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Australian Securities and Investments Commission (ASIC)

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

CONSULTATION PAPER 339

Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance

Thank you for the opportunity to provide this submission in response to the above.

NIBA notes that this legislation is extremely complex and unlikely to be easily understood by many small businesses. Hence, it is vital that ASIC provides practical guidance with useful examples that reflect real-life scenarios.

B. Complying with the deferred sales model

B1. As the deferred sales model is prescriptive, and there are significant consequences of breaching the requirements, we propose to publish a detailed regulatory guide.

Do you agree with our approach of providing detailed guidance on the deferred sales model?

NIBA agrees with ASIC's approach to provide detailed guidance on the deferred sales model. Such guidance is useful to the extent it provides clarity on how ASIC intends to interpret any relevant provision, especially where they may not be clear in scope. This provides industry with a greater degree of compliance certainty.

Do you consider that ASIC could provide less guidance? If so, what parts of our proposed guidance should be deleted?

No, NIBA does not support the omission or deletion of any parts of the proposed guidance.

B2 We propose to publish a regulatory guide on the deferred sales model, which covers:

- a) a description of the scope of the deferred sales model;
- b) what we expect providers will need to do to comply with the deferred sales model; and
- c) how we will approach applications for exemption from the deferred sales model.

Do you agree with the proposed guidance in draft RG 000? Please explain your view.

NIBA notes that the guidance generally repeats and seeks to summarise the law and explanatory memorandum guidance. This is useful because it is complex law. The material regarding record keeping in RG 000.107-110 is helpful and clearly identifies it is “a matter of good business practice, and to comply with general business record-keeping obligations”.

In terms of insurance brokers, they will typically either provide:

- a service to customers of advising on how to manage risks followed by product recommendations including insurance and arrangement of the insurance products; or
- arrangement of or advice on specific insurance products without broader risk management advice.

In such cases, we do not believe that an insurance product sold or arranged as part of the general risk advice service is:

- another product or service; and/or
- managing financial risk relating to the principal product or service because:
 - regarding the provision of risk management advice – the insurance covers a risk of the customer not one related to the risk management advice service itself provided as the principal product or service;
 - regarding specific insurance arranged/advised - the insurance covers a risk of the customer not one related to the advice /arrangement service provided as the principal product or service.

This is to be clearly contrasted with the sale of a bike and insurance that covers risk related to the bike.

If ASIC has a contrary view on this matter, NIBA requests to be notified as soon as possible, as relief would need to be sought.

[Do you agree with the proposed examples in draft RG 000?](#)

These mostly mirror the Explanatory Memorandum. NIBA has not identified any obvious issues.

[Specific Issues, queries and Examples](#)

We note some specific queries below worthy of guidance or further clarity:

- RG 000.15 ASIC considers the concepts of ‘offer’, ‘sale’ and ‘sold’ are relatively broad and take their ordinary meaning. The terms are intended to capture the actions of principal providers, third-party providers and other issuers of add-on insurance

The above is not overly helpful to industry. It would be useful for ASIC to provide details on how broad it believes this scope is by way of examples of what it thinks will and won’t be caught by these terms.

For example, is having a marketing poster of an insurer on a wall of a principal provider's premises or provision of information in a brochure on a front counter or in other areas of a store with nothing more considered offering or selling, or is something more required? Where in ASIC's view is the line drawn?

- RG 000.17 However, ASIC does not consider that an insurance product is complimentary if a component of consideration (payment by the customer for the insurance) is built into the price of the principal product or service, or the product cost is met by the seller and then passed on to the customer.
RG 000.18 This means that an offer or sale may occur where the cost of the insurance is bundled with the principal product or service, or where acquiring insurance is the 'default' option when purchasing another product or service. The add-on insurance product need not be wholly separate from the principal product or service.

The above guidance is unclear to us and an example would assist regarding the concept in the last paragraph. As we read it, it appears to suggest that if a product is:

- (i) automatically provided as part of the principal product or service and complimentary – as described by ASIC above, it won't ever be "offered or sold" and the deferred sales model does not apply – note the anti-hawking provision may apply;
 - (ii) offered as a separate choice to the consumer from the principal product or service (i.e. as a stand-alone offer not an automatic part of the principal product or service) even if at no cost – it is caught; or
 - (iii) offered as an option as part of the principal product or service even if at no cost – it is caught.
- RG 000.19 -0000.22 covers when an add-on insurance product will be offered or sold 'in connection with' a principal product or service.

ASIC has not provided any practical examples of where a connection might not exist other than the general example already provided by Treasury, so this is not overly helpful.

Some examples would assist. For example, stores may have marketing posters of an insurer/its product on a wall of a principal provider's premises or have information in a brochure on a front counter or in other areas of a store. Where the principal provider selling the principal product or service does not otherwise raise the insurance product with the customer in selling the principal product enough to trigger the "in connection with" concept?

Where in ASIC's view should the line be drawn? ASIC specifically talks about a "referral of the customer to a third-party provider being caught RG000.19. If the provision of marketing in store also caught without anything more?

ASIC does not appear to have provided any practical examples of where a connection might not exist other than the general example already provided by Treasury, so this is not overly helpful.

- RG 000.39 refers to the concept of "(b) permitting another person to offer or sell an add-on insurance under an arrangement to which it is a party". Practical examples of this type of scenario will be useful to industry. For example, if marketing/ product information can be provided in store by an insurer without meeting the offered or sold and in connection with tests and the store paid for this with no other requirement regarding the sale of the principal product or service being sold and the insurance (e.g. no referral or other arrangement by the store regarding the insurance), would this be such an "arrangement"?

Also, if a store enters into a marketing arrangement with an advertising company to sell advertising space and the advertising company arranges for the insurer's products to be displayed in the advertising space sold by the store (there being no agreement between the store and the insurer and the store playing no other roles regarding the insurance), is this caught as an arrangement to which the provider of the principal product or service is a party? If so, an example would be helpful.

- Fig 1 of the Draft Regulatory Guide 000 pg. 15.

This does not indicate that anti hawking could apply pre the Pre deferral period. What is concerning is the clack of clarity that can arise if a customer disputes they indicated an intention to acquire the principal product or service triggering the pre deferral period. If they succeed, s992A might apply if the customer is a retail client.

A practical example of such a scenario would be useful. If the client is a retail client and:

- no indication to acquire to acquire a principal product or service has happened; or
- an indication to acquire to acquire a principal product or service has happened but 6 weeks have passed,

Anti-hawking under s992A can apply. As Government (and we expect ASIC) had scenarios in mind, examples would be helpful to explain the scenarios and expectations that led to this provision.

What would happen if a second indication to acquire happened? Does the 6-week timing reset?

- RG 000.63 During the pre-deferral period, and before the hawking prohibition applies, a principal provider or a third-party provider can:

a) offer an add-on insurance product for issue or sale to the customer; or

(b) request or invite the customer to:

(i) ask or apply for an add-on insurance product; or

(ii) purchase an add-on insurance product: s12DR(2)(a).

RG 000.64 This allows the provider to advertise and discuss the add-on insurance product in the pre-deferral period. There are no restrictions on what can be discussed during this period. The provider may answer any questions from customers and provide any information they wish, including in document form. However, the provider cannot sell the add-on insurance product.

Example 1: Communication during the pre-deferral period

Anh buys a mobile phone in-store. Zayn, the salesperson, offers Anh mobile phone insurance. Zayn has not given Anh the Customer Information and so the deferral period has not started. Anh asks a question about exclusions under the insurance policy. Zayn answers verbally and outlines the exclusions under the policy. Zayn also explains the cover under the policy and gives Anh some marketing materials. Zayn has not committed an offence because the deferral period has not started and he has not sold the product.

Can ASIC clarify in the Guidance examples of what it considers to be an “offer” of an add-on insurance product for issue or sale.

Can ASIC confirm in the guidance by an example if completion of an application by a customer which is not binding on the customer would be permitted in this pre deferral period or not – i.e. further action is required by customer to complete any sale?

- RG 000.75 During the deferral period, a principal provider or a third-party provider cannot offer, request, or invite the customer to ask for, apply for, or purchase an add-on insurance product for issue or sale other than in writing:

RG 000.76 This means that a provider cannot discuss add-on insurance during any phone calls or in-person meetings with a customer during the deferral period, subject to the rules for customer-initiated contact: see RG 000.77– RG 000.84.

RG 000.77 The prohibition on making offers, invites and requests to a customer during the deferral period does not apply where:

(a) the offer, request or invitation is made in response to contact initiated by the customer; and

(b) the offer, request or invitation relates only to the purpose for which the customer initiated the contact: s12DR(4).

RG 000.78 For example, if the customer contacts the provider about the principal product or service, the provider can respond using any method of communication, but cannot initiate a discussion about the add-on insurance. On the other hand, if the customer initiates a discussion about the add-on insurance product during a telephone call with the provider, ASIC considers that the discussion of the insurance was part of the customer's purpose for initiating the contact.

RG 000.79 If a customer initiates contact for the sole purpose of discussing an add-on insurance product, the provider can respond using any method of communication. For example, if the customer emails the provider questions about an add-on insurance product, the provider can respond by telephone.

RG 000.80 At all times, a provider must limit the communication to the purpose for which the customer initiated the contact. For example, if a customer initiates contact to discuss home building insurance offered with a home loan, the provider cannot discuss another add-on insurance product (e.g. consumer credit insurance) unless the customer raises it.

RG 000.81 The prohibition on selling insurance during the deferral period remains and cannot be waived. Even if the customer says they wish to buy the add-on insurance product, the provider cannot sell the add-on insurance product until the deferral period ends.

RG 000.82 For example, if a customer calls a provider during the deferral period and asks for information about an add-on insurance product's claims ratio, the provider can give the customer that information over the telephone, because the customer initiated the contact. However, it would be an offence for the provider to then offer to sell the customer the add-on insurance product during the customer-initiated telephone call. Note: See Explanatory Memorandum, Examples 3.9 and 3.10.

RG 000.83 Providers of add-on insurance products need to be able to demonstrate that the offer, request or invitation to a customer relates only to the purpose for which the customer has initiated the contact.

All examples provided appear to relate to a customer physically initiating contact in the period with the relevant person. What is unclear is whether the following scenario gives rise to contact initiated by a customer in the deferral period or post deferral period.

A customer requests in the pre deferral period that the person contact the customer by telephone to arrange for an indicative or binding quote in the deferral period or post deferral period and/ or to arrange for a call to complete the sale in the post deferral period or after this.

The person contacts the customer post the deferral period via telephone as requested. Is this call by the person contact initiated by the customer.

In our view it would appear to be the case as but for the customer's request the contact would not have occurred. ASIC needs to provide an example in this regard or clarify its position with an explanation of why it believes it is not permitted under the law.

- Section 12DQ Comprehensive motor vehicle insurance

An example would be helpful and when ASIC considers this will and won't apply. ASIC should clarify whether it is of the view that a product of that type containing other types of cover is not caught. E.g. Motor vehicle insurance with the above comprehensive motor vehicle insurance covers PLUS mechanical breakdown, tyre and rim cover etc

- ASIC Exemptions

NIBA has made its concerns with the broad catch all approach being taken by Government clear and the under or non-insurance risks to consumers that can arise. ASIC appears to have also supported such an approach.

ASIC's criteria is extremely onerous and the cost to industry of having to make such specific applications relevant to an add on insurance product sold by a specified person or a class of add on insurance products sold by a specified person, is prohibitive. Can ASIC confirm whether applications can be made and granted before the start. If not, few exemptions are likely to be sought as it would be too late by then.

The net result is likely to be that few applications will be lodged and the risk of consumer under or non-insurance will only be discovered after the fact.

In NIBA's view this is a high-risk regulatory approach i.e. catch everything assuming they are all bad products with no evidence in support, require people to seek an exemption for a significant range of products in an overloaded and overly complex regulatory environment and gamble that a consumer won't be left uninsured where exemptions are not sought or granted.

B2Q3 What guidance should we include about the provision of the prescribed customer information (see our proposal for the Customer Information in Section D of this paper)?

See below comments on Section D.

C. Exemptions from the deferred sales model

Proposal C1 We propose to provide guidance on:

(a) how to apply for an exemption;

(b) how we will apply each of the factors that we must have regard to when considering whether to grant an exemption; and

(c) the types of product data and other information that will assist us in determining an exemption application.

For NIBA's comments to questions C1.Q1-Q4, see earlier comments regarding exemptions.

D. Customer Information

D4 We propose to prescribe that:

(a) the default method of providing the Customer Information is electronic, but we will not prescribe exhaustively the available methods for electronic provision;

(b) if the customer does not confirm that they can access the Customer Information electronically, the provider must give the Customer Information in hardcopy format, otherwise the Customer Information will not have been given for the purpose of s12DP(1);

(c) if the Customer Information is sent via postal mail, a return paid and addressed envelope must be included so the customer may return the page with the opt-out tick box checked, and the provider must account for postage time when recording when the Customer Information was given; and

(d) where the customer makes the commitment to acquire the principal product or service in person, the provider must provide the Customer Information electronically and must also give the customer the option of receiving the Customer Information in hardcopy format.

Do you agree that the Customer Information should be provided electronically by default, and that a hardcopy format must be provided if the customer cannot receive it electronically, or requests the hardcopy format in person? If not, why not?

There should be flexibility of approach for the customer and provider. Electronic notice should not be forced on providers. Why limit it to a request in person? If a person wants a hard copy they should be able to ask for this in any manner.

Ultimately the person concerned has to prove the notice was provided and how they do this should be left to them. This appears to make it easier for ASIC as regulator to determine if a breach has occurred or not.

Are there any risks or disadvantages of requiring electronic provision as the default? If so, please detail the risks or disadvantages, and the customers affected.

This may disadvantage smaller businesses.

Should ASIC prescribe permissible and/or impermissible methods of electronic provision? Please provide reasons for your view.

No

Do you foresee any issues in complying with the proposed manner of provision requirements? If so, please explain and provide relevant information to inform our consideration.

NIBA does not support default electronic provision.

D5 We propose to prescribe that:

(a) 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; and

(b) if a customer makes repeat purchases of the principal product or service, the Customer Information must be given each time the customer has entered into a commitment to acquire the principal product or service.

Do you agree with the proposed requirements for when the Customer Information must be given? Please explain your view.

No. This overly restricts disclosure. It should be allowed to be provided earlier as well provided it is also given after e.g. disclosure in pre deferral period and at time of commitment to acquire the principal product or service/acquisition if no prior commitment.

E. Content for electronic provision

The proposed content, and the sequence of the content, for electronic provision of the Customer Information is as follows:

You can say no to being sold insurance. It is not compulsory.

Salespeople must wait 4 days before selling you insurance as an 'extra' to your main purchase.

You can say 'no' to being contacted about insurance as an extra by clicking this link [hyperlink to provider's opt-out mechanism].

If you are unsure, consider your situation and ask yourself:

Do I need and understand this insurance?

Consider what the policy covers and what it excludes. You may already have insurance that will cover any potential loss or damage.

Could I get a better deal somewhere else?

Consider if another insurance product or company can better meet your needs. You may be able to shop around for a better deal.

For more information, visit <https://Moneysmart.gov.au/AddOnInsurance>.

This Customer Information is prescribed as a requirement of the Australian Securities and Investments Commission Act 2001 to reduce the number of poor-quality insurance products being sold in Australia.

NIBA Comments

It is likely to be unclear to consumers what is defined as 4 days, for example, does it include the day the consumer was given information?

The content should include a statement that consumer should consider obtaining advice if they are unsure as to the answers of any of the prompts.

NIBA is strongly opposed to the reference to “to reduce the number of poor-quality insurance products being sold in Australia”. At the very least, this implies that the product being sold is of a type that can be poor quality. In our view this is unnecessary and may be misleading to consumers and result in a negative sales effect to the detriment of the consumer.

If you have any questions in relation to this submission, please do not hesitate to contact me.

Yours sincerely,

Dallas Booth
Chief Executive Officer
National Insurance Brokers Association of Australia