



Ms Helen Yu

Senior Lawyer

Financial Advisers

Australian Securities and Investments Commission

Level 5, 100 Market Street

SYDNEY NSW 2001

Email: [helen.yu@asic.gov.au](mailto:helen.yu@asic.gov.au)

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Dear Ms Yu,

**RE: Consultation Paper 245: Retail Life Insurance Advice Reforms**

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to Consultation Paper 245: Retail Life Insurance Advice Reforms.

The FPA welcomes the sensible approach taken by these measures to help ensure the sustainability of the life insurance advice industry by providing businesses an appropriate amount of time to transition their business models. We continue to highlight the risk raised by many of our members that many financial planning businesses will be unable to transition to the new fee models for demographics which are most in need of insurance advice, or will only be able to offer insurance advice as part of more expensive holistic advice provision. This will only increase the issues within the community of underinsurance and lack of protection for consumers against junk insurance products for those who most need of assistance.

The FPA would like to raise 7 considerations for ASIC when finalising the legislative instrument to implement this framework.



## **1. Grace periods**

The FPA understands that the intention of this legislation is for the changes in the maximum upfront remuneration arrangements for insurance contracts entered into after 1 July 2016. While an insurance contract may be written and signed by a consumer today, there is often a delay before an insurer reviews, underwrites and issues the policy. We therefore recommend that a grace period – for example 3 months - be included within the legislative instrument so that policies submitted with the insurer prior to 1 July each year during the transition period and issued within a reasonable period of time do not unintentionally get affected by the limits on maximum upfront commissions. This will ensure that the agreed fee structure and quantum which have been entered into with customers is honoured.

We therefore propose ASIC include a grace period for pre-1 July applications to be accepted at the maximum upfront commission level for the financial year they were submitted rather than the financial year they have been paid where the policy is implemented within an appropriate period of time.

## **2. Sale of a Business or Client Transfers**

It is not clear from the Consultation Paper how a clawback will be executed with the adviser where there has been a: business sale; change of AFSL; planner transfer (i.e. the servicing planner for the client changes); cessation of use of the purchasing platform; or business closure, while the policy is within the 2 year clawback period. Under current insurance arrangements, ongoing commissions can be transferred from one adviser to another due to the mechanisms highlighted above, however it is less clear where the clawback obligation would rest given the original planner may no longer be servicing or have responsibility for the client.

## **3. Professional Service Fees Collected by Insurer**

The FPA understands that many planners have arrangements in place with insurers to collect professional service fees (for example advice or implementation fees) on behalf of the planner from clients. We note that the intention of the new law is to ensure commission payments are repaid to the insurer in the event of a non-exempt policy cancellation.



We therefore propose that ASIC include within the legislative instrument that the clawback only applies to commission payments, not any other professional service fee payments collected by the insurer on behalf of the planner. This will provide clarity to planners that insurers are able to continue collecting these fees on their behalf.

#### **4. Fee Discounts**

The FPA understands that some insurers provide a discounted or an introductory premium to consumers on first year premiums including when a policy is placed via a planner, but which aren't used for the calculation of ongoing premiums or commissions. We note that there may be some confusion with how upfront commissions are calculated when a discounted premium is offered in year one. Further, we question whether a discounted premium in year one may have the potential to lead to increased ongoing premiums as the insurer seeks to make up this discount over time, subsequently leading to a higher ongoing commission payment to the planner. We recommend ASIC consider the effects of discounts on commission calculations within the legislative instrument.

#### **5. Premium Increases**

The FPA would like to seek clarification for planners on the following scenarios.

1. Where a policy has been written in July 2016 and is increased in July 2017 (as per the scenario proposed in question B1Q2(a)), it is unclear from ASIC's example whether the commission payable is 80% as per the original policy or 70% as it is being paid in the next financial year.
2. Where the same policy is subsequently cancelled in the second year (2017-18 financial year), is the clawback applicable at:
  - a. the 60% rate on the whole "upfront commission" (i.e. the July 2016 and July 2017 combined payment) given it has been cancelled in the second year, or
  - b. 100% of the July 2016 payment and nothing on the July 2017 payment based on the wording of repaying the "commission paid in the first year"; or
  - c. 60% on the July 2016 payment and 100% on the July 2017 top up.



We would note that in scenario 2, the drafting of the consultation paper suggests that 2a or 2b may be the outcome based on use of the term “commission paid in the first year” and “a first year premium” rather than 2c which we believe is the intended policy position.

## **6. Premium Reductions**

The FPA would like to highlight that there can be two main reasons for premium reductions after a policy is in force. The first which we believe ASIC is trying to highlight in the Year 2 row of Table 3 is where the amount of cover has been reduced, and therefore the premiums associated with the policy are reduced.

The second reason, which we believe ASIC must take into consideration, is where the insurer reduced the premiums on the policy themselves (i.e. there is a general premium reduction based on actuarial calculations) despite there being no change in amount of cover under the policy. We do not believe it is the intention of this package of reforms to clawback a commission from a planner when the insurer themselves has reduced the premiums in year 2 of policy.

## **7. Collection of Data**

The FPA is supportive of the proposal within the consultation paper around the collection of data. We are particularly supportive of ASIC obtaining data going back 5 years which will enable benchmarking of both pre and post FOFA policy purchases and replacements, as well as setting a benchmark to see the effects of the Life Insurance Framework package of changes over the review period and for subsequent reviews. We note some insurers may not be able to provide all required information, but we would suggest there is value in getting as much information as is available for benchmarking purposes for each criteria listed in the Consultation Paper. We would also encourage ASIC to make this information publicly available (in a de-identified form) for the purposes of allowing the profession, the life insurance industry and academics a better understanding the Life Insurance market.

We would question whether insurers would currently collect some of the specific data requested by ASIC. For example, we aren't sure that an insurer would have the details of whether a policy is for a first time insured or not. ASIC may also want to be more specific in whether it is the first time a specific type of policy is insured given the variety of classes of life insurance product policies in the market (e.g. Term, TPD, Trauma, IP). Further, we question whether or not insurers have been collecting details about why a policy has been cancelled.



## 8. Update of Regulatory Guidance

We note that it hasn't been flagged as part of this Consultation Paper that ASIC is looking to update its Regulatory Guides where required as part of this program of work. Some of the issues raised in **1 to 7** above may be better dealt with in regulatory guidance rather than the legislative instrument, for example case studies described in **5. Premium Increases** and clarifications of how ASIC will administer the new legislation. As a minimum, we would assume RG 246 would require updating, but updates may also include RG175; RG97 and RG36.

## 9. List of Specific Questions

Questions	Your Response
B1Q1 Are there any considerations ASIC should take into account in implementing this proposal?	See <b>1. Grace Periods</b> ; <b>4. Fee Discounts</b> and <b>5. Premium Increases</b> for our considerations on Proposal B1.
B1Q2 How do you think any increase in premium should be dealt with under the proposed commission structure? (a) For example, if the premium increases in the second year because the amount insured has increased, should the maximum upfront commission apply to the amount by which the premium has increased? (b) Are there any circumstances where the maximum upfront commission should or should not apply where there is an increase in premium in subsequent years? Please specify those circumstances.	a) While the FPA understands that any insurance policy increases are considered by insurers as part of the same policy (i.e. generally have the same policy number), the increased cover often has its own underwriting and potentially a separate set of exclusions or premium loadings which are not included in the original portion of the policy. Based on this, we believe it is appropriate where cover has been increased to allow for a new maximum upfront commission to be payable as it is effectively a new policy on that portion of the cover. We do however highlight the question raised in <b>5. Premium Increases</b> section above.  b) Where the level of cover has not changed and the premium is increased due to a new actuarial calculation or the use of stepped premiums, this should not lead to an increase in the eligibility to receive an increased maximum upfront commission. Maximum upfront commission increases should be restricted to an increase in policy cover.
C1Q1 Are there any considerations ASIC should take into account in implementing this proposal?	See <b>2. Sale of a Business or Client Transfers</b> ; <b>3. Advice Fees Collected by Insurer</b> ; <b>5. Premium Increased</b> ; and <b>6. Premium Reductions</b> for consideration on Proposal C1.
D1Q1 Are there any considerations ASIC should take into account in implementing this proposal?	See <b>7. Collection of Data</b> for our considerations on Proposal D1.
D1Q2 Is there information we have not covered that you think we should require? If so, please specify.	It is unclear at D1(b) whether ASIC is seeking data at the life insurer level, AFSL level, or specific adviser level.



<p>D1Q3 Do you think we should also collect data at an adviser level?</p>	<p>It is not clear whether the context of this question is asking whether life insurers should provide additional data at an adviser level (i.e. additional columns of data), or whether ASIC is proposing to collect data directly from advisers or licensees.</p> <p>Based on the data being collected from life insurers, it isn't clear how ASIC would propose to monitor adviser behaviour without collecting data down to adviser level, particularly as ASIC appear to be trying to identify instances where additional upfront commissions are being used as the only reason for a policy to be churned, and therefore show that this policy framework will assist in reducing policy churn behaviour. This would also have the benefit of allowing ASIC to monitor adviser behaviour as they change licensees.</p> <p>We would however oppose any requirement for advisers or licensees to report additional data to ASIC.</p>
<p>D1Q4 Do you have any feedback on our proposal to remove identifying details before we publish the information?</p>	<p>Any data made publicly available must be de-identified to protect the privacy of consumers. However to provide the profession, industry and academics as much data as possible, all data should be made available in a deidentified form.</p>
<p>D1Q5 What will be the costs for you to provide all of the information we have set out in this proposal? Please provide amounts in dollars, if possible. Are there particular types of information that are more difficult or costly to collect? If so, please provide details.</p>	<p>No response provided.</p>
<p>D1Q6 What would be the costs for you to provide data on lapse rates and clawback arrangements only? Please provide amounts in dollars, if possible.</p>	<p>No response provided.</p>
<p>D1Q7 Do you think we should be collecting historical information? If so, how many years of historical data should we collect?</p>	<p>Yes. See <b>7. Collection of Data</b> for our considerations on the benefits of collecting historical data for the last 5 years, even if a complete set of data is not available from the insurer.</p>
<p>D2Q1 Are there any considerations ASIC should take into account in implementing this proposal?</p>	<p>It seems appropriate to collect data over the transition period at regular intervals, therefore FPA agrees with Proposal D2 as the minimum frequency of data collection.</p>
<p>D2Q2 Does this timing allow you to adequately prepare your systems to start reporting on the specified data from 1 July 2016?</p>	<p>No response provided.</p>



The FPA would welcome the opportunity to discuss our feedback and proposed amendments further.

We welcome the opportunity to discuss our submission with ASIC. If you would like further information about our submission, please contact me on (02) 9220 4500 or email: [dante.degori@fpa.com.au](mailto:dante.degori@fpa.com.au).

Yours sincerely

**Dante De Gori**  
*General Manager Policy and Conduct*