



28 February 2020

Ms Kate O'Rourke
Acting Division Head
Financial System Division
Department of Treasury
Langton Crescent
CANBERRA ACT 2600

Submitted by email: FSRCconsultations@treasury.gov.au

Dear Ms O'Rourke

Insurance Australia Group Limited (**IAG**)¹ welcomes the opportunity to make a submission to the exposure draft legislation (**Exposure Draft**) and explanatory materials to the Exposure Draft (**Explanatory Materials**) to implement Recommendations 4.1 (no hawking of insurance), 4.3 (deferred sales model for add-on insurance) and 7.2 (strengthening breach reporting) (**Recommendations**) of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**FSRC**).

IAG's purpose is to "make your world a safer place". We recognise that our role extends beyond transferring risk and paying claims. Our purpose drives our business to work collaboratively with communities to understand, reduce and avoid risk, and to build resilience and preparedness. This results in better outcomes for the community and means fewer claims and lower costs for our customers.

We work collaboratively with government, industry bodies and Australian and international organisations on a range of topics and issues that relate to our customers, our people and the community. These include climate change, disaster response and resilience, and diversity, inclusion and belonging.

We support in principle the Government's approach to implementing the Recommendations. We believe the proposed reforms will deliver good outcomes for consumers if they are implemented in a pragmatic, reasonable and clear manner. With that in mind, we have made some recommendations and requested some clarification that we believe will provide greater certainty around how these laws are intended to operate.

Our recommendations and request for clarification are intended to supplement the submission made by the Insurance Council of Australia (**Insurance Council**) to the Recommendations, which we fully support.

¹ IAG is the parent company of a general insurance group with controlled operations in Australia and New Zealand. Our businesses underwrite over \$11 billion of premium per annum, selling insurance under many leading brands, including: NRMA Insurance, CGU, SGIO, SGIC, Swann Insurance and WFI (in Australia); and NZI, State, AMI and Lumley Insurance (in New Zealand). With more than 8.5 million customers and information on the majority of motor vehicles and domestic residences in our markets, we use our leadership position to understand and provide world-leading customer experiences, making communities safer and more resilient for the future.



If you have any questions or require any further information, please do not hesitate to contact Vincent Lee, Principal, Public Policy & Industry Affairs on (02) 9292 3715 or vincent.lee@iag.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Amanda Whiting', enclosed within a thin, hand-drawn oval.

Amanda Whiting
Executive General Manager
Consumer Distribution



1. NO HAWKING OF FINANCIAL PRODUCTS (RECOMMENDATION 4.1)

(a) Context of reform

The FSRC insurance case studies in public hearings relating to hawking of insurance products highlighted extensive mis-selling and poor consumer outcomes that occurred because of:

- a failure to have in place adequate arrangements to manage conflicts of interest – remuneration structures involving volume-based commissions meant representatives put their interests ahead of the interests of customers, resulting in inappropriate sales conduct; and
- training in unfair sales practices – a ‘sell at all costs’ culture and the lack of training around mis-selling to vulnerable customers.

Commissioner Hayne stated “[m]ost, if not all, of the case studies examined by the Commission involving the unsolicited sale of insurance pertained to hawking that occurred in a telephone call.”² He also referred extensively to ASIC Report 587³ (examining the sales calling practices of six insurers and three distributors who sold life insurance directly to consumers) which identified issues around poor sales conduct (including pressure selling) leading to poor consumer outcomes.

In response to these issues, the Commissioner said “the preferable course is to prohibit generally the hawking of insurance products”⁴ because “they are problems that arise because individuals are offered complex financial products – sometimes very forcefully – when they have not turned their minds to, and do not have adequate information about, what value the product has for them. Hence, the most appropriate course is to prohibit the unsolicited sale of such products.”⁵

This view was supported by the Consumer Action Law Centre (**CALC**) in its submission⁶ to the FSRC. CALC identified the following “significant harm caused by unsolicited sales of insurance”:

- sales to vulnerable people;
- targeting people who could not afford the product;
- poorly-designed, low-value products; and
- insurers not complying with unsolicited selling laws.

As the Government is aware, these issues are now addressed through new consumer protection mechanisms such as:

² <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf> (FSRC Final Report), page 279.

³ <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-587-the-sale-of-direct-life-insurance/>

⁴ FSRC Final Report, page 280.

⁵ Ibid, page 282.

⁶ <https://financialservices.royalcommission.gov.au/Submissions/Documents/Round-6-written-submissions/POL.9006.0001.0211.pdf>



- the new General insurance Code of Practice (**GICOP**)⁷ provisions that help customers who experience vulnerability and the express prohibition on pressure selling;⁸
- the Design and Distribution Obligations and ASIC's Product Intervention Powers; and
- the proposed removal of the anti-hawking exemption (**Anti-hawking Exemption**) in s 992A(3) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Consumers will also benefit from the introduction of:

- unfair contract terms for insurance contracts;
- the proposed deferred sales model for add-on insurance;
- the proposed new financial service of 'claims handling and settling service'; and
- the proposal for ASIC to identify provisions of the GICOP as enforceable code provisions, and for those provisions to become enforceable under statute.

While we support the removal of the Anti-hawking Exemption under the proposed anti-hawking regime, we believe further changes to the current regime should be made in a pragmatic and reasonable manner, having regard to the robust consumer protection mechanisms that are available to consumers. Most importantly, the proposed reform should not preclude consumers from receiving information that helps them to make informed decisions concerning their genuine insurance needs.

We believe our recommended changes to the Exposure Draft Legislation (**Draft Hawking Legislation**) and the Exposure Draft Explanatory Materials (**Hawking EM**) for Hawking of Financial Products as set out below will achieve that aim.

(b) Risk of underinsurance and the importance of accessing information

(i) Background

Paragraph 1.20 of the Hawking EM states that the Bill "give[s] consumers the power to guide their conversations with product issuers in relation to financial products." We believe this is only possible if consumers are empowered to have such conversations in the first place. This is achieved when consumers have access to information that allows them to evaluate whether a product meets their needs or is of value to them.

Information asymmetry is an issue for consumers in the general insurance industry where it is difficult for a layperson to identify the assets that need protecting and the level of cover that is required to protect those assets. Many consumers welcome (and rely on) information provided by their insurer. This is particularly important in the modern era where issues of underinsurance and non-insurance are prevalent.

⁷ http://codeofpractice.com.au/2020/ICA001_COP_Literature_Code_D4.1.pdf (Note: Insurers will implement the new GICOP by 1 January 2021. The important family violence policy provisions included in the Code will commence earlier, on 1 July 2020.)

⁸ IAG has already made significant changes to its internal processes to reduce the risks associated with customers experiencing vulnerability and pressure selling. We have adopted the Sedgwick Principles on remuneration structures for our sales staff and we use clear Q&A frameworks to reduce incentives for pressure selling (this applies to IAG staff and our sales partners).



In our submission⁹ to the ACCC draft recommendation 1 set out in the first *Interim Report*¹⁰ of the Northern Australia Insurance Inquiry (**ACCC First Interim Report**), we expressed our support of effective measures that materially reduce the incidence of unintended underinsurance among consumers. We believe educating consumers about the value of insurance and the risks of underinsurance (and non-insurance) is the most effective measure to reduce the incidence of unintended underinsurance. This information is crucial in helping our customers to understand the real value of their assets (i.e. it will help our customers to accurately estimate the cost of rebuilding a home and replacing home contents) and assess whether they have adequate protection.

As an aside, we also believe improvements can be made to the existing financial services regulatory regime that would allow insurers to have more meaningful conversations with their customers about their insurance needs. Most recently, the Insurance Council (in its response¹¹ to recommendation 8 of the ACCC First Interim Report) stated that the “definitions of personal and general financial advice in the Corporations Act impede insurers from having worthwhile and informative conversations with policyholders about their insurance needs.”¹² The Insurance Council stated “the Corporations Act should make it clear that general insurers can discuss with individual consumers key questions such as the most appropriate level of sum insured for them, appropriate levels of excess, and mitigation measures specific to a consumer’s property.”¹³

(ii) IAG’s sales processes – performing ‘health checks’

IAG’s current sales process allows our consultants to provide our customers with information that improves their understanding of our insurance products. It also allows our consultants to have meaningful conversations aimed at protecting our customers from the risks associated with underinsurance and non-insurance.

A standard part of our process when talking to an existing customer is to perform a ‘health check’ on their current insurance arrangements. This could be within and across general insurance ‘classes’ and includes checking that contact details are up-to-date, that policies are not lapsed or overdue for payment and that sums insured adequately cover the risk.

For new and existing customers, we also check to see whether our customers’ insurance needs have been properly covered, including inviting our customers to consider needs beyond the immediate query (e.g. customer calls us about a car insurance query and the discussion moves to the customer’s home insurance needs). This process is fundamental to the role of providing good service to our customers and fits with IAG’s Purpose to “make your world a safer place”.

⁹ <https://www.iag.com.au/sites/default/files/Documents/Government%20submissions/Response%20-to-Northern-Australia-Insurance-Inquiry-draft-recommendations.pdf>

¹⁰ <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

¹¹ http://www.insurancecouncil.com.au/assets/submission/2019/2019_04_23_ICA-Submission-ACCC-Northern_Australia_Insurance_Interim_FINA....pdf (ICA ACCC Submission).

¹² ICA ACCC Submission, page 4.

¹³ Ibid, page 5.



The following scenario is an example of where a consumer would benefit from information provided by an insurer:

Scenario 1.1

- An insurer's sales model involves face-to-face service where the insurer visits businesses and farms to provide an accurate assessment of their customers' insurance needs
- A prospective customer contacts the insurer and requests a car insurance quote
- The sales consultant visits the customer's farm. Walking around the farm and seeing the various items, the consultant asks questions to determine what's important to the customer. This allows the consultant to call out items (and sections of cover) that the customer has not considered or realised is important to insure. It also allows the consultant to explain how non-insurance could impact business/farm owners in a similar situation
- This discussion prompts the customer to take out insurance for their silos, sheds and home on the farm property
- During a bushfire event, the customer's insured assets are destroyed, however the customer has the requisite insurance cover based on the broader conversation¹⁴ described above.

The following scenario highlights the consequences of an insurer not providing information to a customer:

Scenario 1.2

- A customer makes a claim for a total loss (home) as a result of a bushfire
- The customer's policy has lapsed and, after an internal review, the claim is denied
- The customer recently called the insurer about their motor policies and at that time the insurer did not conduct a health check on the customer's insurances
- Had a health check been conducted, the customer may have elected to take out a new home policy to replace the one that had lapsed
- The customer bears a financial loss of \$660,000 (the building was insured for \$600,000 and home contents for \$60,000).

(c) Recommended changes and request for clarification

(i) Provision of information on secondary products

While we support the removal of the Anti-hawking Exemption, we are concerned that the proposed s 992A in the Draft Hawking Legislation will be a barrier to insurers having positive interactions with their customers. We believe it will prevent our consultants from providing information to our customers that improves their understanding of our insurance products and guards against the risks associated with underinsurance and non-insurance.

We believe an amendment to s 992A in the Draft Hawking Legislation is required to make it clear that a person (first person) can provide another person (second person) with information about secondary financial products in circumstances where the first person

¹⁴ This is done within the requirements of 'giving factual information only' / general advice.



makes contact (that is not 'unsolicited contact') with the second person in relation to a primary financial product (and both products are in the same class of products e.g. general insurance).

(ii) The financial product offered is reasonably within the scope of the consumer's request

We also believe a fourth category should be added to the list in paragraph 1.59 of the Hawking EM for 'common products', as follows:

4. If a consumer requests a product in a class of products (for example, general insurance), then a reasonable person would consider **common products** within that class (for example, car insurance and home insurance) to be within the scope of that request.

We would argue this is consistent with the statement made by Commissioner Hayne that "common banking products such as transaction accounts and credit card accounts may be considered as one type of product..."

In our view, common general insurance products (such as home and car insurance) are generally well known to consumers and protecting such personal assets is important in ensuring consumers' financial wellbeing.

However, if the addition of a fourth category as set out above is not acceptable to the Government, then we believe an amendment to s 992A in the Draft Hawking Legislation is required to make it clear that an offer of a car insurance product is 'reasonably within the scope of the request' for an offer of a home insurance product, and vice versa.

The following scenario highlights how the offer would be made in practice:

Scenario 1.3

- A customer purchases a new car and calls an insurer to get a quote for comprehensive car insurance
- The insurer provides the quote and the customer chooses to purchase the policy
- The insurer invites the customer to discuss their other general insurance needs e.g. for their home or a camper trailer. This is done by asking the customer to explain what is important in their lifestyle that may require insurance protection
- The customer indicates they have their home insurance with another insurer
- The insurer offers to provide a quote on the home insurance, and the customer agrees
- After receiving the oral quote, the customer agrees to purchase the home insurance.

(iii) Related financial products that provide cover for associated risks

The third category in paragraph 1.59 of the Hawking EM states:

3. If a consumer requests a product (for example, a home loan) then a reasonable person would consider related financial products that provide cover for **associated risks** (for example, home insurance) to be within the scope of the request.



We believe the following scenario falls into this third category and would appreciate clarification in the Hawking EM by the addition of a new example (or through ASIC regulatory guidance):

Scenario 1.4

- A customer calls a motoring club to renew their roadside membership
- The representative asks whether the customer has also insured their vehicle
- The offer¹⁵ of motor insurance is reasonably within the scope of the customer's request to renew their roadside membership
- Both products protect the customer from potential financial loss (being the costs associated with repairing a damaged vehicle).

2. DEFERRED SALES MODEL FOR ADD-ON INSURANCE (DSM) (RECOMMENDATION 4.3)

The third category in paragraph 1.59 of the Hawking EM states:

3. If a consumer requests a product (for example, a home loan) then a reasonable person would consider related financial products that provide cover for **associated risks** (for example, home insurance) to be within the scope of the request.

Further, Example 1.14 in the Hawking EM states:

Eleanor visited a bank and made a clear, positive and informed request to arrange a mortgage. During the process the bank offered home insurance. The home insurance would protect Eleanor's ability to repay the bank in the event of loss or damage to her property. A reasonable person would consider home insurance as covering risks directly associated with the mortgage, so the offer of the home insurance is reasonably within the scope of Eleanor's request.

Under the proposed DSM regime, an add-on insurance product is a financial product that "manages financial risk related to the principal product..."

In the above example, the home insurance protects Eleanor's ability to repay the bank in the event of loss or damage to her property. In other words, it manages financial risk related to the home loan. Therefore, it is arguable that home insurance is an add-on insurance product under this scenario.¹⁶

The offer of a home insurance product in connection with a home loan is not prohibited under the Draft Hawking Legislation (i.e. the offer of a home insurance product is reasonably

¹⁵ In the process of making the offer, we can help educate our customers on the correct insurance needed to provide cover for their vehicle. In our experience, many customers assume that Compulsory Third Party insurance (associated with the registration of a vehicle and providing cover for personal injury caused by the insured vehicle) also covers third party property damage cover. After we have explained the various types of motor vehicle and personal injury insurance cover, the customer may choose to purchase property damage insurance.

¹⁶ Note: We support the Insurance Council's recommendation that the draft legislation should exempt home and contents insurance from the DSM regime.



within the scope of the consumer's request for a home loan and the offer is therefore not 'unsolicited contact'), however it may be captured under the definition of add-on insurance for the reasons noted above. Does this mean the home insurance product would be subject to the proposed DSM regime?¹⁷

The Hawking EM states (at paragraph 1.64) that "the new hawking prohibition will not apply to offers to sell or issue add-on insurance products if the offer is subject to the rules for selling add-on insurance products...", however there is no equivalent wording in the Exposure Draft Explanatory Materials for DSM (such that the DSM regime will not apply where the hawking prohibition does not apply).

Since the anti-hawking and DSM regimes seek to address problems associated with pressure selling, we would argue the DSM regime should not apply to a product that is carved out of the anti-hawking regime.

We would appreciate some clarification on this issue.

3. STRENGTHENING BREACH REPORTING (RECOMMENDATION 7.2)

We broadly support the proposed amendments to the Corporations Act to clarify and strengthen the breach reporting regime for financial services licensees. However, we believe some key changes to the Exposure Draft Legislation (**Draft Breach Reporting Legislation**) and further clarification in the Exposure Draft Explanatory Materials (**Breach Reporting EM**) for Strengthening Breach Reporting is required to ensure effective compliance with the regime by financial services licensees.

(a) Clarification on the meaning of 'commenced an investigation'

A financial services licensee may 'commence an investigation' of varying levels and types and at different stages. For example, the enquiries a licensee makes when a staff member first raises a potential issue is very different to an investigation that may be commenced after logging a potential compliance incident on the licensee's compliance tool/systems. Further, these 'investigations' contain far less detail than an investigation that may be commenced when a licensee suspects that a significant reportable breach may have occurred (where the licensee may also engage external advisers or consulting firms to assist them with a complex investigation).

This raises the following questions:

- Does a licensee 'commence an investigation' by entering an incident on the compliance tool/system?
- Do preliminary enquiries/questions into a suspected breach constitute a 'commencement of an investigation'?
- Should there be a test of 'reasonableness' in determining whether a licensee is said to have 'commenced investigation'?

¹⁷ We note there may be other insurance products that are carved out of the proposed anti-hawking regime but meet the definition for add-on insurance.



Given the uncertainty, we would appreciate further clarification / guidance on what it means to 'commence an investigation'.

(b) Clarification on the meaning of 'gross negligence'

Proposed s 912D(2) in the Draft Breach Reporting Legislation expands the list of reportable situations to include a situation where the licensee or its representative has (in the course of providing a financial service):

- engaged in conduct constituting gross negligence; or
- committed serious fraud.

While serious fraud is a defined term under the Corporations Act, the term 'gross negligence' is not. To our knowledge, in Australia, the term does not have a precise meaning at common law. Given the uncertainty, a licensee must interpret what is meant by the term 'gross negligence' which may result in ambiguity and differing interpretations / decisions on whether to report matters to ASIC.

Therefore, if it is intended that the term 'gross negligence' is used to describe negligence which is worse than, or a higher standard than, (ordinary) negligence, then this should be stated explicitly.

We would appreciate further clarification / guidance on the meaning of 'gross negligence'.

(c) Contravention of a civil penalty provision

Example 2.3 of the Breach Reporting EM states that a single customer complaint about not receiving a Financial Services Guide (FSG) amounts to a significant breach as it would constitute a contravention of a civil penalty provision. We believe reporting on such matters to ASIC on an individual customer level would be unreasonably burdensome, if not impossible.

While we understand the proposed changes to reporting are clearly intended to provide ASIC with more information on investigations, breaches and breach assessments, we are concerned about the volume of information being provided to ASIC and the pressure on resourcing to comply with this requirement. We also query how quickly and in what manner ASIC will engage with licensees regarding such reports.

As such, we believe proposed s 912D(5)(b) in the Draft Breach Reporting Legislation requires further consideration.

(d) Clarification on the meaning of 'loss or damage'

Proposed s 912D(5)(c) in the Draft Breach Reporting Legislation states "a breach or likely breach of a core obligation is taken to be **significant** if... the breach results, or is likely to result, in loss or damage to clients..."

We believe the words 'loss or damage' should be defined as it is not clear what constitutes 'loss or damage to clients'. We believe potentially 'minor' breaches that may lead to loss or damage could be considered 'significant', requiring reporting to ASIC. For example, a breach would be deemed to be significant and reportable where we pay interest because we have



failed to process a claim in a timely manner. If there is short delay or the quantum is small, should that be considered a significant breach? Further, excluding cases such as financial hardship, if we have remediated the customer, are they still deemed to have suffered loss or damage?

We assume this is not ASIC's intent and that there must be some measure or quantum of loss or potential loss, for 'loss or damage to clients' to be considered significant. Failure to define or provide further guidance on this is likely to substantially increase the compliance and administrative burden of complying with the Draft Breach Reporting Legislation.

As such, we would appreciate further clarification / guidance on an appropriate threshold for 'loss or damage'.

(e) Clarification on the meaning of 'reasonably knows'

Proposed s 912DAA(1) in the Draft Breach Reporting Legislation provides that "a person **reasonably knows** of a circumstance if... the person is aware that the circumstance exists or will exist in the ordinary course of events; or... the person is aware of a substantial risk that the circumstance exists or will exist; [and] having regard to the circumstances known to the person, it is unjustifiable to take the risk."

In our view, it is very difficult (particularly in a large organisation) to determine how this assessment of reasonable knowledge would apply. The following questions arise:

- Who in the organisation should reasonably know?
- Is it the organisation that needs to know? Is it the person who has the authority to consider and decide whether circumstances may amount to a significant breach/reportable situation (which may be a Breach Committee or staff member – also noting it is ordinarily frontline or 'first line of defence' staff who will flag issues that must be escalated through the various levels of management)?
- To what extent should this be aligned to the Financial Accountability Regime? Should the responsibility to 'reasonably know' fall on the Accountable Person or can it be other people with appropriate authority/delegation?

The Draft Breach Reporting Legislation refers in many places to the licensee, however proposed s 912DAA(1) seems to refer to a natural person. We note Example 2.2 in the Breach Reporting EM refers to 'senior staff'.

Given the uncertainty, we would appreciate further clarification / guidance on the meaning of 'reasonably knows'.

(f) Change to the time for reporting outcomes of investigations

Under the Draft Breach Reporting Legislation, licensees are obligated to report the outcomes of investigations within 10 calendar days (even where there is no breach or likely breach). We believe this time frame may be difficult to achieve during certain periods such as public holidays (e.g. Christmas and Easter).

As such, we believe 10 calendar days should be replaced with 10 business days.