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Australian Securities and Investments Commission

via email: deferred.sales.model@asic.gov.au

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The FBAA welcomes the opportunity to make a submission to ASIC's consultation on CP339 Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance.

Introductory Comments

1. The FBAA has closely followed the developments around Add On Insurance since at least 2017 and has made regular submissions to the development of this framework.
2. We recognise the harm caused by sharp sales practices and selling poor value or unnecessary insurance to consumers.
3. We support measures to address consumer harm caused by poor practices, and also remain acutely focused on the impact that any new regulation has on our members. We have previously expressed concerns that some of the regulatory obligations being introduced through new regulations and through guidance appear aimed at trying to address misconduct by placing additional obligations on those that comply with the law and do the right thing.
4. Our short submission is framed by our desire to support pragmatic regulatory steps. It is clear from the level of specificity in the draft Regulatory Guide, that there is considerable complexity involved with identifying relevant time periods and what action is prohibited and what action can be taken during each period (pre-deferral, deferral and post-deferral periods). The complexity is further compounded by the fact that customers can alter the rules as they apply to each period by initiating contact which in turn triggers another set of obligations in relation to what can and cannot be said depending on what information the customer has inquired about and how they have framed their inquiry.
5. We believe many of the obligations can be managed through workflows however this is a framework that creates many opportunities for providers to inadvertently breach a prohibition by saying something they shouldn't, saying it at the wrong time or contacting a customer after the customer has stated they do not want further contact.
6. We ask that ASIC remains mindful of this when monitoring compliance with these obligations. We would expect to see action taken against wilful and systemic misconduct but want to see fair treatment of licensees and reps where a breach is isolated and inadvertent.



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7. It is also clear that ASIC expects licensees to maintain records to exculpate themselves. This will increase the record keeping burden on licensees as it will be necessary to accurately record the full scope of all customer inquiries, the date of these inquiries and any additional information that may be required to prove that any offer of an add-on product was made in compliance with the prescribed timeframes. Call recording also appears to be becoming almost mandatory for licensees.
8. The consultation paper invites submissions on alternative approaches that might achieve ASIC's objectives. It also invites comments on the likely compliance costs, effect on competition and other impacts, costs and benefits.
9. With the passing off the legislation amending the ASIC Act and the publication of the draft RG, we consider it most unlikely that any alternative approach would be considered at this point in time.
10. Most of the discussion around alternative approaches and the impacts of this deferred sales model have been ventilated in the various consultation pieces over the preceding years and we have not seen any deviation from the intention to introduce the deferred sales model.
11. The FBAA has always maintained that a more effective model would simply regulate the quality of the products made available and require those recommending any product to demonstrate through completing a needs analysis that a particular type of insurance cover is required/recommended. This approach would ensure consumers could only acquire products of reasonable quality and value and would only do so when they needed it.
12. There are at least three parties involved in the supply and acquisition of an insurance product. The product issuer, the intermediary and the consumer. The deferred sales regime loads all of the obligations onto the intermediary (service providers) to maintain detailed records of contact and to engage in certain conduct only within specific timeframes and in the manner prescribed.
13. Neither product issuer nor customer share any accountability under this regime. As we have seen with reforms in other areas including the best interests duty on mortgage brokers and proposed best interests duty on finance brokers, more and more obligations are being pushed onto intermediaries to counteract the potential negative impacts of the conduct of other parties such as the product issuers (i.e. through poor product design) or consumers themselves.
14. From our perspective we are disappointed with the decision to manage the sale of add on insurances through this complex framework of rules and requirements.

Responses to consultation paper questions

15. In relation to proposals B1 through to C1 we make no specific submissions. Noting our general opposition to the framework adopted to manage the Add-on regime we believe the RG accurately captures the obligations under the regime and provides sufficiently detailed guidance for industry to understand what is expected.
16. Proposal D items D1 to D5 relate to the prescribed Customer Information that must be given to each customer each time. We make the following comments in relation to the Customer Information:

D1Q1 – We support most of it but do not support the part of the disclosure under the paragraph headed “Could I get a better deal somewhere else?” This is a question every consumer may ask themselves every time they transact. We do not believe it is within ASIC’s remit to force intermediaries to thrust this question under the nose of every customer in a mandated disclosure document. The language may be aiming for plain-english but it comes across as unprofessional and quite base.

At the very least, if this information is to remain in the Customer Information form then please re-word the question to language more becoming of a profession. Change it to something like “How does this compare with other products in the market”?

D1Q2 – No. The form should remain generic and not include product-specific content.

D3Q1 – We support the proposals of the hardcopy form in respect of prescribing layout and making a copy accessible through the ASIC website that providers can print. We can foresee a potential compliance issue with the form if it cannot be connected back to a specific customer. The electronic form is more likely to be attributable to a particular customer /recipient because of how it is delivered.

If the customer is only required to “tick the box” and return the form to the salesperson, the form will not identify that particular customer. The form either needs the customer to fill in their name and details so it can be identified as originating from that customer or needs to carry some identifier. We can see how a form with a ticked box that doesn’t otherwise identify the particular customer could become an evidentiary problem in future.

D5Q1-2 – We question whether it is necessary to be so prescriptive as to require the Customer Information to be given only after a customer has made a commitment to acquire the principal product or service. If this requirement were varied to require the CI to be given at the time the customer makes a commitment or within a reasonable time of the customer acquiring the product or service it would allow a little more flexibility for salespeople to provide the information at a time in the transaction where it fits the flow of the transaction without risk of giving it slightly too early and contravening the obligations. We are not advocating that the CI could be given at a distinctly different time such as on a separate occasion or at the start of the customer engagement process but something less prescriptive than only after the customer has made the commitment as it presently leaves no flexibility for business to build this into



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their processes.

This may be a non-issue if other paperwork is given to a customer after they have made a commitment although for the most part, the paperwork is likely to be completed by the customer in the course of making a commitment.

17. We noted a couple of minor errors as we read through the draft RG:

- 000.74 *For example, a car hire company may lend a car to a customer*

The use of the word “lend” in association with car hire is unusual. Rent or hire would be more suitable words.

- 000.10 word “a” missing from before financial service
- 000.49 word “prevent” should be “prevents”

Yours sincerely

Managing Director

