



FINANCIAL
SERVICES
COUNCIL

CP 339 Deferred sales model for add-on insurance

Submission to ASIC

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1. 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 one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advice licensees 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 \$3 trillion on behalf of more than 15.6 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.

2. Executive Summary

The FSC welcomes the opportunity to provide a submission to ASIC's consultation on their proposed approach to implementation of the deferred sales model for add-on insurance. Our submission responds to the items raised in ASIC's consultation paper as they relate to specific matters of life insurance.

As set out within the Final Report of the Financial Services Industry Royal Commission (**Royal Commission**) the primary policy intent of the implementation of a deferred sales model for add-on insurance is to ensure that consumers are not pressured by a financial services provider into making an immediate decision to purchase a product that they have not had time to properly consider. The FSC fully supports this intent and wholly agrees with the recommendations made in the Royal Commission Final Report¹. We have considered the proposals set out by ASIC with this overarching policy intent in mind.

Given the interaction of the deferred sales model regime with the anti-hawking regime in that the sale of insurance products directly to consumers would fall under one of the two regimes, the FSC believes it is critical that clear and definitive regulatory guidance on the definition of an add-on insurance product would greatly assist industry with implementation.

We have also highlighted areas where we believe greater flexibility in the manner in which the Customer Information is communicated would result in better outcomes for both consumers and product providers.

We would welcome the opportunity to discuss any aspects of this submission should ASIC have any questions or would like further clarification.

¹ Recommendation 4.3 of the Final Report of the Royal Commission.

3. FSC Recommendations

1. Provide greater certainty around products and situations that are not captured under the definition of “Add-on Insurance”, particularly in relation to standalone life insurance products offered in conjunction with the sale of a Home Loan.
2. Align the definition of complimentary insurance to the Explanatory Memorandum of the Hayne Royal Commission Response bill.
3. Clarify that the timing of the approval of the credit facility would occur well before funding/settlement and that the approval may occur prior to all credit related requirements or conditions being set out and formally signed.
4. Consider providing a condensed list of metrics necessary to support a Section 12DY application, which more closely aligns with the level of evidence requested from Treasury in their consultation on deferred sales model exemptions by class.
5. Consider more general principles around the ease of the method of opting out required and include examples of acceptable versus unacceptable opt outs.
6. Amend the purpose statement of the Customer Information so that it is consistent with the legislative intention established by Government.
7. Consider amending the use of the term “salespeople” in the Customer Information to account for fully digital sales processes.
8. Consider adding minimal specific information to the customer Information to provide the customer with essential contextual information. For example “provider name”, “product type” and “product name”.
9. Consider providing objective criteria about the font’s attributes and list recommended fonts that meet the objective criteria when the Customer Information is electronically communicated.
10. Consider removing the blanket restriction on links and attachments when the content of the Customer Information is electronically communicated.
11. Consider amending the proposed subject line for Customer Information that is communicated via a digital medium that has a subject line so that it better encourages consumer to click into the message.
12. Exclude products that operate on a fully digital basis from the requirement to provide the customer with the option of receiving the Customer Information in hardcopy format.
13. Remove the requirement that the Customer Information may only be given after the customer has made a commitment to acquire the principal product or service to allow providers the option of providing the Customer Information to the person during the pre-deferral period when the add-on insurance product might be discussed.

4. Proposed guidance on complying with the deferred sales model

4.1. Scope of the deferred sales model

Life insurance sold with home loans

The FSC is generally supportive of ASIC’s proposal setting out the characteristics of a life insurance product sold with a principal product that is a loan that it considers would be less likely to meet the definition of an add-on insurance product (RG 000.30 - .31).

We note that if the life insurance product does not meet the definition of an add-on insurance product, the product would instead be subject to the hawking prohibition in s992A of the Corporations Act. This means there is a binary outcome for interpreting which regime a particular life insurance product would fall under. Definitive guidance on the definition of an add-on insurance product is therefore critical given the vastly different approaches in the degree of prescriptiveness, record keeping and penalties for breaches between the two regimes.

The FSC believes there is a potential risk that the proposed guidance does not currently provide sufficient certainty for life insurers in assessing whether a particular life insurance product sold with a loan falls under the deferred sales model regime (or the anti-hawking regime).² In the case where the principal product is a home loan, we are concerned that the deferred sales model regime might apply to standalone life insurance products sold with home loans that will mean systemic consumer restriction where there is no evidence base to support issues of pressure-selling and poor customer value.

A home loan is a significant life stage where it is important for consumers to consider their financial protection needs. New home loan customers are typically younger and not serviced by financial advisers and it is important they have access to and can consider a suitable insurance solution to protect their financial security.

Recommendation

1. Provide greater certainty around products and situations that are not captured under the definition of “Add-on Insurance”, particularly in relation to standalone life insurance products offered in conjunction with the sale of a Home Loan.

Complimentary insurance

We note that ASIC proposes to narrow the definition of complimentary insurance to exclude insurance where it is bundled with the principal product or service and a component of the cost is built into the price of the Principal Product. Specifically, ASIC considers that an

² Contributing to this uncertainty is the fact that industry has not yet seen ASIC’s proposed changes to *RG 38 The hawking prohibitions* to take into account the application of the Anti-Hawking regime to insurance and superannuation products.

insurance product is not complimentary if the cost of the insurance product is met by the Principal Product Provider and then passed onto the customer (RG 000.17 - .18).

As also noted in RG 000.16, the legislative position on the treatment of complimentary insurance that may be found in Paragraph 3.29 of the Explanatory Memorandum (**EM**) of the *Financial Sector Reform (Hayne Royal Commission Response) Bill 2020* and *Corporations (Fees) Amendment (Hayne Royal Commission Response) Bill 2020 (Hayne Royal Commission Response bill)*. The EM explains that complimentary insurance is generally excluded from the definition of “add-on insurance” as it is insurance that is “not offered nor sold to a customer”. Example 3.3 of the EM uses complimentary travel insurance with a credit card as an example to illustrate this point.

In our view, ASIC’s proposed definition operates more restrictively and is inconsistent with the existing legislative position. We are concerned that ASIC’s proposed definition of complimentary insurance does not capture the specific example provided in the EM, as the principal product provider may pass on the cost of these benefits indirectly through other fees within the credit card product. We are also concerned that recent and future innovations in the market may be impacted as a result of any lack of clarity which might lead to longer term customer detriment and a reduction in the ability of principal product providers meeting the needs of their consumers.

As a principle, we submit that the consumer should be able to choose a principal product or service that offers them the greatest aggregate value, whether that be in terms of the price of the products or the features and benefits it offers (which may be an insurance benefit). Where the cost of the insurance product, or any other benefit for that matter, cannot be separated from the principal product, the consumer is making a single decision. For example, different companies will charge the same annual fee for a credit card or interest rate for a home loan but they will offer different features and benefits – the customer can choose the one that best suits their circumstances.

Recommendation

2. Align the definition of complimentary insurance to the Explanatory Memorandum of the Hayne Royal Commission Response bill.

4.2. Time of entering into a commitment

Timing of credit facility approval

ASIC’s proposed guidance clarifies that for a loan secured by a mortgage, the time of entering into a commitment is “When the consumer is informed in writing of the approval of the credit facility” (RG 000.26 Table 1).³

³ This guidance is sourced from the Exposure Draft regulations issued by Treasury in January 2020 setting out the Exposure Draft regulations 3B of the ASIC Regulations 2001.

We believe it would be useful for ASIC to provide additional clarification on when the consumer is informed in writing of the approval of the credit facility, specifically that:

- the approval would occur well before the funding/settlement date; and
- the time (of entering a commitment) does not necessarily require all credit related requirements or conditions to have been set out in the approval. This recognises that the approval of a credit facility may precede the formalities of the consumer signing the documents that set out the detailed terms and conditions of that facility at some later point.

Recommendation

3. Clarify that the timing of the approval of the credit facility would occur well before funding/settlement and that the approval may occur prior to all credit related requirements or conditions being set out and formally signed.

5. Exemptions from the deferred sales model

5.1. General approach to applications for exemption

We note ASIC considers the guidance in paragraph 3.98 of the EM a relevant matter in relation to how it will exercise its exemption granting powers in relation considering applications for an exemption from the deferred sales model. We are concerned that this may mean that ASIC will look to provide exemptions in “exceptional circumstances only”. In our view, the proposed bar for each exemption factor has been set prohibitively high such that it would not be practically feasible to provide and therefore the likelihood of a successful application would be extremely unlikely.

We believe that deferred sales model exemption applications submitted to ASIC should be considered on a case-by-case basis according to their merit. Not doing so will provide customers with less choice and make it more difficult for customers to get suitable insurance. It is also expected to stifle innovation as gaining an exemption for a new product would be an onerous process.

Recommendation

4. Consider providing a condensed list of metrics necessary to support a Section 12DY application, which more closely aligns with the level of evidence requested from Treasury in their consultation on deferred sales model exemptions by class.

6. Proposal for Customer Information

6.1. Content

D1Q1 – Opting out

ASIC has proposed that the opt-out mechanism for further contact from product providers to be via hyperlink where the Customer Information is provided electronically (RG 000.66). We are supportive of ASIC’s intention to make it efficient for customers to opt-out at any time after the sale.

We believe there is further scope for the opt-out mechanism for electronic communications to be made less prescriptive to account for forms of electronic communication where a hyperlink may not be the most efficient way for customers to opt-out.

For example, a customer may be shown the customer information whilst logged into an online portal. In this particular instance there may be the option of showing a tick box within the on-screen text to allow opting out without navigating away from the customer information which would happen through a hyperlink.

Another example could be where the customer information is sent through the use of SMS and the opt out is as simple as the customer replying with the number one “1” or the text “opt out”.

ASIC should also consider the expectations of the Australian Communications and Media Authority (**ACMA**) in formulating more general principles for the opting out of commercial electronic messages.

Recommendation

5. Consider more general principles around the ease of the method of opting out required and include examples of acceptable versus unacceptable opt outs.

D1Q1 – Statement why the customer has been given the customer information

ASIC has proposed that the statement why the customer has been given the Customer Information is “to reduce the number of poor-quality insurance products being sold in Australia” (RG 000.71). We agree that one purpose of the Customer Information is to reduce the sale of poor-quality insurance products.

However, in our view, the purpose statement does not wholly present a balanced view and implies all add-on insurance products are poor value. We are concerned that an unintended outcome of the proposed purpose statement may be a reaction by the consumer to not purchase the product rather than the desired outcome of people being properly informed and having time to appropriately consider the product.

We submit that the purpose statement should closely reflect the Government's stated policy intention and restated at paragraph 000.5 of ASIC's Draft Regulatory Guide.

Recommendation

6. Amend the purpose statement of the Customer Information so that it is consistent with the legislative intention established by Government.

D1Q1 – Use of the term 'salespeople'

The proposed Customer information uses the terminology "salespeople" and "salesperson". This does not take into consideration fully digital sales processes where there is potentially no salesperson.

Recommendation

7. Consider amending the use of the term "salespeople" in the Customer Information to account for fully digital sales processes.

D1Q2 – Product-specific content

We believe there is some scope for ASIC to prescribe some product-specific content to allow for some differentiation of the product and provider, and if applicable third-party provider, to which the customer information relates. This is necessary context for the customer receiving the information and without this the customer may not know what the information relates to, especially if multiple notices are received in proximity to each other. For example, a customer obtains a loan for the purpose of a holiday and so may receive multiple add-on insurance offers within a close proximity, including consumer credit insurance for the loan and travel insurance for the holiday.

Under ASIC's proposed customer information, the only differentiator for the customer is the sender's email address. The lack of context about who the information is from and what product to the information relates to is therefore likely to diminish the effectiveness. It could also risk an error in the customer unsubscribing or opting out based on the information, as they will not know clearly which product or provider they are opting out from.

Recommendation

8. Consider adding minimal specific information to the customer Information to provide the customer with essential contextual information. For example "provider name", "product type" and "product name".

6.2. Form

D2Q1-2 – Font size and type

We believe the requirement of the use of Arial font in the Customer Information is an unnecessary restriction and inconsistent with a technology neutral approach. This could create an unnecessary burden for providers to comply with. Specifically, it may require changes to existing technology platforms which may be used to deliver the customer information to alter what is perfectly clear and easy to read font to Arial.

It may also not be possible in certain digital mediums where a customer is able to customise the appearance of text displayed to them. For example, chatbots or digital customer service interfaces, SMS, mobile devices, etc.

Recommendation

9. Consider providing objective criteria about the font's attributes and list recommended fonts that meet the objective criteria when the Customer Information is electronically communicated.

D2Q1-2 – Links and attachments

ASIC's proposal that Customer Information given in an electronic format cannot be given via a link or as an attachment seems unnecessarily restrictive where a provider has the technology to allow them to monitor and record when a consumer has opened such a link or an attachment.

Recommendation

10. Consider removing the blanket restriction on links and attachments when the content of the Customer Information is electronically communicated.

D2Q1-2 – Prescribed subject line

We note ASIC's proposal that the subject line of the Customer Information where it is communicated via a digital medium that has a subject line be "You can say no to being sold Insurance".

While we support the intention that the subject line should be consistent and prescribed, we are concerned that the specific subject line proposed lacks sufficient context and may not encourage the recipient to read any further. This creates a real risk that some people are warned off and do not take out the protection they need. We believe the subject line should merely give an indication of what is within the message whereas the proposed subject line attempts to communicate a message in itself.

Recommendation

11. Consider amending the proposed subject line for Customer Information that is communicated via a digital medium that has a subject line so that it better encourages consumer to click into the message.

6.3. Manner of provision

D4Q1 – Provision of Customer Information electronically by default

We are supportive of the ASIC’s proposal that the Customer Information should be provided electronically by default as a general rule. This is consistent with the practices of product providers to move to electronic customer communication unless the customer requests otherwise.

However, the proposal should also be consistent with existing Regulatory Guidance issued by ASIC on electronic disclosure for financial products and services. For example see *RG 221 Facilitating digital financial services disclosures* at paragraphs 29 to 31 in respect of “fully digital products and services”. Specifically, where a product operates on a fully digital basis, there should not exist a requirement for the provider to provide the customer an option of being given the Customer Information in a hardcopy format.

Recommendation

12. Exclude products that operate on a fully digital basis from the requirement to provide the customer with the option of receiving the Customer Information in hardcopy format.

D5Q1 – Timing of provision of Customer Information

We do not agree with ASIC’s proposal that the Customer Information must be given to the customer only after, not before, they have made a commitment to acquire the principal product or service.

We note that the legislation allows flexibility in when the customer information may be provided, by providing that the deferred sales period may start at the later of the time of commitment and the provision of the customer information. Under the legislation a customer could be provided with the Customer Information in the pre-deferral period when the provider is allowed to discuss the add-on insurance product with the customer. This particular timing may actually provide greater context for when a customer receives the Customer Information.

Recommendation

13. Remove the requirement that the Customer Information may only be given after the customer has made a commitment to acquire the principal product or service to allow providers the option of providing the Customer Information to the person during the pre-deferral period when the add-on insurance product might be discussed.