the ASIC Review has been updated to 2021 to reflect the new commencement date of the reforms). We also continued to engage with key stakeholders about the instrument and sought feedback on its final form, taking into account the changes in the Life Insurance Remuneration Act.

16 The majority of the submissions received expressed general support for the Government's decision to address poor-quality personal advice and sales practices in the retail life insurance sector, and approved of ASIC's role in the reforms.

17 Two respondents suggested the reform package did not go far enough in addressing poor sales practices in the life insurance industry.

18 One respondent expressed concern that the reform package would significantly change the structure of the life insurance advice industry and that advisers would introduce a fee-for-service charge that could result in a reduction in the quality of advice given to consumers and consumers' access to advice.

19 The main issues raised by respondents were:

(a) how any increase in the cost of the policy (premium) after the first year should be dealt with under the proposed commission structure (see paragraphs 33–40);

(b) how the clawback arrangements would be applied if the maximum upfront commission is applied to premium increases in Year 1 or Year 2 of a policy (see paragraphs 52–53); and

(c) the scope of the proposed data collection requirements for the ASIC Review (see paragraphs 57–61).

ASIC's response

20 We have issued ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 to set a maximum level of commission to be paid by life insurers to advisers (referred to in the legislation as the 'acceptable benefit ratio') and to determine the amount (or way of working out the amount) of commission to be repaid by advisers to life insurers if the policy is cancelled or not continued, or the premium reduced (referred to in the legislation as the 'acceptable repayment').

21 The findings in REP 413 showed a strong, positive correlation between high upfront commissions and poor advice. In addition, the Financial System Inquiry considered that the interests of financial advisers were misaligned with the interests of consumers.

22 The impact of poor advice affects consumers directly and indirectly. Direct effects include:

(a) consumers paying for life insurance that is too expensive (which, in turn, can lead to loss of cover);

(b) inappropriate depletion of superannuation balances by high premiums (examples of which were identified in REP 413); or

(c) loss of cover.

23 Indirect effects include:

(a) higher overall premiums due to costs associated with greater lapse rates arising from high upfront commissions; or

(b) consumers buying inappropriate products directly from the life insurer without seeking advice about what is most appropriate for their circumstances.

24 Issuing an instrument that sets out the upfront and ongoing commission model, transitional arrangements and clawback arrangements, as set out in the reform package, reflects the approach agreed to by industry and the Government in addressing these problems.

B Setting maximum levels of commission

Key points

This section outlines the feedback received on our proposal to make an instrument to set a maximum level of commission to be paid by life insurers to advisers.

It covers our proposal that, if a life insurer adopts an upfront or hybrid commission model, the commission levels will be set at:

- a maximum of 60% of the premium in the first year of the policy; and
- a maximum ongoing commission of 20% of the premium in all subsequent years.

It also covers our proposal of a transition period of two years to allow businesses to move smoothly to the new regime.

This section also details the feedback we received about how increases in premium should be dealt with under the proposed commission structure.

Maximum upfront commission and transitional arrangements

25 The Life Insurance Remuneration Act removes certain life risk insurance products from the exemption in the Corporations Act from the ban on conflicted remuneration.

26 However, s963B(1)(b) of the Life Insurance Remuneration Act allows some commissions for life risk insurance products to be paid if they satisfy the requirements in s963BA.

27 Section 963BA(2) of the Life Insurance Remuneration Act allows ASIC, by legislative instrument, to determine an acceptable benefit ratio, or way of working out an acceptable benefit ratio, for a commission for a year.

28 In CP 245 we proposed that, under the terms of the instrument, from 1 July 2018 if a life insurer adopted an upfront or hybrid commission model:

(a) the level of commissions would be set at a maximum of 60% of the premium in the first year of the policy; and

(b) an ongoing commission for policy renewals would be set at a maximum of 20% of the total of the premium paid for the renewal.

29 We also proposed a transition period of two years, commencing on 1 July 2016, as set out in Table 2.

Table 2: Transitional arrangements—Maximum commission levels

Date	Maximum total upfront commission
From 1 July 2016	80% of the premium in the first year of the policy
From 1 July 2017	70% of the premium in the first year of the policy
From 1 July 2018	60% of the premium in the first year of the policy

Stakeholder feedback

30 One respondent noted that the current benefit ratios were determined after extensive consultation with industry and that any future changes to these ratios by ASIC should be based on industry agreement and appropriate consultation.

31 However, another respondent stated that the proposal placed too much emphasis on the cost implications for industry to the detriment of consumer outcomes. They suggested that the maximum upfront commission rate should be set at 60% from 1 July 2016. They also suggested that ASIC should encourage industry to adopt a 20% level commission model and ultimately move to a fee-for-service remuneration model by imposing additional reporting obligations on those insurers operating an upfront commission model.

32 No other respondents made direct suggestions about the proposed upfront commission model and transitional arrangements.

ASIC's response

We have made ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, which gives effect to the upfront and ongoing commission model, and transitional arrangements, as set out in the reform package. The acceptable benefit ratios we have specified in the instrument reflect the levels agreed by industry, and are supported by our consultation.

While the upfront and ongoing commission model will not eliminate conflicts of interest in remuneration, given that an acceptable benefit ratio of 60% of the first year's premium is still permitted, the instrument will balance the competing interests of advisers and clients.

Setting a maximum acceptable benefit ratio of 60% of the total premium in the first year of the policy will:

- allow advisers to be remunerated for their upfront costs in providing advice to a client; and
- ensure that consumers are still able to access life insurance advice, while reducing the incentive for advisers to

recommend that their clients switch life insurance policies unnecessarily.

The two-year transition period allows AFS licensees to manage their business, and promotes a smooth transition to the new commission regime.

The instrument reflects the new commencement date of the reforms: see Table 1.

We also note that the effectiveness of the upfront and ongoing commission model and clawback arrangements in producing better outcomes for consumers will be considered as part of the ASIC Review. The Government, in its November 2015 announcement, stated that it would move to mandate level commissions if there were no improvement found in the ASIC Review.

We will update Regulatory Guide 246 *Conflicted remuneration* (RG 246) to explain how the ban on conflicted remuneration and other banned remuneration will apply to life insurance after the commencement date of 1 January 2018.

Premium increases in a policy after the first year

33 In CP 245 we sought feedback on how increases in premiums should be dealt with under the proposed commission structure. Specifically we asked:

(a) whether there were any considerations ASIC should take into account in implementing the proposal; and

(b) how respondents thought any premium increase should be dealt with under the proposed commission structure—for example, we asked:

  (i) if the premium increased in the second year because the amount insured had increased, should the maximum upfront commission apply to the amount by which the premium had increased; and

  (ii) were there any circumstances in which the maximum upfront commission should or should not apply if the premium increased in subsequent years?

Stakeholder feedback

34 Five respondents answered these questions directly. They all stated that, if the premium increased in the second year, the maximum upfront commission should apply to the amount by which the premium had increased. However, all respondents gave broader scenarios than the increase in the sum insured. Four of these respondents also agreed that the maximum upfront commission should not apply to all premium increases.

35 Broadly, most respondents distinguished between premium increases resulting from an alteration or request to change an aspect of an existing policy, and premium increases resulting from automatic changes embedded in the policy at the initial underwriting stage.

36 One respondent gave the following examples as customer-directed changes to a policy that would result in an increased premium:

(a) an increase in the sum insured;

(b) a decrease in a waiting period or an increase in a benefit period;

(c) changes to benefits and options; and

(d) changing the premium model from a stepped structure to a level structure, or vice versa.

37 The same respondent gave the following examples of automatic increases to a premium that are made by the insurer, or result from events contractually written into the policy:

(a) age-based increases;

(b) premiums increased by the insurer; and

(c) changes in premiums resulting from the consumer price index (CPI), stamp duty or policy fee increases, or an increase in premiums due to the expiry of a level premium structure and the client moving to stepped premiums.

38 Four of the five respondents asserted that the maximum upfront commission should apply to customer-directed changes to a policy resulting in increased premiums and not to automatic increases to a premium.

39 In support of their position, one respondent explained that, although a policy where the cover has been increased is regarded as the same policy, separate underwriting and exclusions are usually applied so it should, in practice, be treated as a separate policy.

40 One respondent stated that 'where higher premiums are the result of the adviser's work, additional commission should not be withheld'. This idea was echoed by another respondent who was concerned that if advisers could not receive a commission for the increase in a premium, they might instead recommend replacing a policy in order to receive a commission—even if this is not in the client's best interests.

ASIC's response

We have made ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, which allows for a commission to be given as a result of a 'client-initiated' increase. A client-initiated increase is defined in s4 of the instrument. In summary, a client-initiated increase is one where the holder of the product (i.e. the client) has requested, or exercised an option, to make changes to the terms and conditions of the product, including:

- increasing in the level of cover provided to the person insured under the product;
- changing the basis on which premiums are calculated under the product (e.g. from stepped premiums to level premiums);
- decreasing a waiting period that applies to cover provided under the product or a claim made under the product; and
- making certain changes to a product that provides insurance against the insured person losing the ability to work in an occupation.

Our approach treats a change to the scope of the policy in a subsequent year in the same way as it would have been treated if the policy had included that scope in the first year.

This approach also allows an adviser to be rewarded for changes to a policy's product features, which the adviser may have recommended or the insured may have requested, and reflects the balance between the interests of advisers and consumers that the Government and industry agreed on.

In relation to the concern expressed in some submissions that, if additional upfront commission is not available, there may be a conflict for the adviser, we note that this should not be a concern because advisers are required to act in their client's best interests. Therefore, whether or not additional commission is received should not be a relevant consideration for advisers.

Grandfathering commissions

41 One specific issue raised about transitional arrangements related to the grandfathering of commissions. The Life Insurance Remuneration Act and Life Insurance Remuneration Regulations provide that commissions will be grandfathered (i.e. the pre-commencement commission will be paid) when:

(a) a pre-commencement policy is re-issued after commencement because an administrative error is identified;

(b) an application is received for a policy before commencement and the policy is issued within three months after commencement; and

(c) a pre-commencement policy is issued with an option (e.g. to add separate cover) and the insured takes up that option at any time after commencement (the pre-commencement commission will be paid on the additional cover).

42 One respondent suggested that the same grandfathering approach should be taken where these situations arise in the transition periods—that is, at the commencement of each transition date when the benefit ratio changes on 1 January 2019 and 1 January 2020.

ASIC's response

Although ASIC has the power to provide for similar outcomes in the instrument during the transition period, we have declined to do so. The key reasons for declining are that extending the grandfathering provisions to the transition period would be inconsistent with the objectives of the reforms, which are to reduce commission payments, and would unnecessarily significantly increase the complexity of the instrument.

Other issues

43 Many of the submissions raised issues relating to the proposed upfront and ongoing commission model and transitional arrangements, which could not be addressed using the powers the Life Insurance Remuneration Act confers on ASIC in making the instrument (which is limited to determining the ratio, or way of working out the ratio, between the commission payable to the adviser and the relevant amount payable for the product).

ASIC's response

Where relevant, and with the permission of the respondent, we have passed on these comments to Treasury.

C Clawback arrangements

Key points

This section outlines the feedback received on our proposal to make an instrument giving effect to the part of the reform package that determines the clawback arrangements.

It covers our proposal that, if a life insurer pays commission other than under a level commission arrangement, and 'clawback' is triggered:

- in the first year of the policy—100% of the commission paid in the first year would be repaid to the life insurer; and
- in the second year of the policy—60% of the commission paid in the first year would be repaid to the life insurer.

It also covers an issue raised by a respondent about how the clawback arrangements would be applied if the maximum upfront commission is applied to premium increases in Year 1 or Year 2 of a policy.

Our proposed clawback arrangements for life insurance policies that have lapsed

44 Section 963BA(4) of the Life Insurance Remuneration Act allows ASIC, by legislative instrument, to determine the amount (or way of working out the amount) that is an acceptable repayment (i.e. clawback) if the policy is cancelled or the premium is reduced within two years after the product is first issued.

45 The Life Insurance Remuneration Regulation specifies situations where clawback will not apply to commissions, and transitional (grandfathering) arrangements for clawback.

46 Regulation 7.7A.12EB specifies that clawback will not apply where the policy is cancelled or not continued because:

(a) the insured dies;

(b) the insured self-harms;

(c) the insured reaches an age at which coverage is no longer provided; or

(d) an administrative error has been made.

47 Regulation 7.7A.12EC specifies that clawback will not apply where the premium is reduced as a result of:

(a) an agreed reduction in risk for the insured;

(b) the insurer paying a rebate or applying a discount to induce the insured to acquire or continue to hold the product;

(c) the insurer paying a benefit payable under the product; or

(d) an administrative error.

48 In CP 245, we proposed that, under the terms of the instrument, if a life insurer pays a commission other than under a level commission arrangement, and 'clawback' is triggered:

(a) the repayment of commission would be required over a two-year period, in the way set out in Table 3; and

(b) if there is a reduction in premium, the repayment amount would relate to the amount of reduction in the premium, in the way set out in Table 3.

Table 3: Proposed clawback arrangements for life insurance policies that have lapsed

Policy year	If a policy is cancelled or not renewed	If the premium is reduced
Year 1	Advisers must repay 100% of the commission on the first year's premium. *Example:* For a first year premium of \$1,000 and an upfront commission of \$600, repayment is \$600 (i.e. 100%of \$600).	Advisers must repay the proportion of the premium reduction applied to 100% of the commission received for the first year. *Example:* For a first year premium of \$1,000 and an upfront commission of \$600, if the premium falls to \$500 in the first year (i.e. 50% reduction), repayment is \$300 (i.e. 100% of \$600 multiplied by 50%).
Year 2	Advisers must repay 60% of the commission on the first year's premium. *Example:* For a first year premium of \$1,000 and an upfront commission of \$600, repayment is \$360 (i.e. 60% of \$600).	Advisers must repay the proportion of the premium reduction applied to 60% of the commission received for the first year. *Example:* For a first year premium of \$1,000 and an upfront commission of \$600, if the premium falls to \$500 in the second year (i.e. 50% reduction), repayment is \$180 (i.e. 60% of \$600 multiplied by 50%).

Note: Table 3 does not show the different ways in which clawback is paid in other circumstances, such as where there is a client-initiated increase or a reduction in the policy cost.

Stakeholder feedback

49 One respondent did not support the clawback proposal because, in their view, it would fail to eliminate the incentive to provide inappropriate life insurance replacement advice that is contrary to the best interests of the client. In particular, they were concerned that advisers who provide such advice would still retain 40% of upfront commission payments provided the relevant life insurance policy is retained for at least one year.

50 Another respondent proposed an alternative minimum three-year clawback period, with repayment of 100%, 80% and 60% of the upfront and ongoing commission in each respective year.

51 No other respondents provided specific comments that addressed the proposed clawback arrangements.

> *ASIC's response*
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> We have made ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, which gives effect to the clawback arrangements as set out in the reform package and outlined in CP 245. The acceptable repayment levels we have specified in the instrument reflect the levels agreed by industry, and are supported by our consultation.
>
> The instrument sets:
>
> - the maximum level of commission at 60% of the premium in the first year of the policy;
> - a requirement to repay 100% of the commission if the policy is cancelled or not continued in the first year; and
> - a requirement to repay 60% of the first year premium if the policy is not continued in the second year.
>
> These are designed to reduce the incentive for advisers to inappropriately rewrite clients' policies.

Clawback of commissions received after the first year of the policy

52 The proposed clawback arrangements detailed in CP 245 only accounted for commissions received in the first year of a policy.

53 One respondent raised the issue of how the clawback arrangements would apply if the maximum upfront commission were applied to premium increases in Year 1 or Year 2 of a policy. Under s963BA(3) of the Life Insurance Remuneration Act, clawback is limited to within two years after a policy is first issued to a retail client and so premium increases after Year 2 of the policy cannot be subject to clawback.

> *ASIC's response*
>
> We have made ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 and provided the acceptable repayment for various scenarios where the life insurance product is cancelled or not continued, or there is a reduction in the policy cost in Year 1 or Year 2, including where the benefit ratio is applied to a client-initiated increase in Year 1 or Year 2 of a policy. We have set out the different scenarios with the acceptable repayment amounts to assist life insurers with calculations. We have consulted with industry on an ongoing basis to ensure we have covered the various scenarios.
>
> For example, we have included a scenario in the explanatory statement to the instrument where there is a commission from the

issue of a product and a further commission from a client-initiated increase in Year 1 and the policy cost is then reduced by X% in the second year (the policy cost at the beginning of Year 2 is less than the policy cost at the end of the Year 1) and within 12 months of the client-initiated increase. In this scenario, the instrument sets out that the clawback amount will be 60% of X% of the commission from the client-initiated increase in Year 1.

We consider that the approach we have taken in the instrument is consistent with the objectives of the reforms, one of which is to reduce the incentives for advisers to give inappropriate life insurance replacement advice.

Other issues

54 Many of the submissions raised issues relating to the clawback arrangements, which could not be addressed using the powers the Life Insurance Remuneration Act confers on ASIC in making the instrument (which is limited to determining the amount, or way of working out the amount, of commission to be repaid by advisers to life insurers if the policy is cancelled or the premium reduced).

ASIC's response

Where relevant, and with the permission of the respondent, we have passed on these comments to Treasury.

D Ongoing reporting to ASIC

Key points

As part of the reform package, the Government announced that life insurers would be required to provide ongoing policy replacement data to ASIC, and that ASIC would conduct a review to establish whether the reforms had improved the quality of advice about life insurance.

This section outlines the feedback received on our proposal to require detailed information on life insurance policies, remuneration, lapse rates and clawback amounts, and the approach that we now intend to take in response to this feedback.

Information required by ASIC

55 In CP 245, we proposed that—as part of the ASIC Review of the effectiveness of the life insurance reforms—we would use ASIC's information-gathering powers under s912C of the Corporations Act to require, by written notice, the following information from life insurers on life insurance policies sold through both personal and general advice, or with no advice provided (i.e. direct sales):

(a) information on life insurance policies, including:

(i) how many policies are in force;

(ii) details of the policies in force, such as:

(A) the inception date on each policy;

(B) how many policies are to 'first time insureds';

(C) how many are new or altered policies sold to existing policyholders;

(D) the type of policies (i.e. life, total and permanent disability, trauma, income protection and various combinations of these)

(E) the structure of policies (including premiums and the sum insured); and

(F) any trends in the structure of policies over time (e.g. an increase or decrease in premiums relative to the sum insured); and

(iii) how many policies have been exited (and the reasons for the exit);

(b) remuneration data, including:

(i) historical data on commissions (where relevant);

(ii) the type of remuneration model adopted (i.e. upfront commission, hybrid commission, level commission, or no commission); and

(iii) the level of upfront and ongoing commissions being paid (where relevant);

(c) lapse rates and clawback amounts, including:

(i) data on lapse rates;

(ii) the reasons for policies being exited (see also information required for policies in paragraph 55(a)(iii)); and

(iii) for every policy that lapses, the amount that has been clawed back; and

(d) data on policies sold with:

(i) personal advice;

(ii) general advice; or

(iii) no advice.

56 We proposed to remove any identifying details before publishing this information or releasing a final report.

Stakeholder feedback

57 Many respondents expressed concern about the scope of the proposed data collection for the purposes of the ASIC Review, and that this would create an unnecessary regulatory burden for insurers. In particular, there was concern about providing:

(a) historical data;

(b) the causes/reasons for the exit of all policies;

(c) details of the policies in force, including identifying policies of ‘first time insureds’, altered policies and trends in the structure of policies; and

(d) details of distribution channels.

58 Several respondents stated that insurers do not collect data on what channel a policy is sold through (i.e. whether it is sold through a personal advice, general advice or ‘no advice’ model).

59 Other concerns respondents raised about the proposed data collection included the following:

(a) *Timing*—Some respondents were concerned that industry would not be able to start reporting from 1 July 2016 if reporting requirements were not finalised with sufficient time for insurers to prepare.

(b) *Cost*—One respondent estimated that the cost to industry of reporting would be $36.78 million.

60 However, some respondents were supportive of the proposals in CP 245:

(a) One respondent believed the timing was adequate as the majority of information proposed to be required from insurers was already available to insurers.

(b) One respondent supported the collection of certain information from life insurers on life insurance policies sold through general and personal advice and in circumstances where no advice was provided.

61 Respondents also considered that the ASIC Review should focus on the change in behaviour at an adviser level and include quality of advice reviews consistent with REP 413. They suggested that ASIC should request details from adviser licensees with the highest lapse rate percentages.

ASIC's response

Ideally we would collect the broad range of data on which we consulted on a policy-by-policy basis. However, after further consideration of the practicalities involved in collecting data on a policy-by-policy basis, we have modified the scope of the information we intend to collect from insurers. The policy data collected will now be aggregated.

We will also conduct adviser file reviews in 2021, similar to the work we did in 2014 for REP 413.

As discussed in paragraph 15, since the consultation period closed we have continued to engage with stakeholders on the data collection process.

We also engaged an external consultant to assist us in setting the information we will gather for the ASIC Review in 2021. The consultant engaged in further consultation with life insurers on:

- identifying the availability of their existing data, reports and other analyses;
- obtaining feedback from life insurers about their ability to produce or generate the required data; and
- discussing how they would ensure the accuracy of the data.

We intend to finalise the scope of our data collection before the collection period begins on 1 January 2018 (the date of commencement of the Life Insurance Remuneration Act). We will provide sufficient notice to life insurers before we begin collecting the data.

We plan to collect the data at least twice during the reporting period (1 January 2018 to 31 December 2020). We may also collect data again in 2021 to assess whether there has been an increase in lapse rates after the two-year clawback period ends.

In addition, we have commenced collecting policy replacement data from life insurers to help identify advisers who may be providing advice to replace one product with another, which is not in their clients' best interests. This work is part of our ongoing monitoring of advisers who provide personal financial advice on life insurance. We started collecting this data in September 2016.

Appendix: List of non-confidential respondents

- AMP Life Limited
- Association of Financial Advisers Limited
- Australia and New Zealand Banking Group Limited
- Financial Planning Association of Australia
- Financial Services Council
- Industry Super Australia
- National Insurance Brokers Association of Australia
- National Seniors Australia