



FINANCIAL
SERVICES
COUNCIL

FSC Submission

Reforms to the sale of add-on
insurance products

3 October 2019



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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.

FSC Feedback

1. Summary

The FSC welcomes the opportunity to submit on the Treasury Proposals Paper *Reforms to the sale of add-on insurance products* (the Proposals Paper).

FSC considers that due to the far-reaching breadth of this reform (which the Proposals Paper itself acknowledges), it is likely there will be customer experience and practical difficulties which may not be known until the reforms are implemented.

The FSC supports consumer choice and convenience, and importantly, that consumers who need or want cover are not prevented from obtaining cover at the time they need or choose. The sales process should support informed consumer decision making.

This submission comments on some practical outworkings of the quite broad proposals (indeed, unprecedented globally in comparable jurisdictions as acknowledged in the Proposals Paper) in their current form which, with minor refinements or clarification, will make the proposals less likely to result in inconvenience to customers, restriction of consumer choice and inadvertent lack of cover (by not acting after the deferral).

The Proposals Paper acknowledges that a policy of applying a sales deferral for (essentially) the whole insurance industry in the scenarios contemplated (insurance sold in conjunction with the primary product or financing agreement) is unprecedented (a world first). Given this, it is appropriate for a "check-in" (that is, a post-implementation review) in 2 years time on the implementation of the reform, in relation to the impacts of the reforms in respect of consumer choice (and the risk of not obtaining cover due to the mandated deferral).

While the paper describes the proposed regime as three tier, the regime by default applies a single deferral model to all "add-on" insurance distribution (as the ASIC product intervention power (tier 1) is current law, and the proposed exemption (tier 3) hurdle is extremely difficult to

satisfy (perhaps comprehensive car insurance may meet the test but this will be carved out in any event), particularly for new (and innovative) products.

FSC supports the mandated deferral of add-on insurance for consumer credit insurance (CCI) sold alongside credit cards and personal loans, but has the following concerns:

- That the definition of “add-on insurance” could be interpreted more broadly than is intended.
- Some practicalities associated with the proposed implementation of the deferred sales model.

This submission provides feedback on these matters in addition to the feedback requested on Tier design and Trigger events and how they correspond to current business practices.

This submission makes the following key points:

1. “Add-on” sales are different from, and should be distinguished from, referral arrangements. Clarity is required that a referral is not considered a simultaneous sale and not subject to the add-on insurance proposals.
2. FSC urges consideration, before finalising the reforms, of providing the customer with a default deferral but where the customer may choose (verbally or in writing) to instead proceed at the point of commitment to the primary product without deferral if the customer wants that (thereby letting the consumer decide how and when they want to proceed with any add-on insurance and preserving consumer choice and convenience).
3. Insurance should not be considered as a primary product for the purposes of the add-on regime. Accordingly, different types of insurance should not be considered as an add-on to another type of insurance.
4. The regime should provide that the add-on insurance is the broad financial product (for example, a life policy under the Life Insurance Act) and not sub-categories or options (such as TPD added to death cover).
5. Add-on insurance regulation should not apply where personal advice is provided.
6. Contact with the client at the end of the deferral period should be by any mode of contact, rather than “in writing, once only” and the law should not prescribe a “once only” contact.
7. The impracticality of applying the add-on insurance proposals to online sales.
8. Clarity is needed as to the time from which a discussion on the “add-on” insurance may be introduced.
9. The content of the add-on insurance document should be set out in Regulations and subject to the Office of Best Practice Regulation requirements, rather than delegated to a regulator (in this case, ASIC) whose role should be to oversee and provide any regulatory guidance on any legislative (including regulations) content requirements for the add-on insurance document.

10. The ASIC exemption (tier 3) is extremely difficult to satisfy and inhibits and stifles product innovation.
11. FSC notes that underinsurance may be an outcome of the reforms and overseas experience may be a reference point.
12. A post-implementation review should occur in 2 years' time.

2. Detail

2.1. Referrals distinguished from add-on sales

The legislation for the proposals should distinguish between “add-on” sales (for which the deferral applies) from referrals.

Commonly, a consumer may become financially committed to the primary product (for example, a home loan), and either at that time or some later time, a mortgage broker may bring to the attention of the consumer, whether they wish to be referred to a specialist (typically a life insurer or their representative) to investigate life insurance. The Add-On proposals should clarify that such referrals are not subject to the Add-On-Insurance proposals.

2.2. Consumer election to proceed with the discussion of add-on insurance

A range of situations exist where add-on insurance is applicable. Some customers may not have thought of the add-on insurance. Some customers, prompted to consider it, may want to proceed to consider and complete the purchase of add-on insurance at the same time as the primary product (such as time poor customers, or customers who prefer to deal with the primary product and add-on insurance together without a later discussion on the add-on insurance). Some customers will want time to consider. Ultimately, provided distribution and sales practices are fair and promote consumer convenience and choice, it should be a matter for the consumer whether they wish to opt-out of the deferral (or not).

FSC considers that the regime should apply as follows:

1. The consumer should be offered the option of a deferral (this option would be the default);
2. The consumer should be told that the default situation is they will be contacted after the deferral period (not now);
3. The product issuer/distributor may ask the consumer, whether they want to opt-out of the default deferral;
4. If the consumer does not expressly consent to proceed without a deferral, the deferral applies;

5. If the consumer expressly consents to proceed to a sale of the add-on insurance, then the deferral would not apply. The consent must be recorded (whether given verbally or otherwise) and the customer should be informed (after they have chosen to proceed without a deferral) that there is also a cooling off period that applies;
6. The consumer may elect to proceed with the add-on insurance sale (that is, dispense with the deferral) by express request (which may be verbal or written).

The scenario above meets the policy objective of providing a deferral except if the customer actually does not want to wait to proceed to the add-on insurance.

The customer has the benefit of a cooling off period (and under our suggestion, the customer should be reminded of this after they choose to proceed with considering the add-on insurance without being deferred), where they choose that they actually want to proceed to discuss the add-on insurance without a deferral.

Note our submission here is not to do away with the deferral as a default, but to allow consumers (for example, time poor or for convenience) to proceed with the add-on insurance in the same discussion as the primary product if that is what the customer wants to do. Further, not allowing this has the prospect of clients being uninsured when they intended to be insured and forget to progress with the add-on insurance after the deferral period. An example may be the customer takes out a mortgage, and is told they may wish to consider life insurance. The customer agrees that is appropriate but then must wait the deferral period. They then forget to proceed with the life cover and suffer an event causing them to not be able to cover the home mortgage.

2.3. Risk protection discussions

The genesis of the proposals in the Proposals Paper are transactions where the consumer has in mind the acquisition of a tangible (for example, a car) or a financing agreement (a credit card) and may not have been considering “front of mind” add-on insurance.

Insurance should not be considered as a primary product for the purposes of the add-on regime. Accordingly, different types of insurance should not be considered as an add-on to another type of insurance. The proposal should clarify that composite discussions in relation to risk (insurance) needs are not covered by the add-on insurance regime. One or both are not a “primary product” or “add-on” product for the other.

2.4. Add-on product versus the primary product

Typically, the primary product would be a tangible product (for example, a holiday, a flight, a car) and the add-on insurance would be clear. The regime should provide that the add-on insurance is the broad financial product (for example, a life policy under the Life Insurance Act) and not sub-categories, such as TPD added to death cover.

2.5. The Add-On Insurance Proposals should not apply where personal advice is provided

Where a client receives personal advice in relation to the add-on insurance, the add-on insurance proposals should not apply.

2.6. Prescription on the manner of contacting the customer after expiry of the deferral period.

In this modern age, contact with consumers takes various forms, typically suited to the needs or preferences of the consumer (for example, SMS, email, phone).

The proposals are surprisingly and unduly restrictive and prescriptive in dictating that after the deferral period, a customer may be contacted in writing once only. This is an area of prescription which is novel. Clearly if a customer responds to contact and indicates they do not want to proceed with the add-on insurance, that indication should be respected. However, to dictate an in writing once-only reach out to the consumer is far too restrictive as regularly customers do not respond to the first (or subsequent requests), such as in relation to warnings of the prospective cancellation of life insurance as part of the Protecting Your Super measures.

2.7. Application to online sales

The proposals apply to online sales. However, FSC believes further consideration needs to be given to distinguishing the add-on insurance from the primary product in an online sales situation. There can be more than one (regularly, many) primary products offered on a website (that is, online) and the application of add-on insurance to an online model needs care – the fact that a website has more than one product should not necessarily result in one being treated as a primary product and the other as an “add-on” insurance.

Further, in the online situation, the client has to select (online) to proceed to acquire the (add-on insurance) product. FSC questions why the add-on insurance proposals would apply to an online environment where the consumer is actively making their choices.

2.8. Time when the deferral period commences

The Proposals Paper provides that the trigger event determines when the deferral period will commence. FSC understands that the policy objective is to ensure that the decision to buy the insurance is made in isolation from buying the primary goods/service such that the insurance is considered on its own merits. FSC supports this and believes that this policy objective is achieved if, as stated in the paper, the trigger event is the application for a mortgage, loan or other credit.

2.9. Content of add-on insurance document should be set out in Regulations

The requirement for an add-on insurance document duplicates existing disclosure regimes. Much of what is suggested for inclusion in an add-on insurance document appears in a PDS. Nonetheless, the content of disclosure documents are set out in the Corporations Act, National Consumer Credit Protection Act and their related regulations. Similarly, the content of the add-on insurance document should be set out in regulations, and not determined by the regulator (ASIC). The regulator can of course issue guidance on its interpretation of the content requirements set out in regulations.

FSC has concerns with mandating disclosure to consumers of product claims ratios because they will be misunderstood without explanation of how the figures are made up, that they do not include distribution and other costs of the insurer, and are based on assumptions, and do not equate to profitability/margin of the insurer without more detailed context. Such ratios are also “moment in time measures” - there can be variability in the loss or claims ratio depending on when the consumer buys the insurance. FSC does not believe consumers would understand why loss and claims ratios would differ between different channels (for example, advised versus direct versus group insurance). FSC agrees that the regulator can use these figures as it understands the complexity and nuances of actuarially determined figures.

2.10. Stifling innovation

The proposals do not reflect the changing world where consumers interact with product providers in a range of ways, seek prompt resolution of transactions and use digital and technological functionality increasingly.

The proposals provide criteria for an exception for add-on products which are “historically good value for money”, “well understood”, have “strong competition” and have a “high risk of underinsurance”. By definition, innovative (new products) will never meet the “historically” good value for money criteria as it is new product, and being innovative may not be widely issued and subject to “strong competition”.

The tests for an exception should be refined to not inhibit and stifle new, innovative and novel products.

2.11. Under-insurance

FSC notes under-insurance may be an impact of the reforms and overseas experience in this regard may be a reference point.

2.12. Post-implementation review

Given the above matters, the Government should undertake (via Treasury) a Post-Implementation Review of the add-on insurance Proposals two years after commencement.

Yours faithfully,

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