

FSC Submission

**ASIC CONSULTATION PAPER 317:
Unsolicited telephone sales of direct
life insurance and consumer credit
insurance**

29 August 2019



About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies.

Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses. The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

Part 1 – General Feedback

1. Introduction

The Financial Service Council (**FSC**) welcomes the opportunity to provide a submission to the ASIC consultation on unsolicited telephone sales of direct life insurance (including funeral insurance) and consumer credit insurance.

The FSC is fully supportive of the policy intent of the proposals to protect unsuspecting Australians from being pressured into taking out insurance they do not want or need. The FSC fully recognises that pressure selling insurance products, over the phone or otherwise, is never acceptable. The FSC understands that none of its life insurance company members now engages in such activity and fully supports a ban. However, the FSC also understands that hawking of funeral expenses insurance is continuing.

Our submission is in two parts – the general feedback in this part, and the answers to the formal consultation questions in Part 2.

2. Principles

The FSC believes that any changes to the regime should be designed to ensure that customers are always in control. In particular, that the customer:

- Is in the target market for the product.
- Is informed about the product's key features, benefits, limits and exclusions.
- Has a reasonable opportunity to consider whether or not to buy the product.
- Can choose how and when to buy financial products in a way that suits their circumstances and preferences.

3. Consent

Whilst Regulatory Guide 38 currently refers to a customer's positive clear and informed request when characterising telephone sales as "solicited", the FSC is of the view that what is needed in today's life insurance market is "positive, clear and informed consent".

The product provider should be able to initiate a call or discussion about a product, provided the person has given their positive, clear and informed consent for the product provider to do so.

The FSC believes that the characteristics of positive, clear and informed consent are as follows:

- Positive – the person must take some positive action, such as:
 - Ticking a box (as opposed to not unticking a box)
 - Asking for a call
 - Clicking an email link to find out more about a product
 - Providing contact details, for example on an insurance website
- Clear – the person must realise that they are giving their consent and that they are likely to be contacted by taking the positive action (for example, the request must not be hidden within a competition or be a condition of entry or be buried in small print).
- Informed – the person should know what the contact is likely to be about (for example, about insurance or life insurance, not just a general consent to receive one or more unspecified offers) and who will contact them.

The consent could have been obtained by the life insurer or a related organisation. A related organisation is one with which the life insurance company has an ongoing business relationship, and which has gained the person's positive, clear and informed consent to be contacted about life insurance.

Where a person gives consent in line with the above, the FSC takes the view that an outbound call is appropriate and would not be unsolicited. In that outbound call, the discussion could extend to products reasonably within the ambit of the consent.

4. Lifespan

Unless the person is or becomes an existing customer, or a customer of a related organisation, the FSC believes that when a person gives their positive, clear and informed consent, the initial contact should be made within 3 months.

5. Existing Customers

Existing customers (or customers of a related organisation) should never be approached if they have asked not to be, such as by asking to be placed on a “no contact” list unless they have made an explicit request.

There are times when it would be in an existing customer's interests to be contacted. For example, it may be appropriate to flag life insurance when arranging a home loan, given the customer's changed life circumstances and increased financial obligations. Importantly, businesses of all types in Australia use data about customers to target relevant offers to them at times when the product is likely to be needed. Insurance companies are no exception, so it is vital that this aspect of innovation and good practice is not stifled. Other occasions might be when an improved new product is available offering wider coverage and/or lower premiums.

The FSC is of the view that the provisions need to be nuanced enough to allow this, subject to having measures to ensure that the customer always remains in control and has the opportunity to consider any product before purchase (or is asked for any payment details).

6. Other considerations

ASIC will be aware of the additional work done to improve customer outcomes in the direct market in the important areas of culture, identifying vulnerable customers, training, monitoring, scripting, use of incentives customer incentives, and remuneration.

Product design and the means of distribution are further important considerations which are being addressed in other ways – for example, DDO & PIP and unfair contract terms legislation.

Part 2 – FSC feedback on the consultation questions in CP317

Consultation Question	FSC Comments
We intend to use our modification power in relation to the hawking provisions in the Corporations Act to prohibit unsolicited telephone sales of life insurance (including funeral insurance) and CCI, when only general advice or no advice is given at the point of sale.	
C1Q1 Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell direct life insurance?	<ul style="list-style-type: none"> • The FSC supports the broad policy intent. We agree that there is no place for cold-calling potential customers to sell any financial product, including life insurance, funeral insurance or CCI (or funeral expenses insurance). • We believe the proposals need to be carefully nuanced so that they are not likely to stifle meeting genuine customer needs or competition, as well as preventing poor practice. • Similarly, the proposals should not stifle innovation, for example in the use of data and its application to existing customers. • The FSC believes that it would be helpful to clarify what positive, clear, informed and consent means – we give our views in part 1 above. • Unless the person is or becomes an existing customer, or a customer of a related organisation, the FSC believes that when a person gives their positive, clear and informed consent, the initial contact should be made within 3 months. • There are times when it will be in an existing customer's interests to be contacted. <p>The FSC notes that:</p> <ul style="list-style-type: none"> • Considerations other than consent are also important here – such as culture, identifying vulnerable customers, training, monitoring, scripting, use of incentives customer incentives, and remuneration. These are addressed in other ways. • Product design and the means of distribution are further important considerations which are being addressed in other ways – for example, DDO & PIP and unfair contract terms legislation.
C1Q2 Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell CCI?	As above.

<p>C1Q3 Is there a risk of causing inadvertent consumer harm by banning unsolicited telephone contact to offer, issue or sell direct life insurance and CCI?</p>	<ul style="list-style-type: none"> • Yes, if the measures are too broad and stifle innovation, competition or good practice as well as unacceptable practices. • There are times when it would be appropriate to draw relevant products to an existing customer's attention – for example, life insurance when a customer is known to have started a family or taken out a mortgage and might not have considered the importance of life insurance. This might be known through other customer data. • It is known that people who generally prefer to buy goods and services on-line frequently need help and support through the application process for life insurance. It is typically a longer and different process from that for consumer goods and services purchased on-line. Most people take out life insurance very infrequently, so the process is usually unfamiliar. Experience shows that people often want the reassurance of speaking to a person to finalise the purchase. This interaction should be encouraged or people who want insurance may not otherwise complete the purchase. • Preventing good practices creates risks that access to life insurance is reduced and that people who need insurance might: <ul style="list-style-type: none"> • not be aware of its relevance or even its availability, or • not start or complete an intended purchase. • The FSC notes that: <ul style="list-style-type: none"> • ASIC proposes the RG as an interim measure until the law is amended. The current anti-hawking law applies more broadly than life insurance, funeral insurance and CCI so, until the law is amended, the revised RG could create two different interpretations of the same law. • Para 35 in the CP states: <i>In 2015, we specifically examined the design and sale of funeral insurance, which revealed a high rate of policy cancellations. In 2014, the cancellation rate was 80% of policies sold, with insurers not doing enough to ensure that consumers understood the features of the product: see REP 454.</i> According to MoneySmart, this has significantly changed since 2014. Across all metrics shown (claims accepted, claim processing time, rate of disputes and cancellation rates), funeral insurance now performs better than almost any other type of life insurance, including for lapses.
<p>C1Q4 Do you think that the prohibition on unsolicited telephone contact should be extended to any other financial products currently captured by the hawking provisions (e.g. other insurance products, superannuation products)? If so, which products, and on what basis?</p>	<ul style="list-style-type: none"> • We understand the Government intends to include funeral expenses insurance within the range of financial products subject to the Corporations Act. • Funeral expenses insurance is not covered by the proposal which risks creating an even wider regulatory gap than currently exists between this and the similarly named funeral insurance. Until the regulatory difference is addressed, there is a risk that the framework will result in poorer customer outcomes, rather than the intended better ones. • Funeral expenses insurance should be captured by the hawking provisions as soon as the legislation so allows. • The FSC notes that metrics for 'funeral expenses insurance' are not shown on the MoneySmart website.

<p>C1Q5 If you are an insurer or distributor: (a) what are the likely compliance costs of the ban?</p>	<ul style="list-style-type: none"> • The industry has already moved away from unsolicited telephone calls to potential customers and the FSC is not aware of any of its members continuing this practice. • The FSC believes that there will be no significant compliance costs provided that the measures to ban unacceptable practices are significantly nuanced so as not to also stifle good practices and innovation. • Clearly, there are significant future opportunity costs to both stifling innovation and/or practices that result in good customer outcomes.
<p>(b) what is the likely effect on competition?</p>	<ul style="list-style-type: none"> • The direct market remains a significant point of access to life insurance for a large demographic of consumers who may not be otherwise aware of the importance of insurance and who prefer to deal direct. • The industry has already moved away from unsolicited telephone calls to potential customers and the FSC is not aware of any of its members continuing this practice. Provided the measures are nuanced so as not to stifle good practice or innovation, there should be no adverse effect on competition.
<p>(c) do you foresee any other impacts, costs and/or benefits of this proposal, or of any alternative approach you suggest?</p>	<ul style="list-style-type: none"> • This proposal needs to be carefully nuanced to avoid preventing good practice as well as bad. Doing so would inappropriately prevent consumer awareness and access to insurance. • The direct life insurance market provides important access to insurance. Stifling good practice would be a very poor outcome.

If you wish to discuss any aspect of this submission, please contact me on [REDACTED]

Yours sincerely,

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