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**Manager Insurance Team Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600**

Email addoninsurance@treasury.gov.au

REFORMS TO THE SALE OF ADD-ON INSURANCE PRODUCTS

**SUBMISSION BY NATIONAL INSURANCE BROKERS' ASSOCIATION OF AUSTRALIA
(NIBA)**

1. ABOUT NIBA

- a. The National Insurance Brokers Association of Australia (**NIBA**) appreciates the opportunity to make this submission on the reforms to the sale of add-on insurance products.
- b. NIBA is the industry association for insurance brokers across Australia and has around 350 member firms, employing over 4,000 insurance brokers in all States and Territories, in the cities, towns and regions of Australia.
- c. Over many years, NIBA has been a driving force for change in the Australian insurance broking profession. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced an independently administered and monitored code of practice for members.

2. ABOUT INSURANCE BROKERS

- a. Insurance brokers work with their clients to assist them to:
 - i. understand and manage their risks, including the risk of loss or damage to property as a result of adverse weather or other climate-related events;
 - ii. obtain appropriate insurance cover for their risks and their property; and
 - iii. pursue claims under their policies when an insured event occurs, in which case the insurance broker becomes the advocate for the client during the assessment and resolution of the claim.

- b. Many insurance brokers advise and assist industry associations and other bodies which provide services and support to their members, often including insurance coverage for members of the association or group. For example, many bicycle riders join Bicycle NSW in order to gain access to third party property and personal injury insurance protection¹. Also groups such as the Australian Physiotherapy Association offer professional indemnity insurance cover for their members, arranged via an insurance broker².
- c. Insurance brokers act primarily for and on behalf of their client, and they owe legal duties to their clients for the nature and quality of the work they perform on their behalf. When acting for and on behalf of the client, insurance brokers do not SELL insurance policies – they PURCHASE insurance policies on behalf of their clients from the markets available to them.
- d. In some cases, insurance brokers may provide services for insurers under agency arrangements.

3. EXECUTIVE SUMMARY

- a. NIBA has significant concerns with the regulatory approach taken, particularly the lack of any cost benefit analysis and explains why in this submission. In short, NIBA believes better consultation should have occurred (as was proposed by the Productivity Commission) regarding what products should be caught as a starting point (with an ASIC power to include others) rather than a catch all approach.
- b. NIBA is of the strong view that a catch all approach requiring application for exemption by all add on insurance (or equivalent) providers is not practically workable and will likely result in significant consumer and industry detriment. This submission explains why in some detail and identifies some areas of concern. Others will arise given time.
- c. NIBA explains typical add on sales models and identifies a number of areas which require clarity on how the proposed deferred sales model will work.
- d. NIBA identifies areas for clarification in relation to the exemption and comments on each of the proposed criteria and their relevance. In particular, NIBA submits that an exemption should apply where a

¹ See: <https://bicyclensw.org.au/insurance/>

² See: <https://australian.physio/apa-member-insurance-program>

consumer is represented by an insurance broker providing personal advice, as the concerns raised do not arise in this scenario.

- e. NIBA proposes some options that are consistent with the Government Response but are likely to result in a fairer and safer outcome for all concerned.
- f. NIBA is happy to engage further with Treasury in relation to the above.

4. ISSUES WITH THE REGULATORY APPROACH

- a. NIBA is normally supportive of fair and reasonable improvements in consumer protection and regulatory powers, implemented in accordance with sound regulatory practice. However, if legislative changes have the potential to disrupt the insurance markets, particularly the nature, supply and cost of insurance, policyholders and consumers are unlikely to be better off, and could well be substantially worse off as a result of the so-called “reforms”.
- b. NIBA believes it is important, in developing any legislation and reform proposals, to consider up front whether there is any detriment that needs addressing, rather than catching all and after the fact seeking to carve out those who are in reality not the focus of the change. This is consistent with OECD principles of good regulation.
- c. It appears to NIBA that this is not occurring in relation to this reform.
- d. NIBA has considered the:
 - i. Australian Securities and Investments Commission (ASIC) work on add-on insurance sold in car dealerships (see for example *ASIC Report 492 (2016): A market that is failing consumers: The sale of add-on insurance through car dealers*) and broader review of consumer credit insurance (CCI) (See *ASIC Report 622 (2019): Consumer credit insurance: Poor value products and harmful sales practices*);
 - ii. Productivity Commission inquiry ‘Competition in the Financial System’, 2018, chapter 15 Add on Insurance; and
 - iii. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission).

- e. It is clear to NIBA that all of the above only considered motor dealer add on insurance and Consumer Credit Insurance (CCI) in any detail i.e. what could be considered the worst-case situations.
- f. The only basis provided for extending the deferred sales model to other add on insurance products was that as there were issues identified in the very specific context of the motor dealer add on insurance and CCI, it is assumed the same issues must also arise in relation to all other add on insurance. Because of this, all products should be caught to avoid ASIC engaging in a “whack a mole” exercise, unless industry can establish that they should be exempt.
- g. Whilst the Productivity Commission, Royal Commission and ASIC did not consider the impact of such broad reform proposals on stakeholders, the Government should.
- h. The Government has adopted a catch all model where:
 - i. no evidence of an issue in add on products beyond the worst-case scenarios has been identified;
 - ii. no cost benefit analysis has been conducted;
 - iii. no prior consultation with affected stakeholders has occurred – industry has been given 21 days to make a submission to Government on whether they should be exempted or not in primary legislation, with the option of later seeking relief from ASIC if this is not done (or if unsuccessful at this initial level). ASIC relief can only be applied for once the legislation is in force and the transition period proposed is not clear. This creates great uncertainty in the industry; and
 - iv. there is already significant (and duplicated and complex) consumer protection regulation that protects consumers (this is discussed in detail later, but see for example ASIC’s Product Intervention Power that can address significant consumer detriment. It is worth noting that ASIC’s power was not in force when the Productivity Commission Report was released, which is what the Royal Commission relies on as the justification for supporting a catch all change).
- i. We are advised that feedback is to be focussed on “how the measure can be best implemented, not whether it should be implemented”.

- j. This is not sound regulatory practice. No equivalent Government has taken a similar approach and this is for very good reason, which appears to have been lost in the momentum of the Royal Commission.
- k. We provide a quick example (we are sure there will be more) of where things can go significantly wrong.
- l. If group policies are caught (as the proposal reads now they could be), nearly every sporting or other association, corporate employer and equivalent entities with a group policy would either need to seek an exemption or cease the current offering (in the examples mentioned above, both Bicycle NSW and the Australian Physiotherapy Association would be offering insurance cover under a group policy arranged by an insurance broker).
- m. This is because such insurance is usually provided at the same point as provision of their products or services. Most won't either have the capacity or knowledge to seek an exemption and would unknowingly breach the law.
- n. If they all sought an exemption from ASIC, we doubt ASIC would ever have the resources to complete the process.
- o. The same would apply in the cargo industries and many others that have not been identified in the Code Governance Committee, Productivity Commission and Royal Commission reports as add on, but can be caught by the broad definition in the proposal paper.
- p. The above are examples of the need for proper and considered consultation with industry given the unintended consequences that can flow from such a catch all regime.
- q. We emphasise that the above are only starting examples that we have been able to pick in the context of what is a broadly drafted paper. Has ASIC advised Treasury that it will have the resources to grant exemptions as proposed in sufficient time before transition ends – period yet to be identified?
- r. Refer below to the other issues of concern (in particular regarding “services”) we have been able to identify in the limited time made available for consultation.

5. DEFERRAL PERIOD TRIGGERS - LACK OF CLARITY ON HOW THE PROPOSED DEFERRED SALES MODEL WILL WORK

- a. Treasury has asked ***“How [does] this trigger correspond to current business practices in selling add-on insurance products. This could include information on the number and frequency of customer touchpoints in the sales process and/or at what point in the process financial commitments are typically made by consumers.”***
- b. In the extremely limited time given, NIBA has sought to identify issues that require further clarification and discussion relevant to the proposed triggers. These are set out below.

Insurance Products caught

- c. The proposal is to catch all life and general insurance products unless exempt via primary legislation or ASIC relief at a later stage.
- d. The paper notes that it proposes to provide ASIC with the power to regulate risk management products similar to add-on products— though not technically the same —to help ensure competitive neutrality between AFSL-holders who issue risk management products.
- e. It is crucial to understand how such products will be defined in order to provide any useful feedback. The risk is that it will be too narrow or too broad and have an adverse effect on competitive neutrality.

Persons protected

- f. The paper does not identify whether the proposals will cover retail and wholesale clients as defined in the Corporations Act. It only uses the term “consumer” which implies retail clients. NIBA notes that add on insurance customers identified by ASIC, the Royal Commission and Productivity Commission were individuals and retail clients. If a broader approach is proposed, what is the justification for taking such a broad approach and what will the scope be?
- g. It makes no sense to catch businesses that do not need such protection. The small business definition in the retail client definition that sets the line, has not to our knowledge, been the subject of any significant criticism. Where is the evidence that it has not worked well? If there is, it is worthwhile fixing things, but in a manner that will not cause unnecessary confusion for all concerned. There is no useful discussion of this important issue in the paper.

Circumstances in which the insurance product is subject to the deferred sales model rules

- h. An add on insurance product is described in the paper as a general and life insurance product that is “offered or sold at the same time as when a consumer purchases the primary product or acquires finance for which the insurance covers associated risks” unless exempted in the legislation or by ASIC’s relief power.
- i. Whilst not clear from the proposal, we assume that the intent must be to only apply the deferral rule to a product in circumstances **when** it is “offered or sold” at the same time as the primary product i.e. the time of the pressure sales risk. It would make no sense to catch renewals or variations that occur after this initial purchase. Can Treasury please confirm it will be drafting the legislation to make this point clear? If this is not the case, we have additional concerns to raise.
- j. We also note that in the Corporations Act, the terms “offered” and “sold” are not used in an insurance context. The terminology and concepts typically used in the Act for insurance (depending on the obligation in question) are as follows:
 - i. “Referral service” or “clerks and cashiers type service” – this is not considered a financial service (ie because the role is so limited so as not to constitute “dealing” in or providing “financial product advice” on the insurance);
 - ii. “General advice”, “personal advice”, factual information and advertising – these are things that are usually services provided pre entry but can be provided post entry too;
 - iii. “apply for” or “arrange” – these describe the process by which the consumer applies to enter into the insurance;
 - iv. “offer to issue” – this is an offer capable of acceptance by the client i.e. a PDS trigger. Offers made that are not capable of acceptance e.g non-binding quote are not a PDS trigger;
 - v. “issued” means entered into (i.e. when final agreement with the consumer is reached); and
 - vi. “vary” is a post contractual change to a policy once entered into.

- k. In summary, add on insurance would normally be distributed in one of the following ways:
- i. **Referral model** -customer meets primary product/service provider e.g travel agent. Customer is told travel agent cannot arrange the insurance but customer needs to consider obtaining it. The travel agent may refer customer to insurer call centre, online site or face to face contact and play an exempt clerk and cashier or no further role. Customer contact will then be with the insurer or the insurer's employee or agent. In some cases, the agent of the insurer may be another representative of the entity that the travel agent works for. In other cases they will be the insurer or a separate entity acting as agent for the insurer. Pressure sale risks in such a scenario are low.
 - ii. **No advice arranging model** - customer meets primary product/service provider e.g travel agent. Customer is told travel agent can arrange the insurance on behalf of the insurer but cannot enter into it (ie non-binding authority). Travel agent does not provide any form of advice (ie recommendation about the product to the customer), only factual information. Pressure sale risks in such a scenario are lower.

The agent gets the customer's details or goes through the insurer application process with them and customer submits the details to the insurer, which agrees to enter into the policy (generally by phone or online but could be face to face).
 - iii. **General advice arranging model** – same as above but general recommendation can be made by travel agent promoting the insurance.
 - iv. **No advice binding model** – Same as no advice arranging model but travel agent can enter into the contract for the insurer rather than having the customer go to the insurer to do so.
 - v. **General advice binding model** - Same as general advice arranging model but travel agent can enter into the contract for the insurer rather than having the customer go to the insurer to do so.
 - vi. **Personal advice model** – rare in add on insurance but travel agent would (usually on behalf of the client) give personal advice on what travel product is suitable for their needs. They would be subject to the best interest duty under Part 7.7A of the Corporation Act 2001 in doing so. They would then engage with the insurer or its agent on

behalf of the client to arrange the insurance which the insurer or its agent would then enter into.

- I. Is the intent to:
 - i. catch mere referral arrangements of the type noted above?
 - ii. prohibit marketing and other offers made pre issue that are not capable of acceptance e.g non-binding quotes?
 - iii. prohibit point of sale offers to issue (ie those capable of acceptance) but which are only accepted after the deferral period or day 1 after sale of the primary product if the customer asks to do so?
 - iv. only prohibit “issue” to a consumer at point of sale?
 - v. catch free provision of insurance arrangements e.g where cover is initially provided for free and the customer then has a choice to continue or not and pay for ongoing cover?
 - vi. catch interim cover arrangements which result in an interim contract being issued for a short time that is later intended to be replaced by a final contract?
 - vii. only apply in relation to a “primary product” or a primary “product” and/or “service” for which the insurance covers associated risks?

The proposal paper wording is not clear in this regard as the definition of add on product only refers to a “primary product or acquires finance” but the deferral period description refers to “primary good/service and/or arranges finance”.

- viii. clarify what an associated risk is? If a “service” is caught, the scope of the regime is broader. When providing such a service in circumstances where insurance is also “sold” or “offered” (once the scope of these terms are identified), it must be determined whether the insurance “covers associated risks”.

For example, a hockey or football club provides services to members and on joining, members can access cover under a group policy for injury or liability associated with the sport. We doubt such organisations either will (or have the capacity to) make submissions or seek exemptions.

Another example is the fact that the Department of Foreign Affairs and Trade strongly recommends travel insurance for those travelling overseas³. Is it the intent of this proposal to prevent the sale of travel insurance at the time customers and consumers purchase air travel and other travel services? We note there has been no demonstration of clear community detriment in this area.

This is a significant industry and community wide issue not covered in the paper or considered by those who thought it worthwhile to recommend such a broad change on the basis of “principle”.

- m. We expect there will be more issues identified given time.
- n. The sensible approach for Government to take given such risks would be to exempt all products other than those identified as problem areas, with the ability for ASIC to add others subject to appropriate and fair criteria being applied.
- o. This would be technically consistent with the Government Response and a fair result. We note below the degree of consumer protection that would still apply in such a case to those add on products not caught, having regard to recent Government reform.

Need for a Personal advice exemption for all add on insurance

- p. Where a customer is provided with personal advice by a licensee acting on their behalf, such as an insurance broker, they are represented by and relying on the professional advice of such persons.
- q. In such a case, the insurance broker must act in accordance with its best interest duty under Part 7.7A of the Corporation Act 2001 (in addition to its general law obligations) which requires the broker to provide personal advice on the personal (not general) suitability of the product for the retail client.
- r. This is why an exemption was created in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act; see EM 1.781.82 which states [our bold]:

“While retail product distribution conduct includes providing financial product advice, **the new regime excludes personal advice and associated conduct from most of the new distribution obligations. This reflects that such conduct already involves consideration of the client’s individual**

³ See: <https://smartraveller.gov.au/guide/all-travellers/insurance/Pages/default.aspx>

circumstances and is subject to the best interest obligations under Part 7.7A of the Corporations Act.”

- s. NIBA believes that an exemption should be included for the situation where the customer is provided with personal advice by a licensee acting on their behalf, as the issues of concern regarding suitability and pressure sales would not arise.

Deferral period

- t. It is not clear whether the timing of the deferral period operates, in relation to a 4pm Monday purchase decision, as:
 - i. Day 1 ends 24 hours later on Tuesday 4pm and Day 2 ends 4pm Wednesday and so on; or
 - ii. Day 1 ends on the Monday and Day 2 starts on the Tuesday and so on.

Also why a four day deferral period? Two days is more reasonable as it is in the public interest for consumers to be insured. Too long a deferral could lead to either non-insurance or under insurance.

Prescribed information

- u. The Prescribed information appears to presume a sale has occurred which will not be the case (e.g. it requires disclosure of the total premium) and requires a claims ratio, which can change on an ongoing basis.
- v. We also note that the claims ratio can often not be a fair indicator of product value or performance as it ignores the expenses which would usually be deducted to come up with the overall net combined operating ratio ie claims, commission and expenses net (or after) reinsurance – if less than 100%, the insurer is making an underwriting profit.
- w. The position does not take into account business costs associated with insurance other than claims paid which is not a realistic picture. The claims ratio is a starting point but the costs need to be deducted to see the overall benefit to the insurer. If costs are high, there could be an overall loss scenario. We feel that inclusion of such information is not helpful for a consumer in the same way that a price comparator service is not helpful.

- x. Will there be an oral disclosure option available as there is relating to Product Disclosure Statements? If it is left up to ASIC to decide, what security does industry have that it will be reasonable and workable?

Customer contact

- y. At the conclusion of the deferral period, the Government proposes that the intermediary or the insurer will be able to contact the consumer via written correspondence, but only on one occasion. What happens if they ask for further contact?

Customer opt out of deferral period from Day 2

- z. The sale of an add-on insurance product can be concluded the day after the deferral period has commenced if, and only if, the customer initiates completion of the sale.
 - aa. This effectively stops the sale of insurance to persons who need a risk covered at point of sale e.g persons buying a mobile device before they walk out of the shop, persons buying a travel ticket subject to an immediate cancellation risk or travelling that day and so on.
 - bb. With the purchase of a car, the ability to buy motor vehicle insurance before or at the time a consumer takes possession of the car is important because:
 - i. a failure to do so can expose the consumer to a significant loss; and
 - ii. insurance is ultimately a grudge purchase and if not taken, the risk of loss or liability lies with the consumer and ultimately the community.
 - cc. This works where the product is of value to the consumer, the cost of the product is affordable and sales practices are fair.
 - dd. Government has already implemented significant measures to protect consumers in this regard, with the new ASIC Product Intervention Power and Design and Distribution obligations, and the unfair contracts, claims handling and settlement reforms etc.
 - ee. In our view, products of a similar nature should be exempt because if cover cannot be purchased at point of sale of the product or service:
 - i. the customer is exposed to an immediate risk e.g when they gain possession of the property; and

- ii. there is a significant risk that the consumer will then not buy it after that time, either deliberately (grudge purchase concept) or by omission (they forget).
- ff. If the Government proposals make the model unworkable for industry and a stand-alone insurance option is not viable, consumers may end up with no protection, the Government will only become aware of this when the complaints come in and the community will suffer.
- gg. In short, the Government is making consumers bear more risk.
- hh. Currently, if an issue is identified, the consumer has access to significant existing consumer protection (including those made by recent Government reform) and ASIC can use its new Product Intervention Power. ASIC will also be obtaining internal dispute resolution (IDR) data from licensees that will assist in early warning. Consumers also have the ability to access AFCA for insurance-related disputes. We discuss the consumer protection position in more detail further below.

Option for the consumer to reject the sale entirely during the deferral period

- ii. NIBA has no issue with this.

6. TIER 3 EXEMPTIONS

Background

- a. If industry does not want a product to be caught by tier 2 such that it will be subject to the proposed deferral period rules, it must either:
 - i. seek to obtain a Government approved exemption pre-start date through primary legislation; or
 - ii. seek ASIC relief in the period of time (yet to be advised) between:
 - the passage of legislation; and
 - the date when providers of tier two products will be expected to comply with the deferred sales model’s requirements.
- b. Treasury has asked:

“Please provide evidence as to why a particular type of add-on insurance product should reside in a particular tier. This could include details of the sales

process, claims ratios and distribution channels for different add-on insurance product lines. As per Commissioner Hayne’s final report, exemptions should only arise where there is overwhelming quantitative evidence of product value and consumer understanding.”

Approach generally

- c. We have discussed our concerns with the “prove you should be exempt” approach above. In short, we believe it has not been well thought through and is unjustified, except in identified problem areas where a cost benefit analysis justifies the deferred sales model. Based on the reports above, the only problem areas where there is some evidence of consumer detriment are the motor dealer add on area and CCI.

Form of exemption

- d. We support the exemption of insurance required by law and comprehensive motor vehicle insurance.
- e. No detail is provided on the form of exception that may be provided e.g is the intent that it can be:
 - i. At a specific product level (e.g a particular insurer’s travel product) so that the exempt product could be issued by a distributor but the same distributor could not issue a non-exempt travel product of another insurer?
 - ii. At a specific distributor level?
 - iii. At a class of product type level e.g all travel insurance that contains the following minimum cover etc?
 - iv. Other ?

Insufficient time

- f. The proposal paper was released on 9 September 2019 and requires submissions by 30 September 2019 without extension. Industry has been provided with 21 days in which to provide a response and seek an exemption.
- g. This is insufficient time for industry to reasonably do so.

Sufficient protection already exists to warrant a less onerous approach for add on insurance where there is no identified evidence of a problem and on a cost benefit analysis the costs are likely to outweigh the benefits

- h. Chapter 7 of the Corporations Act imposes significant requirements and protections in relation to insurance.
- i. General Licensing obligations are imposed on licensees under s912A(1), a breach of which, due to recent Government reform, results in significantly increased sanctions and penalties. These include:
 - (a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;
 - (aa) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative;
 - (b) comply with the conditions on the licence;
 - (c) comply with the financial services laws;
 - (ca) take reasonable steps to ensure that its representatives comply with the financial services laws;
 - (d) have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements. (N/A to APRA regulated insurer);
 - (e) maintain the competence to provide those financial services;(f) ensure that its representatives are adequately trained and are competent, to provide those financial services(g) if those financial services are provided to persons as retail clients:
 - (i) have a compliant internal dispute resolution procedure; and
 - (ii) have membership with the AFCA scheme per s912A(2)
 - (h) have adequate risk management systems. (N/A to APRA regulated insurers).
- j. In addition, an AFSL holder is also required to:
 - i. have compensation arrangements approved by ASIC if financial services are provided to persons as retail clients (s912B) (N/A to APRA regulated insurers);
 - ii. notify ASIC of significant breaches (s912D);
 - iii. take responsibility for the conduct of their representatives (s917A-F); and

- iv. comply with and be subject to other general consumer protections in the Act e.g Chapter 7.10 misleading or deceptive conduct protections.
- k. Special retail client protections also apply to:
 - i. The obligation to provide:
 - a Financial Services Guide;
 - a General Advice Warning;
 - a Product Disclosure Statement;
 - a cooling off period;
 - confirmation of a transaction; and
 - advertising disclosures.
 - ii. The ASIC Product Intervention Powers in Part 7.9A; and
 - iii. The Design and Distribution obligations (effective 6 April 2021).
- l. In addition to the Corporations Act, there is the protection provided to consumers relevant to insurers under:
 - i. The Insurance Contracts Act 1984 (Cth) e.g duty of utmost good faith and the proposed disclosure and standard contract changes;
 - ii. The ASIC Act 2001 (Cth) – e.g misleading or deceptive conduct provisions and proposed unfair contract terms changes;
 - iii. The General Insurance Code of Practice (GICOP); and
 - iv. AFCA Rules.
- m. For the purposes of the exemption, Treasury has identified the following key areas to be met:
 - i. Historically good value for money;
 - ii. High risk of underinsurance;
 - iii. Well understood by consumers; and
 - iv. Strong competition.
- n. In terms of existing consumer protection, it is important to note the following.

Historically good value for money

- o. This is a difficult issue. A claims ratio analysis is only a starting point. One option is for Treasury to automatically exempt any product that has a claims ratio (i.e. claims paid vs premium received excluding taxes) of an agreed reasonable minimum percentage.
- p. Anything under that could go through an exemption process explaining the product's value, as there can be very good reasons why the product provides value despite the claims ratio being under the minimum.
- q. If this approach is taken, ASIC still has its product intervention power to shut down any products identified as causing significant consumer detriment.
- r. The Design and Distribution process being introduced by Government will also help ensure products are designed to be suitable for the target market.
- s. The Government is introducing unfair contract terms legislation in relation to insurance which will further improve the quality of products and the rights of consumers.

High risk of underinsurance

- t. Any insurance offered at point of sale that covers a risk that arises from that time will give rise to a very real risk of no insurance. Assuming the product is of value, not being able to buy this cover at point of sale is a bad result for consumers and the community.
- u. People forget that insurance is ultimately a grudge purchase and if not taken, the risk of loss or liability lies with the consumer and ultimately the community.
- v. If there is no exemption provided, the Government is:
 - making consumers bear this gap risk;
 - adding to the cost of insurance e.g a direct model may be more expensive or the new deferral model costs will be passed onto consumers; and
 - making consumer bear the full risk if the market becomes unviable.
- w. The question arises as to whether adding the deferral period layer of protection in such a scenario is justified on a cost benefit analysis, especially where the consumer has access to significant existing consumer protection

(including those made by recent Government reform) and ASIC can use its new Product Intervention Power.

- x. We note that ASIC will also be obtaining IDR data from licensees that will assist in early warning.
- y. Consumers can also access AFCA for insurance-related disputes.

Well understood by consumers

- z. It needs to be acknowledged that no matter how well a product is drafted, explained or summarised, a consumer may still not engage.
 - aa. A personal adviser such as an insurance broker can address this risk, but insurance will, by its nature, require exclusions and conditions that circumscribe the risk to an acceptable level.
 - bb. This is common to ALL insurance, not just add on insurance. CCI and add on motor dealer insurance understandability was worse for a consumer because it was not immediately obvious as to the need to transfer the risks or liability covered, and this was exacerbated in the context of low value offerings and pressure and poor sales practices.
 - cc. It is for this very reason that Government has introduced new consumer protection in this regard, such as the new ASIC Product Intervention Power and Design and Distribution Obligations and unfair contracts terms and disclosure reforms.

Strong competition

- dd. This will depend on the market. In some cases, the nature of the insurance and the circumstances in which it is offered as an add on to a primary product or service can give rise to significant benefits for consumers, not only in reduced cost vs a direct model, but convenience.
- ee. This is a subjective matter and such a requirement effectively gives Government and ASIC the ability to seek to set commercial terms.
- ff. For example, a stand-alone insurer may form a view that without access to an add on provider and its systems, the insurance offering is not viable. If this is the result, there may be no direct market or only those willing to engage will provide more restricted cover at a higher cost.
- gg. The Government won't know if this is the case until it is too late.

- hh. There is no doubt that in the CCI and add on motor dealer space, there were issues with reverse competition that led to poor consumer outcomes. However, this was specifically linked to the context of low value products and poor sales practices.
- ii. In terms of the practicality of offering more than one product from different insurers, cost wise this is not usually feasible for an add on type distributor to do. This would involve significant additional training and compliance costs related to each product and insurer etc that such distributors would not wish (or have the time) to engage in. It would also increase the costs of the provision of their services.
- jj. At a certain point, it is not worth the effort.

7. Proposed approach

- a. A sensible approach Government could take, given the issues identified above, would be to:
 - i. exempt all products from the deferral model, other than the problem products where actual detriment has been identified and which warrant, on a cost benefit analysis, application of the deferral model.

The minimum claims ratio concept may be workable here too.
 - ii. give ASIC the ability to add (ie catch) other products subject to an appropriate objective and fair criteria being agreed and applied – noting it has its product intervention power in any case.
 - iii. allow the exempt products to be issued at point of sale but require the provision of prescribed content that manages the pressure sale risk in a reasonable manner.
- b. This would be a fair result technically consistent with the Government Response. We have noted the degree of consumer protection that would still apply to those add on products not caught, having regard to recent Government reform.

8. IMPLEMENTATION

- a. To consult on and introduce legislation by 30 June 2020 – subject to relief period.

- b. There is no identified transition period. Significant changes to systems and training will be required and a reasonable transition period is required for this purpose.

We are happy to meet and discuss these issues in more detail at a time convenient to Treasury.

Dallas Booth

Chief Executive Officer

Direct: + 61 2 9459 4305

Mobile: + 61 488 088 478

Email: dbooth@niba.com.au