



Investment & Financial Services Association Ltd

IFSA SUBMISSION

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Corporate and Financial Services Review

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PART 1. PRODUCT DISCLOSURE STATEMENTS

1.1 INCORPORATION BY REFERENCE IN PRODUCT DISCLOSURE STATEMENTS

IFSA response to consultation proposal 1.15 (for PDS only): IFSA supports the proposal to enable issuers of Product Disclosure Statements to incorporate information by reference to sources in addition to those which are currently permitted by the legislation. IFSA also submits that only specific elements of the enhanced fees and costs model set out in Schedule 10 of the Corporations Regulations should be incorporated in a Short-Form Product Disclosure Statement

1.1.1 Summary

We refer to consultation proposal 1.15. IFSA supports any proposal which will facilitate “incorporation by reference” into Product Disclosure Statements (PDSs), including information provided in other documents required under the legislation and from other sources.

1.1.2 Background

IFSA has worked closely with Treasury throughout the course of the development and refinement of the product disclosure regime. IFSA’s aim in contributing to the consultation process has been to facilitate the stated objective of the financial services reforms regarding point of sale disclosure obligations, namely to “provide consumers with sufficient information to make informed decision in relation to the acquisition of financial products, including the ability to compare a range of product”.¹ This objective can only be achieved if prospective investors receive information in a format that is “clear, concise and effective”.² The directed disclosure regime taken by Part 7.9 of the Corporations Act was intended to balance the need for the investor to receive sufficient information to make an informed decision and compare products against the concern that they may be provided with more information than they can comprehend.

Unfortunately, the Part 7.9 directed disclosure regime has achieved some but not all of the objectives outlined in the Explanatory Memorandum. It is widely acknowledged that PDSs that are currently issued in the market are lengthy and that this may affect an investor’s ability to extract information necessary for them to make an informed decision.³

Various reasons have been given for the length of PDSs. That PDSs could not incorporate any material by reference before December 2005 has certainly played a role in preventing the length of PDSs from being reduced by referring to external materials. However, IFSA considers that rather than a sole explanation, there are multiple reasons why PDSs are so long.

1.1.3 Shortfalls in Short-Form PDS

The Short-Form PDS provisions introduced by the Corporations Regulations 2005 (No. 5) permit incorporation by reference into such a document but only of material from the full

¹ Paragraph 14.28, Explanatory Memorandum for the Financial Services Reform Bill 2001.

² Section 1013C(3) Corporations Act 2001

³ See for example IR04-71 ASIC issues guidance on PDS disclosure dated 21 December 2004.

PDS⁴ and a relevant FSG⁵. IFSA appreciates the considerable efforts have been spent by Treasury endeavouring to develop a Short-Form PDS regime to help industry achieve clearer, more concise and therefore more effective disclosure documents for consumers.

However, IFSA considers that the Short-Form PDS provisions in their present form are unworkable. IFSA has been advised by its members that they are unlikely to issue Short-Form PDSs. Why? The current provisions requires the production of not one but two PDSs, ie a Short-Form PDS and a full PDS. The new rules require that a Short-Form PDS must contain a statement notifying a retail investor that they may ask for the (full) PDS for the relevant product and the means by which they may do so.⁶ If an investor makes such a request, the issuer must provide the PDS.⁷

Accordingly, an issuer would need to issue two separate PDSs for each financial product issued by it, in order to take advantage of the Short-Form PDS regime. There are no practical benefits (or indeed interest) for the industry to take on the production of additional PDSs.

Further, the incorporation by reference mechanism which has been developed for Short-Form PDS does not enable issuers and investors to take advantage of the broad range of available information sources, particularly as a result of developments in information technology.

1.1.5 IFSA's submission

IFSA proposes that an issuer should have an option of preparing either a full or a Short-Form PDS. This could be adapted in the current Short-Form PDS regime, where the flexibility of incorporating by reference the full PDS may be retained whilst amending the current provisions to allow the incorporation of other materials.

The mechanism by which incorporation by reference may be facilitated should be subject to further discussion. In this respect, the relevant issues include:

- Consent where third party information is incorporated.
- Issuer's obligations regarding issue of supplementary PDSs,
- Record keeping requirements, particularly regarding electronic storage of information.
- Whether certain information does not need to be incorporated.

IFSA considers that incorporation by reference should be permitted from any publicly available information source, which could include annual reports, scheme constitutions, external websites such as those operated by ASIC, APRA, the ATO and the ASX, the issuer's own website, websites of other issuers whose products may be relevant to the issuer's product⁸ and copies of constitutional documents and material contracts (which could be made available on website or for inspection).

⁴ Except for offers of financial products that are to be traded on market, a PDS is not lodged with ASIC.

⁵ It is to be noted that the prospectus regime permits incorporation by reference from any material lodged with ASIC – see section 712(4).

⁶ Section 1017I(I).

⁷ Section 1017(H).

⁸ For example, disclosure regarding eligible rollover fund procedures could be substantially reduced if a superannuation trustee could incorporate by reference information relating to the PDS for the relevant eligible rollover fund.

1.1.6 Short-Form PDSs, fee disclosure and other matters that are causing lengthy PDSs

IFSA considers, that in the interests of effective disclosure to prospective investors, it should not be necessary to include in a Short-Form PDS all information currently required concerning fees and costs.

IFSA will continue to make submissions regarding the feasibility of the fees and template model currently prescribed for inclusion in PDSs for managed investments and superannuation products. However, for the purposes of this submission, IFSA wishes to emphasise to Treasury that the fees and template model adds significant length to PDSs. IFSA submits that the appropriate information to be included in a Short-Form PDS is the consumer advisory warning, the template itself⁹ and the example of annual fees and costs¹⁰. The additional explanation of fees and costs could be included elsewhere (such as the issuer's website), thus ensuring that investors receive an appropriate summary of the fees and costs relating to the relevant product.

Further, IFSA does not consider the current PDS disclosure regime under FSR as being the sole factor affecting the length of PDSs. IFSA believes that insufficient attention has been given to the way FSR interacts with other legislation, including (inter alia) the Privacy Act and SIS (particularly in respect of SIS Regulation 4.02).

1.1.7 Conclusion

IFSA strongly supports any advances towards establishing a workable regulatory regime to ensure investors are provided with clear, concise and effective disclosure to make informed investment decisions. We urge that incorporation by reference and any other proposals that may achieve more investor friendly PDSs are subject to further debate.

1.2 IN-USE NOTICES

IFSA response to consultation proposal 8.5: We support the broad thrust of this proposal to the extent that it seeks to ensure that the original intent of in-use notices may be met.

We refer to consultation proposal 8.5. We strongly support the proposal to the extent that it seeks to ensure that the original intent of in-use notices may be met.

IFSA believes that ASIC is using in-use notices to obtain information about PDS's for its own regulatory purposes over and above what the notices were originally intended for. While there can be no doubt as to the importance of ASIC's need to obtain appropriate information to properly undertake its regulatory work, we consider that in-use notices may not be the most effective and efficient way of obtaining the relevant information. IFSA has difficulty seeing the net practical benefits to ASIC against the immense quantity of in-use notices currently received (approximately 12,000 notices in 2004).

Clearly, the most appropriate means of providing information to ASIC in order to satisfy its information needs should be subject to further consultation.

⁹ Paragraphs 201 and 202, schedule 10, corporations act.

¹⁰ Paragraph 211 and 212, schedule 10.

In the meantime, while the in-use notice system remains in place, we are broadly supportive of establishing electronic means to convey the necessary information about PDS's that are in use. This information should be limited to:

- Issuer's corporate name and ACN;
- Name/identifier of relevant offer document; and
- Issue date.

1.3 ALIGNING ORAL DISCLOSURE BETWEEN TIME CRITICAL CASES AND UNSOLICITED CALLS

IFSA proposal: The oral disclosure requirement in respect of a cooling off regime for time critical advice under reg 7.9.15H should be aligned with the hawking provisions relating to unsolicited phone calls under s992A.

We refer to IFSA's submission of 8 November 2005 in response to the exposure draft regulations released last October designed to give effect to the FSR Refinements Proposals (Round I).

We would like to reiterate our request to align the oral disclosure requirement for time critical advice under 7.9.15H with the hawking provisions of s992A in relation to unsolicited phone call.

The simplest way to achieve this would be to amend regulation 7.8.22A to state that section 992A(3)(e) does not apply where the client is provided with the information in respect of the cooling off regime and should consider the information in the PDS, as consistent with reg 7.9.15H(3).

We believe that it is unnecessary to make the mandatory oral disclosures in the case of what in effect is a simple telephone service given:

- that the caller either already has a copy of the PDS; or
- that one can be provided within the 5 business days.

There is no difference in the underlying rationale for aligning time critical cases with services provided for unsolicited phone calls because the cooling-off regime should be able to counteract any investor detriment that may arise from the potential dealing that may take place at the time.

PART 2: ADVICE AND DISTRIBUTION

2.1 SCOPE OF GENERAL VS PERSONAL ADVICE

IFSA response to consultation proposal 1.17: Consider refining the scope of personal advice such that the definition of personal advice should:

- (a) depend on the representations made by the adviser rather than what the adviser considered
- (b) apply only where the adviser represents that a transaction is appropriate for the particular client
- (c) apply only if the representations were intended to be understood in that way, or if a reasonable person would have understood them in that way
- (d) allow appropriate warnings to identify or clarify the status of the advice
- (e) be directed only to decisions about transactions.

Refinements to the definition of general advice may also be appropriate.

The consequences flowing from the definitions of general and personal advice should be fine tuned, including by providing specific exemptions in particular cases where it is not possible to provide a consistent test across all situations and consequences.

2.1.1 Introduction

We refer to consultation proposal 1.17. IFSA welcomes the opportunity to revisit the definition of general and personal advice.

Given the broad scope of financial services and financial products that are offered by IFSA members, IFSA is accordingly well placed to provide a perspective on the appropriate boundaries for and between general and personal advice. Accordingly, IFSA welcomes the opportunity to revisit the definitions of general and personal advice.

IFSA considers that the current definitions of general and personal advice are too broad and inadvertently capture more than may have been originally intended. Due to the legal obligations that flow from the categorisation of advice, this places an unnecessary burden on financial services providers and significantly impairs their ability to meet client needs without benefit to consumers. Some of these issues have been dealt with by providing multiple exemptions from the obligations flowing from the categorisation, which has made the application of the definitions quite confusing in practice (particularly where advice is given across a range of products to which different requirements apply) and also created anomalies and disparities in the law.

IFSA does not propose at this stage to provide a firm proposal on the boundaries between general and personal advice. Our approach is to outline the policy objectives, the circumstances in which the current definitions do not achieve those objectives and outline a proposal for further consideration. IFSA intends to follow this submission with a more detailed analysis and proposal for consideration by Government and relevant stakeholders.

2.1.2 Testing the appropriateness of the definition

In considering the appropriateness of the scope of the definitions, it is critical to consider the consequences that flow from them.

The consequences will be appropriate only if they are consistent with the relevant policy objectives and considerations, being:

- (a) consumer protection;
- (b) the enhancement of customer education, understanding and experience;
- (c) the cost and practical implications for clients (including whether access to valuable advice is made unnecessarily difficult or expensive);
- (d) the cost and practical implications for financial service providers; and
- (e) the effect on economic efficiency and competition.

These matters are at the forefront of IFSA’s consideration of the definitions of general and personal advice and the consequences that flow from them.

2.1.3 Issues with the current definition

IFSA believes that the current definitions do not meet the above test and cause particular problems in a number of areas, including:

Factual information	Financial literacy and investor education
Badging	Dealing/non dealing general advice
Advice in the media	Advertising
Public forum and seminars	Targeted mail-outs and communications
General advice by licensed or unlicensed issuers	General advice by providers who are not issuers
Answering client queries and providing helpful client service	Generic advice
Calculators and profilers	Guidance in disclosure documents and other material about the type of clients for whom a product or option would be suitable
Asset allocation advice across classes of products	Asset allocation within product options
Uneconomic to provide “low value” advice	Hold recommendations for clients where adviser has no financial interest in making the recommendation and is not paid by the client for the advice
Low risk advice	Simple products
Advice to employers when reviewing, or tendering for the transfer of, corporate superannuation plans (including setting default investment and insurance options)	Secondary services involving personal advice
Lack of client choice in level of service and scope of advice	Rejected advice

Preliminary discussions and guidance	Client involvement in strategy development
Length of statements of advice	Unnecessary delay and complication in advice process

2.1.4 Approach

To the extent that the current definitions create inappropriate consequences, there are two basic approaches to addressing those issues:

- (a) to the maximum extent possible, amend the definitions so that the desired consequences apply, and only apply, in the appropriate situations; and
- (b) fine-tune the consequences flowing from the definitions by providing specific exceptions in particular cases where it is not possible to provide a consistent test across all situations and consequences.

2.1.5 General advice

One of the matters being considered by IFSA is whether there should be a distinction between the treatment of advice that relates to a decision whether to enter into a transaction in relation to a specific product (“**dealing general advice**”), and other general advice. One approach could be to make the definition of dealing general advice broadly similar to the definition of “general securities advice” under old ASIC Policy Statement 122, paragraphs 31 to 36.

Another matter under consideration is whether the exemptions for general advice given by unlicensed product issuers (see regulations 7.1.33G and 7.1.33H) should be revisited or extended to licensed issuers and other providers. At the moment, there is a discrepancy between the treatment of licensed and unlicensed issuers in this regard.

There may also be other areas that require attention both in terms of the definition of general advice and the consequences that flow from it.

2.1.6 Personal advice

In IFSA’s view, consideration should be given to amending the definition of personal advice so that the definition:

- (c) depends on the nature of the **representations** given or directed to the client, not on what the provider actually or apparently **considered** in making the representation;
- (d) applies only where the provider represents that a product, class of product or transaction is **appropriate** for *that particular client*;
- (e) applies only if:
 - (i) the provider **intended** to represent that the transaction was appropriate for the particular client; **or**
 - (ii) **a reasonable person would have understood** the provider to have made that representation;
- (f) is directed only to decisions about whether to enter into a **transaction** in relation to a financial product or class of financial products, not merely to any decision about financial products; and
- (g) allows the provider to give an **appropriate warning** to identify or clarify the status of the advice, provided the warning is not misleading or deceptive.

The proposal would make the definition of personal advice broadly similar to the definition of “personal securities recommendation” under old ASIC Policy Statement 122, paragraphs 31 to 36.

Consideration should also be given to fine-tuning the consequences of advice being classified as personal advice. For example, it may be appropriate in some cases to require a reasonable basis for the advice, but not require a statement of advice where the advice refers to a class of product (but not specific products), or where the advice is an opinion (but not an express or implied recommendation).

2.1.7 Further consideration

Clearly, any amendments to the definitions must be done only after a careful and detailed consideration of the consequences of those changes, both in terms of the impact on the law, the consequences on other provisions of the law and whether the new definitions are clearer and more appropriate than the current definitions. The fine-tuning required (or no longer required) in relation to particular consequences will of course depend on the terms of the definitions.

Accordingly, IFSA will undertake a more detailed consideration of the issues (which may also result in some changes to the suggestions made in this submission). It will then provide a more comprehensive submission for further discussion with Treasury and ASIC. In that submission, IFSA will refine and provide more detail in relation to the above proposals and demonstrate how they address the policy objectives and concerns referred to above.

2.1.8 Consultation

IFSA strongly believes that any changes to the definitions should only be made after careful consideration and appropriate consultation, and IFSA views Treasury’s request in item 1.17 as the start an iterative and interactive process of consultation between government and relevant stakeholders.

We suggest that holding a series of “round tables” to discuss the definitions and their consequences would be an appropriate and efficient way to progress towards a solution to these issues. Such a forum would facilitate the identification and communication of particular policy objectives and practical concerns, as well as the formulation, testing and refinement of proposed solutions.

2.2 INCORPORATION BY REFERENCE IN STATEMENTS OF ADVICE

IFSA response to consultation proposal 1.1 and 1.15 (for SoA's only): We support the proposal to allow incorporation by reference in Statements of Advice subject to appropriate record keeping and other conditions.

We refer to consultation proposal 1.1 and 1.15. We reiterate our support for incorporation by reference in Statements of Advice (SoA) and believe that proposals 1.15 and 1.1 may be considered in tandem since the availability of incorporation by reference in SoA's will lead to less repetition in SoA's.

We submit that the availability of incorporation by reference in SoA's will allow the length of SoA's to be reduced thus promoting more clear, concise and effective advice documents.

2.2.1 What documents should be incorporated by reference into an SoA?

We support the general thrust of ASIC Class Order 04/1556 in relation to Statement of Additional Advice, which allowed SoAA's to incorporate by reference information from other "eligible advice documents". The defining principle and safeguard built into the definition of an "eligible advice document" is that a document that is to be incorporated by reference must first have been provided to a client.

The information that is incorporated by reference into a document will depend on where the client is within the advice process. Accordingly a client who is obtaining personal advice for the first time will not have a previous SoA, RoA or other advice document incorporated into their SoA but may have information provided in a fact find or the FSG incorporated into the document. However a client who is obtaining further advice could have previous advice provided in an SoA or SoAA incorporated into the current advice.

Therefore, the documents that are permitted to be incorporated into the SoA should allow flexibility to the provider to determine what is necessary to achieve shorter documentation while preserving consumer protection. To achieve this we recommend that the following information or statements be permitted to be incorporated by reference into an SoA:

- all eligible advice documents (as defined in CO 04/1556);
- SoAA's;
- Records of Advice;
- File notes signed or acknowledged by clients;
- Relevant personal circumstances (part of client fact find);
- Financial Services Guide;
- General disclosure on remuneration and other benefits;
- Dollar disclosure (including worked dollar examples);
- Conflicts of Interest; and
- Associations and relationships.

In addition the definition of eligible advice document is too restrictive and consideration should be given to extending that definition to allow:

- An adviser to incorporate by reference advice previously provided by that adviser when they were an authorised representative of another licensee; and
- Licensees to incorporate by reference advice previously provided by another licensee

We consider that the decision should be left to the licensee to determine whether it wishes to accept the risks and consequences associated with meeting the requirements of providing personal advice under the law, and any other pertinent advice giving obligations.

There are merits, however, to consider allowing other types of documents that are not required by law to be incorporated by reference in a SoA if the provider chooses to, including:

- Standardised information (eg. taxation rules, industry/government guides);
- Product Disclosure Statements;
- Research Reports;
- Risk Profiling Questionnaires; and
- Insurance Quotations.

We consider however that the choice to include additional information be left to the provider to consider. We note that ASIC's Class Order 04/1556 will be redundant if this proposal is successful and this will lead to a simplification of the advice disclosure regime.

2.2.2 Appropriate conditions:

IFSA submits the incorporation of information or statements into an SoA should be subject to the following conditions:

- Each document incorporated by reference should be clearly identified with a short description of what they are and a further statement about how they may be obtained.
- The SoA should mention that all documents incorporated by reference will be made readily available to the client upon request – at no additional cost.
- The provider must keep accurate records of what documents have been incorporated at any given time, and also ensure the correct version is kept.

The conditions above should ensure that relevant documents should always be available to investors and other relevant bodies if needed.

2.2.3 Benefits of incorporation by reference in SoA's

The availability of incorporation by reference should focus SoA's on statements setting out the advice that is relevant to investors. SoA's can become what was originally intended – a clear, concise and meaningful document providing personal advice and recommendations to the retail client. All other documentation required in the preparation of an SoA, for the purpose of establishing the basis for the advice are already retained on file (eg. client fact finder, research notes, projections, assumptions, disclosure, analysis / investigation) for a minimum period of 7 years, as currently required by law.

Shorter disclosure also means a reduction in costs for advisers (and product issuers alike), making financial planning more affordable and therefore accessible especially to the lower net worth segment of the marketplace. Moreover, advisers can spend more time in developing and putting in place good strategic financial planning advice/ outcomes, thereby providing better service to their clients.

2.2.4 Some concluding remarks

IFSA would be happy to discuss further with Treasury this proposal and the appropriate conditions that may need to apply to ensure there is no dilution of the current disclosure obligations. The same liability and defence regime would apply to all information incorporated by reference, as for material included directly in the SoA, forming an integral part of the disclosure document – regardless of the mechanism by which it is made available.

2.3 STATEMENT OF ADVICE AND FINANCIAL SERVICES GUIDE

This Part 2.3 constitutes IFSA's responses to Financial Services Guides and Statements of Advice arising from the following consultation proposals:

- 2.3.1 IFSA's proposal to remove the requirement for an FSG for general advice;
- 2.3.2 Proposal 1.5 Combining a Financial Services Guide (FSG) and a Prospectus;
- 2.3.3 Proposal 1.6 Updating FSGs;
- 2.3.4 Proposal 1.12 Badging of disclosure documents;
- 2.3.5 Proposal 1.18 Exemption from the requirement to provide an FSG;
- 2.3.6 Proposal 1.20 Oral disclosure (for FSGs); and
- 2.3.7 Proposal 1.2 and 1.3 SoA and FSG relief, as the case may be, where personal advice is clearly rejected and where no remuneration is received.

2.3.1 Remove requirement to provide an FSG for general advice

IFSA proposal: IFSA believes that an FSG should not be required for either:

- general advice provided by a product issuer or a distributor in relation to product or class of products it issues; or
- general advice provided by anyone else when not immediately accompanied by other financial services such as dealing.

Before responding to the specific proposals relating to FSG's and SoA's, we would like to reiterate our request as stated in our submission of 10 June 2005. That is, our recommendation to remove the requirement to provide an FSG for general advice given by product issuers and distributors.

The current requirement to provide an FSG for general advice creates several problems, caused by:

- restrictions on the definition of 'public forum' in Regulation 7.7.02 (more specific submissions relating to public forums is discussed below);
- the amount of information required; and
- the fact that all of the information in a product issuer's FSG material to an investor is already contained in the PDS.

General advice is typically provided at an early or preliminary stage of a client process which is typically followed by either personal advice and / or product dealing services. Arguably, FSG information (eg remuneration structures, AFSL authorisations and dispute handling mechanisms) is more relevant and valuable for a client at a later point in time where the client is considering whether to acquire personal advice and / or dealing services from a provider. IFSA believes that an FSG should not be required for either:

- general advice provided by a product issuer or a distributor in relation to product or class of products it issues; or
- general advice provided by anyone else when not immediately accompanied by other financial services such as dealing.

In all cases where only general advice is given, there is no need for potential investors to receive detailed information about the provider. General advice by its very nature is not targeted to particular customers and consequently is less influential on individual consumers.

Moreover, the interests of general advisers in giving the advice are obvious (eg. when representing a named product issuer or distributor).

Giving FSG's in cases where only general advice is provided results in customers being given more disclosure than is likely to assist consumer comprehension.

We note our submissions in this Part 2.3, particularly in respect of general advice and FSG's, should be considered in light of our proposals set out above in this part 2.3.1.

2.3.2 Combining a Financial Services Guide (FSG) and a Prospectus

IFSA response to consultation proposal 1.5: – IFSA supports the proposal to allow FSGs to be combined with prospectuses. Additionally, we recommend that this provision should also be extended to allow the FSG of a third party to be included in the PDS provided the PDS is distributed by the third party and the product issuer consents to the inclusion of their FSG in the PDS.

We refer to consultation proposal 1.5. We support the proposal to allow FSGs to be combined with prospectuses.

The Report of the Taskforce on Reducing Regulatory Burdens on Business¹¹ provides for the need to avoid overlap, duplication and inconsistency in regulation. In recent years, there has been wide support to align the disclosure requirements for securities with other financial products. An FSG can currently be combined with a product disclosure statement (PDS). It therefore makes sense to extend this to allow a prospectus to be combined with an FSG.

It is recommended that this provision should also be extended to allow the FSG of a third party to be included in the PDS where the PDS is distributed by that third party and the product issuer consents to its inclusion of their FSG in the PDS.

In reality, it is likely that only in circumstances where there is a particular distribution relationship between the product issuer and the product distributor would the product issuer agree to the inclusion of the third party distributor's FSG in the product issuers PDS. Currently where a distributor FSG must accompany the product issuers PDS there can be real distribution issues relating to the distribution of the FSG leading to the risk that the investor may not receive the distributor's FSG.

The change to allow a third party distributor to include their FSG in the PDS of a product issuer would improve regulatory efficiency as it would stop the need for a separate mail for the distributors FSG and reduce the possibility that the customer would not get the distributors FSG. We would expect that suitable statements in the PDS could be included to ensure the customer was not confused by the inclusion of the distributors FSG.

2.2.3 Updating FSGs

IFSA response to consultation proposal 1.6: IFSA supports the proposal to remove the requirement to update an FSG where the change would relate to information that is not materially adverse, provided there is disclosure on how access can be made to the updated information.

¹¹ Regulatory Taskforce 2006, *Rethinking Regulation*, Report of the Taskforce on Reducing Regulatory Burdens on Business (January 2006).

We refer to consultation proposal 1.6. IFSA supports the proposal to remove the requirement to update an FSG where the change would relate to information that is not materially adverse, provided there is disclosure on how access can be made to the updated information. The proposal is consistent with IFSA's submission of 10 June 2005 in response to the original FSR Refinements.

However, IFSA considers that any additional obligations to send updated FSG's to consumers will not add significantly to effective disclosure, and is likely to undermine consumer comprehension, particularly where any additional changes to a product that may be materially adverse to a consumer would already be subject to the PDS regime.

Instead, IFSA recommends that a warning be prominently disclosed on the FSG that details may change from time to time and that customers **are advised** to check the relevant issuer's website for details of the updated FSG, or can request at any time for the updated version of the FGS to be sent to them.

2.3.4 Badging of Disclosure Documents

IFSA response to consultation proposal 1.12: IFSA requests regulatory relief from certain badging situations that provide low key messages of support for certain product manager's product offer, subject to certain conditions being met primarily to prevent product recommendations and kickbacks.

We refer to consultation proposal 1.12.

IFSA supports the aim to provide clarity on when a badged product offered by a manufacturer on a co-branded basis via a distributor or corporate partner [ie badged] would not constitute general product advice by the entity providing the 'badge'. ASIC has advised in the past that a 'no advice disclaimer' by the badging entity will not necessarily be effective depending on the circumstances.

Many badging situations are characterised by simply including the badging entity's logo or brand, and some very low key messages of support for the product manufacturers offer - for example, statements along the lines of:

- (a) *... 'we suggest you consider product manufacturer companies offer, as it may suit your needs for saving/insurance/super etc, or*
- (b) *'we have helped assemble this product and invite you to consider it as we think it may well have application to your needs' or similar.*

The media for placing such messages should not be restricted to the extent that is not misleading. For example, such a message of support might be included in the PDS or a communication supporting the PDS, or a website, etc.

IFSA's view is that relief is required so that if the involvement of the party providing the badge is restricted to the scale of the scenarios above, then that should be categorised as exempt and not constitute general product advice. The implications of such an exemption would be that the badger would not need to be licensed and/or authorised in respect of the particular offer. Also the badger would not need to be PS146 competent and the product manufacturer would be released of all of the related supervision obligations associated with authorisation. Many of these 'badging' situations are hardly more than a 'mere referrer'

scenario, and clearly those situations should be cleared of the licensing obligations and related costs.

IFSA notes that the present provisions of PS146 related a party providing the general advice being subject to scripting or appropriate supervision do not address many 'badging' situations and do not assist in the badging situation.

There also appears to be uncertainty in some quarters as to whether and when badging could amount to arranging for customers to acquire the product. Consequently, IFSA believes that any exemption for badging should extend to all financial services not just financial product advice.

ASIC's views on general advice and arranging in the badging context has meant that commercial co-branding arrangements have been curtailed in many cases because meeting the requirements and associated compliance costs of providing general advice have been unviable. This limits the development of some distribution models which reduces efficiency and limits customer choice.

Appropriate conditions where products are badged

IFSA believe that some conditions are desirable to avoid situations when the intent of the present law might be abused and the consumer protection aims compromised. The areas where IFSA suggests clarity is needed are:

- (a) The scope of exemption needs to apply to arrangements of the scale envisaged in Part 1 above. The only situation in which it should not apply is where the 'badger' makes an express recommendation that the customer should acquire the product or that the product is suitable for the customer. However, the 'badger' should be permitted to introduce the product to customers.
- (b) The exemption needs to accommodate arrangements with both related and unrelated companies.
- (c) The PDS for the product should be required to state that the 'badger' receives remuneration directly related to the sale or acquisition of the product if applicable. An FSG should not be required, as the 'badger' would not provide a financial service. This is consistent with IFSA's proposal that an FSG should not be required where general advice is provided by the product issuer (see Part 2.3.1).
- (d) The exemption should apply equally to licensees, authorised representatives and people who do not hold an AFSL.

2.3.5 Public forums

IFSA response to consultation proposal 1.18: IFSA supports the proposal and considers that the current definition of 'public forum' is too restrictive and should be broadened to apply to certain types of seminars, such as educational seminars that are given to employees and groups of clients about superannuation or other matters.

We refer to the consultation proposal 1.18.

a. Public forums carve out too restrictive

IFSA supports the proposal to broaden the scope of the 'public forum' carve out to include such forums as employee educational seminars. This would make the exemption from the need to provide an FSG more widely available, subject to any necessary conditions.

IFSA considers that the current definition of ‘public forum’ is too restrictive. Public forums relate only to events where *any person* is permitted to attend the event. The definition should be broadened to include situations that would apply to various types of seminars that are not open to any person, including educational seminars that are given to employees and groups of clients about superannuation or other matters.

There is no policy rationale why the types of seminars described above should be excluded from the definition.

b. Certain required oral disclosure in public forums should be removed

A further problem with public forums is the current requirement to make certain oral statements under section 941C(5). Consistent with our proposal above, we submit that these oral statements are not helpful to consumers, particularly if:

- the advice is general advice;
- no payment is to be received for the general advice;
- no arrangement to deal is being undertaken in conjunction with the general advice;
- the general advice relates to a class of products and not specific products; and
- consumers will eventually receive a PDS and FSG if they wish to apply for a financial product. That is, attendees will not receive any other personal financial service before receiving at least an FSG.

It is clear that in a public forum, the objectives, financial situation or needs of an individual have not been taken into account. If the consumer sees advice as necessary, a decision can be made to get advice. If the consumer wishes to proceed without advice, the choice is with them. The general advice does not provide the consumer with a personal recommendation. Accordingly, the disclosure requirements by way of oral statements at that point neither necessary nor useful to consumers. Oral statements should therefore be limited to a general advice warning.

2.3.6 Oral disclosure for FSGs

IFSA response to consultation proposal 1.20: IFSA supports the proposal to reduce oral disclosure requirements that apply to Financial Services Guides and Statements of Advice for products with a cooling off period.

We refer to consultation proposal 1.20.

IFSA supports the proposal to reduce oral disclosure requirements that apply to Financial Services Guides and Statements of Advice for products with a cooling off period.

The cooling off period means that investors have the opportunity to reconsider important financial decisions and is an important legislative feature to alleviate any investor detriment caused by pressure selling. IFSA therefore strongly supports the existence of cooling off period requirements in the Corporations Act.

The following are examples of potential benefits of an appropriate cooling off provision:

- reduces complexities in respect of simple telephone transactions and conversations, especially in time critical cases.

- provides further safeguard where general advice is given in public forums, particularly if other oral disclosure requirements are also removed (other than providing a general advice warning).

2.3.7 Advice that does not lead to dealing

IFSA response to consultation proposal 1.2 and 1.3: IFSA supports SoA and FSG relief, as the case may be, where:

- a. Personal advice is given but no financial product is recommended and no remuneration is received for the advice. (1.2)
- b. A client clearly rejects a product and/or advice. (1.3)

We refer to consultation proposals 1.2 and 1.3. IFSA supports the basic proposition of SoA and FSG relief, as the case may be, where:

- (a) Personal advice is given but no financial product is recommended and no remuneration is received for the advice. (1.2)
- (b) A client clearly rejects a product and/or advice. (1.3)

Both the scenarios in consultation proposals 1.2 and 1.3 concern situations where the advice does not lead to a product dealing (ie. the point at which the client's financial position changes). In fact, both scenarios also appear to suggest that a payment is not made by the client.

We will consider whether this (with some conditions or modification) has any use as a potential "identifier" of a class of advice situations warranting SOA relief. As part of this, we will consider:

- (a) the nature of advice provided to consumers in these scenarios and how it can be ensured that consumers receive appropriate levels of information (even in the absence of SOA requirements) in order to make a decision on the advice; and
- (b) whether situations involving the provision of personal advice about only product classes should be treated differently from those involving the provision of personal advice about a particular financial product.

IFSA encourages Treasury to consider the initial points above in its own consideration of SOA relief proposals concerning Items 1.2 and 1.3.

PART 3. CONSUMER CREDIT INSURANCE (CCI)

IFSA proposal: Consumer credit insurance or CCI is a simple product which provides much needed protection for ordinary Australian borrowers and credit card holders. Unfortunately mainly due to the piecemeal evolution of various regulations governing CCI the current regulatory regime is adding to the cost of providing this product to the detriment of consumers. We propose that this matter be addressed in accordance with part 3.1 below.

IFSA supports this proposal and recommends that, in accordance with the spirit of principle based regulation, the only limitation should be that the bundled products are sold or commence at the same time and the wholesale component should be the predominant element of the bundled product. In the explanatory material, the Government could give some examples by way of guidance on this. One example could be a bundled product where the premium for the wholesale component(s) exceeds the premium for the retail component(s).

IFSA believes that CCI is another example of a product which is sometimes structured as a bundled product for which the regulatory regime could be simplified.

3.1 Changes requested to current law governing CCI

Consumer credit insurance (CCI) is a simple product which provides much needed protection for ordinary Australian borrowers and credit card holders. Unfortunately mainly due to the piecemeal evolution of various regulations governing CCI the current regulatory regime is adding to the cost of providing this product to the detriment of consumers.

To address these concerns, IFSA believes the following changes should be made:

- CCI should have its own definition in the Corporations Act. At the moment, the only definition is contained in the definition of 'retail client' for general insurance products. As CCI can be sold as either life insurance, general insurance or as a bundled life and general insurance product, this causes confusion.
- The definition of CCI needs to recognise the full range of products sold for this purpose. The current definition does not recognise recent commercial developments. We have set out a suggested definition below.
- Given the simple nature of CCI, the following exemptions available for general insurance should also be applied to all CCI:
 - the general insurance product disclosure provisions (but regulation 7.9.16 should apply to all CCI);
 - the class order for general insurance distributors (ie. ASIC Class Order 05/1070 should not be limited to bundled CCI);
 - the ability to combine financial services guides and product disclosure statements (while regulation 7.7.08A applies to life and general insurance products, it may not be clear whether it would apply to a bundled general and life insurance product);
 - the statement of advice exemption; and
 - all forms of CCI should only require only Tier 2 level training under ASIC Policy Statement 146.
 - ASIC should amend Australian financial services licence (AFSL) authorisations relating to insurance to ensure that general insurance authorisations always include life risk CCI and life risk authorisations always include general insurance CCI. This may be achieved by amending the definitions in AFSL conditions and issuing a practice note confirming that

ASIC will administer the law as if AFSLs contain the amendment and will include the amendments when each licensee's AFSL is next varied.

We are concerned that without the amendments proposed the availability of CCI to consumers, particularly as it provides vital protection to them and their dependants, will continue to be affected. CCI provides cover if a defined event should occur to assist the borrower to repay any outstanding indebtedness under a particular loan facility. Consumers who generally take out this type of cover are those most vulnerable to financial hardship should the insured die, become disabled or unemployed. This is particularly important given the current high levels of family debt. As premiums are generally low any extra cost born by the provider, such as the provision of a SoA, can reduce the availability of the product, advice or both. We would therefore encourage Treasury to consider our proposals which would:

- Provide uniform regulation of all CCI – that is both the life risk insurance and the general insurance elements of the product,
- Relieve licensees of the cost burden associated with the provision of SoAs,
- Provide that CCI is treated in a similar manner to other well understood financial products,
- Ensure consumers can access important low cost financial products which provide vital protection for them and their families; and
- Ensure that the provision and promotion of CCI remains subject to key consumer protection requirements and prohibitions.

3.2 Nature of CCI

CCI insures the capacity of a borrower to repay their loan or a credit card holder to repay their credit card balance. It does this by paying either a lump sum or a regular amount when an insured event occurs which is likely to affect the borrower's ability to repay the debt. Insured events typically include death (to reduce the risk that the borrower's estate will be reduced by the debt if it remains outstanding at the time of death); disablement and involuntary unemployment (as being unable to work is likely to make it very difficult to repay the debt). The amount of insurance and the period of cover is directly related to the loan or credit card.

Because CCI must be linked to a loan or credit card, it is only made available when a loan or credit card is applied for or approved. In practice, lenders, their agents and credit card providers only make available one CCI product. The simple nature of the product and the fact that it is only incidental to the loan or credit card means that it is not worthwhile for a lender or credit card provider to implement the training and other measures that would be required to offer more than one product. However, the end customer is not required to obtain CCI. It is this optional aspect that can trigger the present requirement for a SoA because the end customer has the characteristics of a retail customer.

It is not practicable for customers to acquire CCI from anyone other than the lender, its agent or credit card provider. Insurers only make CCI available for particular institutions with whom they have a relationship. In theory, an end customer might be able to obtain alternative cover which is not linked to the loan or credit card. However, this will usually be more difficult because it is likely to involve meeting complex underwriting requirements. The cover may also be more expensive than CCI.

Insurers typically impose no or very few underwriting requirements for CCI. This reflects the simple nature of the product and the fact that borrowers have a direct interest in acquiring insurance to protect their ability to make debt repayments. It recognises the fact that additional insurance cover is almost always required when a new debt is incurred.

IFSA is very concerned about the levels of underinsurance in the community and believes that this has significant social and economic consequences for the Australian community. We refer to our submission relating to SoA and Life Insurance for more substantial discussion on underinsurance. Facilitating the availability of CCI will help to address these concerns in a very practical way because the simple nature of the product means that it is feasible to make it available in connection with transactions most likely to give rise to the need for additional insurance – when credit is obtained.

3.3 Structure of CCI

CCI may be issued as a general insurance contract, a life insurance contract or as a bundled product comprising a general insurance contract and a life insurance contract.

Where CCI is issued as a general insurance contract, the insurer can only provide cover for accidental death. This is because only a life insurance policy can cover death from any cause (as a result of the definition of 'life policy' in section 9 of the Life Insurance Act 1995 (Cth) (Life Act) and the limited exception for sickness and accident policies under section 9(2)).

Where CCI is issued as a life insurance policy, the insurer may only be able to provide cover for involuntary unemployment if it obtains a declaration from APRA under section 12A of the Life Act. This is because life companies are prohibited from engaging in any insurance business other than life insurance business under section 234 of the Life Act (unless they carried on that business before the commencement of the Life Act). The definition of 'life policy' in the Life Act does not refer to unemployment cover. All IFSA life company members, we believe, have obtained APRA approval to cover involuntary unemployment under their CCI policies where they issue CCI as a life insurance policy.

Because of the limitation on a general insurance company from issuing a CCI policy containing complete life cover it is very common for CCI to be issued as a bundled product comprising both a general insurance and life insurance policy. The general insurance contract will provide any unemployment cover and the life policy will cover death from any cause. Disability cover may be provided by either the general insurance company or the life insurance company because, while disability cover may be a life policy under section 9A of the Life Act if its term is at least 3 years (with certain exceptions), it may also be issued by a general insurance company if the term of the contract of insurance is less than 3 years.

3.4 CCI definition

The definition of CCI in regulation 7.1.15 is based on the definition in the Insurance Contracts Regulations 1985 (Cth) and therefore reflects the nature of CCI available over 20 years ago.

As noted above, the nature of CCI is that it is linked to a credit contract such as a loan or credit card. However, the development of consumer credit in recent years, including the development of redraw facilities, has led to matching developments in CCI. While the amount of CCI cover has traditionally been the amount outstanding under the loan or the minimum repayment at the time of the claim, the development of facilities such as redraws has led to some providers of CCI offering a 'level cover' where the amount of cover is set at the amount borrowed or the minimum repayment at the outset of the loan but does not reduce as the loan is repaid. This recognises that with redraw and advance payment facilities the principal amount of a loan and the minimum repayment may go up and down during the course of the loan. Under traditional CCI policies, consumers would need to apply for additional cover every time they make a redraw. 'Level cover' eliminates this administrative inconvenience and the risk that further cover is refused when sought, for example because the

consumer's circumstances or health has changed. However, 'level cover' CCI remains linked to the credit facility. The amount of cover does not exceed the amount originally lent.

Similarly, many debt protection products now have an automatic continuation feature meaning that the insurance policy does not terminate when the loan to which it was originally linked terminates. This means that a customer who refinances a credit facility with a different provider maintains his or her existing debt protection cover. This is to the particular advantage of customers whose health condition has changed since the inception of their original cover. This product development recognises the increased willingness of customers to switch loan providers in a competitive retail debt market.

IFSA believes that it is appropriate to update the definition of CCI in the Corporations Act to cover all CCI products as well as modern lending arrangements by making the following marked changes:

'consumer credit insurance product' means a contract or part of a contract that has the following characteristics:

- (a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of:
 - (i) the death of the insured person; or
 - (ii) the insured person contracting a sickness or disease; or
 - (iii) the insured person sustaining an injury; or
 - (iv) the insured person becoming unemployed; and

- (b) either:
 - (i) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a specified agreement to which the insured person is a party; or
 - (ii) a reasonable person in the insured person's circumstances would believe that the contract is entered into for the dominant purpose of insuring the insured person's ability to pay their liabilities under another agreement to which the insured person is a party.

This definition should replace the current definition in regulation 7.1.15. However, IFSA believes that it should also be included separately in Part 7.1 for the reasons set out below. (One way of doing this would be to make a regulation under section 764(1)(m) to 'make' CCI as defined above a financial product.)

3.5 CCI regulation

IFSA has long been concerned that the complex regulation of CCI has caused uncertainty and confusion in how various provisions of a number of Commonwealth laws and regulatory policy should be applied. Far from being complex and "not necessarily well understood by retail clients"¹² IFSA believes CCI is a relatively straight forward financial product which, by virtue of certain regulatory restrictions, has a simple application and fulfils a vital protection to consumers when borrowing from lending institutions.

The 'complexity' is more of a regulatory nature and comes from the interaction between various legislative instruments and regulatory policy¹³ and the ability for CCI to be

¹² EXPLANATORY STATEMENT Select Legislative Instrument 2005 No. 324 Issued by the Parliamentary Secretary to the Treasurer *Corporations Act 2001 Corporations Amendment Regulations 2005 (No. 5)*

¹³ Insurance Contracts Act 1984 Cth and associated regulations, Life Insurance Act 1995 Cth and associated regulations, Insurance Act 1973 Cth and associated regulations, Corporations Act 2001 Cth and associated regulations, Corporations Amendment Regulations 2005 (No.5), ASIC Class Order CO 05/1070 and ASIC Policy Statement PS146.

prudentially regulated as life insurance, general insurance or both albeit that the standard provisions are regulated under The Insurance Contracts Act 1984 Cth (ICA).

As a consequence of the 2005 Financial Services Reforms made by both regulation and ASIC Class Order Relief, which IFSA welcomed, the provision of financial services relating to CCI have become even more complex for industry and have produced several anomalies. These include CCI being included in the list of financial products to which Regulation 7.6.04A applies for which most products listed are exempted from the provision of a FSG or SoA (general insurance sickness and accident products still require a FSG and SoA) and ASIC's CO 05/1070 where the concept of a bundled CCI is introduced¹⁴.

We also note that the Corporations Act 2001 Cth (CA) adds to the uncertainty in that the only definition of CCI can be found in Section 761G(5)¹⁵ under the heading of "General insurance products" and further defined in the Regulations. The definition in the Regulations¹⁶ could equally apply to a CCI policy issued as a life insurance policy, a general insurance policy or a combination of both as it does in the ICA Regulation 21.

This gives rise to uncertainty. ASIC decided for good reason to class CCI as a separate category of financial product along with general insurance, except personal sickness and accident products, when setting the competency obligations for licensees and their representatives. However because the definition of CCI in PS146 picks up the definition from the CA there is confusion about whether CCI issued as either a life insurance policy or a bundled CCI is technically grouped with more complex products, including personal sickness and accident insurance and requires competence at 'Diploma' level¹⁷.

We therefore believe that including a separate definition of CCI unrelated to the general insurance retail client test would be the easiest way to ensure that CCI is separately identified as a 'financial product' for the purposes of Chapter 7 and thus able to become subject to a uniform set of regulations and policy regardless of the issuer. These amendments also avoid the necessity to make any alterations by way of amending the Life Insurance Act, ICA and Insurance Act.

We also note that the current draft of the Anti-money Laundering and Counter-terrorism Financing Bill 2005 also produces an anomalous outcome with respect to CCI. As the Bill is drafted general insurance is exempted however life insurance will be subject to all the

¹⁴ **Interpretation 6.** In this instrument:

bundled consumer credit insurance product means a facility that:

(a) is a consumer credit insurance product as defined by regulation 7.1.15 of the *Corporations Regulations 2001*;

and

(b) constitutes both:

(i) a general insurance product; and

(ii) a life risk insurance product as defined by section 761A of the Act.

¹⁵ **CORPORATIONS ACT 2001 - SECT 761G Meaning of retail client and wholesale client - General insurance products**

(5) For the purposes of this Chapter, if a financial product is, or a financial service provided to a person relates to, a general insurance product, the product or service is provided to the person as a retail client if: (b) the general insurance product is:

(v) a consumer credit insurance product (as defined in the regulations);

¹⁶ **CORPORATIONS REGULATIONS 2001 - REG 7.1.15 Meaning of retail client and wholesale client: consumer credit insurance product** (1) For subparagraph 761G (5) (b) (v) of the Act, a *consumer credit insurance product* is a contract or part of a contract that has the following characteristics:

(a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of: (i) the death of the insured person; or (ii) the insured person contracting a sickness or disease; or (iii) the insured person sustaining an injury; or (iv) the insured person becoming unemployed; (b) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a specified agreement to which the insured person is a party.

¹⁷

Tier 1 People advising on all financial products except those listed under Tier 2

The characteristics of this level are *broadly* equivalent to the "Diploma" level under the Australian Qualifications Framework

identification and reporting requirements. This will mean that CCI that consists only of a contract of general insurance will be exempt whereas a policy that is either solely issued as a life insurance policy or where it is issued as a bundled life and general insurance policy will be subject to the provisions of the AML & CTF Bill. Establishing CCI as a separately distinguishable financial product in the CA should assist all government and regulatory authorities to better provide uniform treatment of CCI.

Our proposal would mean that ASIC's CO 05/1070 (general insurance distributors) should be amended to remove the reference to a "bundled consumer credit insurance product" so as to be inclusive of any CCI product.

There are some other issues with the CO which also refers to a new definition:

“insurance distributor means, in relation to a financial services licensee, a person who is authorised to provide financial services in relation to risk insurance products on behalf of the licensee.”;

Because "risk insurance products" includes both general insurance and life risk products, it appears that licensees are required to hold authorisations for both life risk and general insurance to take advantage of the CO. It is also confusing that the CO refers to general insurance distributors when in fact it should also be available to CCI distributions whether the CCI distributed is life insurance, general insurance or both.

3.6 Licensing

The problems with CO 05/1070 only serve to highlight a broader problem. Many distributors of insurance specialise in general insurance and consequently only hold authorisations for general insurance. This does not cause any difficulty where they are involved in the distribution of general insurance CCI. However, the technical niceties of characterisation are often not well understood. Consequently, there is a real risk that distributors of CCI do not have the correct authorisations. This arises because of a misunderstanding when their AFSL was obtained or because they start distributing a different CCI product which is technically characterised differently, eg because it is or contains a life insurance policy.

Given the simple nature of CCI, anyone with either a general insurance or life risk authorisation should be able to distribute CCI. Unfortunately, that is not the case currently because of the categories and definitions employed by ASIC in AFSLs. This problem could be easily solved by ASIC amending the standard AFSL conditions to include definitions of general insurance product and life risk insurance product that refer to the definitions of those terms in S761A but in each case go on to include life risk CCI (in the case of the general insurance product definition) and general insurance CCI (in the case of the life risk insurance product definition). This would mean that a licensee authorised to distribute general insurance would automatically be authorised to distribute life risk CCI as well and vice versa.

Including these definitions in the standard AFSL conditions will not directly help existing licensees. However, rather than requiring individual licensees to apply for a licence variation, IFSA submits that it should be sufficient for ASIC to issue a practice note confirming that ASIC will administer the law as if AFSLs contain the amendment and will include the amendments when each licensee's AFSL is next varied.

3.7 Consumer Protection

IFSA believes that it is important that any regulatory complexities be removed to ensure consumers have ready access to this form of insurance cover, particularly in a society with such a high level of borrowings. However, IFSA also recognises that there should not be any

dilution of the necessary consumer protection mechanisms. In particular, the following protections will continue to apply if the changes sought are made:

- prohibition on misleading and deceptive conduct (under both the CA and the ASIC Act);
- advisers must have a reasonable basis for advice – although the need for this protection is questionable and potentially adds unnecessary cost as it is almost inconceivable that a borrower would not need additional insurance when obtaining finance;
- the hawking prohibition will continue to apply;
- unconscionable conduct will be prohibited;
- CCI providers and distributors will need to have internal dispute resolution procedures that deal with CCI complaints;
- the consumer will retain their right to have a complaint dealt with by an external dispute resolution body – e.g. FICS, IOS or IBDL; and
- licensees will remain responsible for the acts of their representatives in relation to CCI and will be liable for that conduct.

IFSA believes that these mechanisms provide a sensible level of protection in relation to a simple product such as CCI.

PART 4. BREACH REPORTING

IFSA response to consultation proposal 8.4: IFSA strongly supports the use of consistent policies and documentation by both regulators in order to avoid confusion/repetition and reduce compliance related costs. These submissions are summarised below.

We refer to consultation proposal 8.4 and make the following comments in respect of inconsistencies between legislation referring to breach reporting requirements between ASIC and APRA.

IFSA considers that it is appropriate to address the inconsistencies arising from the current ASIC/APRA “twin peaks” breach reporting regime. For reference purposes only, the below diagram indicates some of these inconsistencies:

	Inconsistency	ASIC Requirements - AFS Licensee	APRA Requirements - RSE Licensee
1	Source of Obligation to Notify Breach	<i>s912D Corps Act. and s601FC(1) Corps Act.</i>	<i>s29JA SIS Act.</i>
2	Obligations that if breached are reportable	s912D Includes all of legislation reportable by RSE licensee except Financial Institutions Supervisory Levies Collection Act. Also includes other legislation including <i>Superannuation (Resolution of Complaints) Act</i> . s601FC any breach of the Corporations Act which relates to a Managed Investment Scheme which is (or likely to have) a materially adverse effect on the interests of members.	Most limited range of laws but includes risk management strategies and plans.
3	Likely breaches	Reportable but very narrow definition of “likely” (<i>s912D(1A) Corp Act</i>). Reportable but “likely to breach” is not defined in s601FC.	Not reportable.
4	Insignificant or trivial breaches	Not reportable.	Reportable.
5	Reporting timeframe	s912D As soon as practicable, and in any event within 5 business days, of becoming aware of the breach or likely breach (<i>s912D(1)(b) Corp Act</i>).	As soon as practicable and in any event within 14 days after becoming aware that a breach has occurred (<i>s29JA SIS Act</i>).

		s601FC as soon as practicable after becoming aware of the breach	
6	Content of report	A report on the “matter”.	A notice setting out “particulars” of the breach.
7	Offence if fail to report	50 penalty units or imprisonment for one year or both.	50 penalty units. Strict liability offence.

IFSA has made a number of detailed submissions to the effect that legislation should be applied and administered uniformly by both regulators. IFSA strongly supports the use of consistent policies and documentation by both regulators in order to avoid confusion/repetition and reduce compliance related costs. These submissions are summarised below.

IFSA considers that the following measures will result in a more appropriate and effective regime.

- a) Reporting trigger/threshold dictating when a breach should be reported. IFSA considers that the s912D reporting requirement (ie significant breaches having regard to a number of factors) is the appropriate threshold. In addition, any obligation to report “likely”, trivial or insignificant breaches at a particular point should be removed from the legislation - if the legislation does not include such a limitation, the regulators will receive more breach notifications than are appropriate or useful. IFSA considers that it is not in the interests of investors to report all breaches to the regulator without first considering their significance, particularly in view of the administrative burden associated with assessing and reporting breaches.
- b) There is difficulty in the practical application for two provisions in the Corporations Act (sections 601FC and 912D) for one product set (managed investment schemes). IFSA considers that the s912D reporting requirement is appropriate.
- c) Reporting timeframe. IFSA considers that a standard reporting time frame should be adopted, and suggests 21 days as an appropriate period. The current timeframe of 5 business days (s912D Corps Act) is not considered enough time for the licensee to identify possible breaches, obtain legal advice, have the relevant committees or boards consider the possible breach and report to the regulator/s.
- d) Standardised penalties/liability provisions for both regulators. In the event of failure to report a breach, ASIC may currently impose a fine or imprisonment on individuals or a fine for a company whereas APRA may impose a fine and the failure equates to a strict liability offence. IFSA considers that the penalties should be standardised and further, that strict liability provisions are inappropriate. The current APRA provisions may result in strict liability offences occurring in inappropriate circumstances, for example if reporting is one day late, or the breach of the law is technical and investors are fully compensated.

IFSA understands that the above proposals are in line with submissions previously made by both The Association of Superannuation Funds of Australia Limited (ASFA) and the Industry Funds Forum, ie there is a commonality within the industry in respect of this issue.

PART 5. RETAIL / WHOLESALE DEFINITIONS

5.1 SMALL BUSINESS TEST

IFSA response to consultation topic 1.8: The current small business test should be simplified so that the same number of employees applies whatever the type of business. This will increase efficiency in the provision of financial services because service providers will not need to make arbitrary assessments of the kind of business they are dealing with. The test should also recognise that many businesses now employ contractors and form part of larger corporate groups.

The current small business test should be simplified so that the same number of employees applies whatever the type of business. This will increase efficiency in the provision of financial services because service providers will not need to make arbitrary assessments of the kind of business they are dealing with. The test should also recognise that many businesses now employ contractors and form part of larger corporate groups. Consequently, the test should be changed to:

- **small business** means a business that, together with other businesses operated by the owner of the business (**owner**) or, if the owner is a body corporate, by any related body corporate of the owner, has less than the equivalent of 20 employees and contractors.
- **contractor** means a person that has been engaged by a business to provide services to or for the business on a full-time basis for at least three months.

In addition, there should be alternative tests that a business can meet to be a wholesale client. One alternative would be the 20 employees/contractors test. Other alternatives should include assets and turnover. If the business meets any one of these tests it would not fall within the retail client definition and would be a wholesale client. IFSA is currently consulting with its members about the appropriate level for these tests. However, it will be essential for the service provider to be able to rely on data supplied by the client to satisfy the test and once a financial service is provided, that there be no ongoing obligations to 'retest' for compliance with the test. This means that sections 761G(8) and (9) should be changed so that a service provider's only obligation is to ask the client for the information required to establish whether the client is a wholesale client and the service provider would be able to rely on the information received from the client to satisfy any evidential burden of proof. IFSA also believes that it should not be necessary to obtain an accountant's certificate for any of these tests.

5.2 TREATMENT OF SUPERANNUATION TRUSTEES

IFSA response to consultation topic 1.9: This proposal is fully supported. IFSA requests that it be made clear that the retail client test in section 761G(6) does not apply to non-superannuation financial services provided to trustees of superannuation funds

We support consultation topic 1.9.

Another difficult problem for the industry is that superannuation trustees who acquire interests in pooled superannuation trusts (PSTs) are always treated as retail clients whether the acquiring fund is large or small. IFSA believes that only trustees of small self-managed

superannuation funds should be treated as retail clients and only if the trustee or all of its directors would not otherwise qualify as wholesale clients.

In addition, IFSA requests that it be made clear that the retail client test in section 761G(6) does not apply to non-superannuation financial services provided to trustees of superannuation funds, for example where superannuation trustees receive investment management, asset consulting and custodial or depository services.

Section 761G(6)(c)(i) of the Act provides amongst other things that if a financial service (other than the provision of a financial product) provided to a person who is the trustee of a superannuation fund that has net assets of at least \$10 million relates to a superannuation product, that does not constitute the provision of a financial service to the person as a retail client. As the services referred to above do not relate to a superannuation product, this test does not apply.

However, ASIC has taken a different interpretation in QFS 150. Which creates difficulties for wholesale service providers as they have to apply a different test for superannuation trustees than applies to other clients and creates inefficiencies and limits the products and services available to superannuation trustees. IFSA submits that s.761G(6) should be clarified so that it only applies to superannuation products and services directly relating to superannuation products and does not apply to other products provided to or dealt in by superannuation trustees or services relating to such products.

Alternatively, section 761G(6)(c)(i) should be confined to self-managed superannuation funds.

5.3 TREATMENT OF EMPLOYERS

IFSA response to consultation topic 1.10: There is a commercial need to distinguish the tender and advice arrangements engaged in by Superannuation product issuers with Employers as being wholesale rather than retail for the purpose in particular of the application of the 'advice' regime under the law.

We refer to consultation topic 1.10. We support the proposal contained in the topic on the basis that the small business test is changed in the manner discussed above.

Corporate superannuation product issuers are engaged in the business of providing 'advice' about their products to employers, including about investment options and insurance options as well as default options. The nature of the Employer Superannuation 'tender' and advice environment does not practically align with retail advice obligations.

Consequently, in addition to the change proposed in consultation topic 1.10, the small business test changes as recommended above should be supplemented by an exemption from the retail advice obligations where the issuer of a corporate superannuation product is providing a service including advice to an employer through a licensed consultant or adviser engaged by the employer. In this case, the employer would only be a wholesale client of the licensed consultant or adviser if the employer met the modified small business test.

5.4 RELATED BODIES CORPORATE

IFSA proposal: Section 761GG(4A) should be amended to make it clear that related bodies corporate of wholesale clients are also wholesale clients.

There is still room for confusion in the wording of 761GG(4A) (inserted by regulation 7.6.02AD) to the extent that it suggests that the corporate wholesale client must be a client and must acquire the service for a related body corporate to be treated as a wholesale client. Unfortunately, the Explanatory Statement does not assist in determining whether that is the intended outcome. The provision should be amended as follows:

'For the purposes of this Chapter, if a body corporate (*wholesale body corporate*) would be a wholesale client if it acquired a financial product or financial service, each of its related bodies corporate is also a wholesale client when it acquires that financial product or financial service, whether or not the wholesale body corporate acquires or has previously acquired the financial product or financial service.'

5.5 SICKNESS AND ACCIDENT INSURANCE

IFSA response to consultation proposal 1.21: This proposal is supported but IFSA recommends that its proposal in relation to Group Risk arrangements would solve the problem without creating any regulatory imbalance between life risk insurance and general insurance. In any case, any solution must extend equally to both.

It is probable that insurance written with employers as owners to cover their employees from lost income due to illness or accident is more likely to be written as life risk insurance than general insurance.

This proposal is supported but IFSA recommends that its proposal in relation to Group Risk arrangements would solve the problem without creating any regulatory imbalance between life risk insurance and general insurance. In any case, any solution must extend equally to both.

The exemption should, however, be extended to cover any insurance arrangements which cover employee benefits, share purchase and partnership insurance arrangements or key person arrangements.

5.6 'BUNDLED' GENERAL INSURANCE PRODUCTS

IFSA response to consultation proposal 1.11: Comments are sought on whether it is appropriate to treat predominantly wholesale bundled general insurance products as totally wholesale and, if so, what conditions or protections should apply to ensure that genuinely retail clients are not prejudiced.

We refer to consultation proposal 1.11 that propose whether it is appropriate to treat predominantly wholesale bundled general insurance products as totally wholesale.

IFSA supports this proposal and recommends that, in accordance with the spirit of principle based regulation, the only limitation should be that the bundled products are sold or commence at the same time and the wholesale component should be the predominant element of the bundled product. In the explanatory material, the Government could give some

examples by way of guidance on this. One example could be a bundled product where the premium for the wholesale component(s) exceeds the premium for the retail component(s).

IFSA believes that CCI is another example of a product which is sometimes structured as a bundled product for which the regulatory regime could be simplified. This is explored above in detail in Part 4 of this submission.

5.7 GROUP INSURANCE

IFSA proposal: We submit that Group Risk products with 10 or more members should be deemed to be wholesale business. The definition of Group Risk should be the same as in section 1012H(1)(a) and (b), ie a contract of insurance that covers or is designed to cover a group of people. This would apply to both life and general insurance contracts. S1012H should also be changed so that insurers are only required to provide information about the cover to the policy owner who can then distribute it to group members.

We refer consultation topic 1.8. We submit that Group Risk products with 10 or more members should be deemed to be wholesale business. The definition of Group Risk should be the same as in section 1012H(1)(a) and (b), ie. a contract of insurance that covers or is designed to cover a group of people. This would apply to both life and general insurance contracts.

If a Group Risk policy has 10 or more members at the outset, it should remain a wholesale product even if membership subsequently drops below 10 members.

IFSA believes that this approach is the most logical and efficient definition for Group Risk products. It recognises that some retail insurance products may cover more than one person (such as a married couple or a parent and their children). Such products will continue to be retail products. However, Group Risk policies are sold on a different basis to retail insurance.

The problem with the current small business test is that it does not allow Group Risk products to be purchased by smaller employers. The present 100 employee rule for manufacturers effectively precludes these employers from buying Group Risk insurance, as insurers can't economically meet the retail client tests at the member level in particular for this type of product. For example:

The insurer may not know who the members are, and even if the insurer has names or dates of birth, they are unlikely to hold address information, as all correspondence is with the policy owner

The costings for, and infrastructure that back Group Risk products are such that insurers cannot provide the product at economic cost when the Plan tends to take on a retail client status.

If the present wholesale client tests are not relaxed for Group Risk, some employers will not be able to purchase this type of product. This means that if the employer is in an industry where their employees work in occupations that are high risk from a life insurance underwriting perspective, then those employees effectively will not be able to purchase life insurance. This is because the employees are unlikely to be able to meet the individual underwriting process associated with purchasing insurance privately, and even if they can qualify, it may be at an unaffordable premium. So the present small business tests can preclude those employers and their employees from purchasing life insurance.

Section 1012H should also be changed so that an insurer is only required to provide information about the group policy to the policy owner. However, the information provided should be in a form that is capable of being given by the policy owner to insured persons and should be the information that is relevant to members for the particular group policy. The obligation to deliver that disclosure information to members insured should rest with the policy owner and not the insurer who will not necessarily know who the members are, and/or where they are located. The disclosure material provided should be directly related to the terms of the policy that affect the member (ie the major benefits, definitions and exclusions), and not have to meet all of the prescriptive provisions for retail clients and PDS's. The information must not be misleading or deceptive. This will ensure that relevant information about cover is available to group members without imposing an unreasonable burden on insurers.

Group Risk insurance arrangements are based on the insurer receiving a premium in a single amount from the policy owner. How the employer/trustee accumulates money to pay the premium or what sources the premium might be collected from will in most cases not be known by the insurer.

We also refer to IFSA's submission of 10 June 2005 to the extent that it is consistent with our submission here on Group insurance. We would be happy to further consult on this matter.

PART 6. COMPANY REPORTING OBLIGATIONS

6.1 CONCISE REPORTING REQUIREMENTS

IFSA response to consultation proposal 2.1: IFSA supports the simplification of concise financial reports.

IFSA believes that one of the driving factors behind the significant “opt-out” rates in relation to annual reports and concise financial reports is their length and complexity. Therefore, IFSA supports reducing the content of the concise report to ensure that it remains concise and meaningful to investors.

However, IFSA is not convinced that removing the remuneration report from the director’s report and requiring it to be a stand alone document is the most appropriate solution.

In this context, IFSA would like to raise a related issue with the Remuneration report. IFSA believes that issues remain with the Report where a particular director’s remuneration is determined on the basis of their contribution and value to a conglomerate organisation. In such a case, where only one salary package for this integrated effort is received, difficulties arise in relation to apportionment and presentation in the Report.

This is further complicated by the fact that the differing legislative or licensing obligations impose different levels of requirements (eg. MIA v SIS) when preparing.

IFSA also believes that any changes to the concise report should be considered in the context of related Recommendation 5.20 in the Rethinking Regulation Report. Recommendation 5.20 deals with Annual Reports being made available on the Internet, with hard copies to be provided only on request. This Recommendation is further explored below in IFSA’s submission.

6.2 EXECUTIVE REMUNERATION – DISCLOSURE REQUIREMENTS

IFSA response to consultation proposal 2.2: IFSA strongly supports rationalising the existing legal and accounting framework.

IFSA has previously argued for the need to rationalise the existing legal and accounting framework dealing with director and executive remuneration.

One of IFSA’s primary concerns with the move towards International Accounting Standards has been the loss of control over those standards by domestic standard setting boards such as the AASB.

As a consequence, IFSA has previously suggested that it prefers the relevant requirements being wholly contained in the Corporations Act, where the government is able to exercise its own judgment and interpretation as to how the obligations ought to be applied.

Alternatively, the policy aspects of the requirements should be contained in the Act, with the quantitative elements in the Standard. This approach would also significantly aid in

simplifying the application of the two without affecting our compliance with international standards.

6.3 CEO/CFO SIGN-OFF

IFSA response to consultation proposal 2.3: IFSA is confident that the ASX Corporate Governance Council will adopt this proposal.

As a representative on the ASX Corporate Governance Council, IFSA is aware that the Council's Principles of Good Corporate Governance are presently being reviewed. The review includes addressing any misalignments between the obligations contained in the *Corporations Act 2001* and in the Council's Principles of Good Corporate Governance.

Therefore, IFSA believes that this issue will be appropriately addressed through the Principles review process.

6.4 THRESHOLDS FOR FINANCIAL REPORTING OF LARGE PROPRIETARY COMPANIES.

IFSA response to consultation proposal 2.4: IFSA agrees with Recommendation 5.21 of the Rethinking Regulation Report on this matter.

The criteria for determining whether a proprietary company is small or large have not been changed since they were established in 1995. This has led to increasing numbers of relatively small companies being defined as large proprietary companies and thus subject to the reporting requirements.

IFSA therefore believes that the thresholds should be reviewed on a regular basis.

6.5 REMOVAL OF DUPLICATION IN NOTIFICATIONS

IFSA response to consultation proposal 2.5: IFSA agrees with removing duplication in this context.

6.5.1 Change in officeholders

IFSA believes that duplication in this context may not be a significant issue due to Form 370 not being mandatory, while Form 484 is mandatory. Nevertheless, IFSA believes that it is unnecessary for two forms to deal with the same changes to company details and therefore this duplication should be removed.

6.5.2 Maintenance of registered office address

A single notification process is preferred as it will simplify the process and reduce an ongoing administrative burden. Wherever possible and appropriate, the use of a single form for notification of any changes to company details (Eg. Form 484) should be preferred to separate forms to be used only for specific purposes.

6.6 SHARE AND MEMBER REPORTING REQUIREMENTS

IFSA response to consultation proposal 2.6: IFSA supports the removal of unnecessary reporting obligations relating to member lists.

IFSA supports the removal of the obligation for public companies to notify ASIC of the top 20 members in each class of shares as part of the annual review process provided the information remains publicly available.

6.7 REMOVAL OF ANNUAL REVIEW FEES FOR COMPANIES APPROVED FOR VOLUNTARY DEREGISTRATION

IFSA response to consultation proposal 2.7: IFSA supports the removal of the obligation to pay the annual review fee for those companies that have applied for voluntary deregistration.

IFSA supports the removal of the obligation to pay the annual review fee for those companies that have applied for voluntary deregistration.

IFSA is aware of instances where these fees will be incurred by a company even though it has lodged its notice of termination but may need to wait a period of time before it has settled any outstanding regulatory issues and/or has undergone due process so that the regulator can then confirm the deregistration. During this period, the company may have audited nil balance financial accounts and therefore no means of paying the fee.

Additionally, we consider that this relief should be extended to the winding up of managed investment trusts where the audited accounts show a nil balance. Again, these are subjected to a deregistration process that can require approximately 3 months before ASIC can declare the trusts deregistered.

6.8 PARENT ENTITY FINANCIAL STATEMENTS

IFSA response to consultation proposal 2.8: IFSA believes that where consolidated financial accounts are lodged, separate parent entity financial statements should not be required.

PART 7. CORPORATE GOVERNANCE

7.1 RELATED PARTY TRANSACTIONS

IFSA response to consultation proposals 4.1.1, 4.1.2: IFSA does not believe that a clear rationale for these amendments has been outlined and hence is concerned at their appropriateness and the signal they could send to the market.

IFSA does not believe that an adequate case has been made for the need to make any amendments in this area.

The *Corporations Act 2001* presently provides for appropriate policy exceptions to the need for member approval in cases where, for example, the transaction is at arm's length or the benefit is in the form of remuneration to a related party as an officer or employee or is a payment of expenses incurred or to be incurred, or reimbursement for expenses incurred by a related party as an officer or employee.

7.3 EXTEND THE BUSINESS JUDGMENT RULE

IFSA response to consultation proposal 4.3: IFSA does not believe that an adequate case has been made out to support such a significant change to the nature of director's duties.

Director's duties are a fundamental part of our corporate governance framework as they seek to ensure that directors always act in the best interests of shareholders as a whole.

Therefore, IFSA believes that any amendment to director's duties must be carefully considered against this critical aim.

It appears from the text Item 4.3 that the rationale behind this proposal is to introduce a consistent defence for directors, given that the business judgment rule only applies to section 180 (Exercising powers with care and diligence) of the *Corporations Act 2001* (the Act).

IFSA is concerned, however, that the extension of the business judgment rule (or an alternative) to other duties may result in confusion for directors and shareholders as to how director's should carry out their functions/responsibilities.

In addition, IFSA questions the policy rationale behind providing a defence to a director for using information for their own benefit or for trading while insolvent.

For example, section 182 deals with improper use of position for personal gain or to cause detriment to the corporation. It is unclear how the business judgment rule (or an alternative) would interact with such a prohibition and whether, in fact, it is possible for someone to fulfil the elements of this offence and at the same time have acted in good faith and for the corporations benefit (using the elements of the suggested defence in Item 4.3 of the paper).

As a result, IFSA does not believe that an adequate case has been made out to support such a significant change to the nature of director's duties. However, IFSA does support greater consistency as to the obligations placed on directors more generally, including through further consideration of obligations/defences under the Corporations Act and the separate ASIC and APRA licensing and conduct requirements.

7.4 GREATER FLEXIBILITY FOR COMPANY MEETINGS

IFSA response to consultation proposal 4.4: IFSA is concerned that this proposal may reduce the burden on companies at the expense of shareholders.

It is unclear what types of amendments are being proposed under this item. Therefore, we can only provide more detailed comments once more information is provided on the specific rules that would be affected by this proposal.

Importantly, IFSA believes that the proposal has the potential to shift costs from companies to investors if the standardised processes in the Act for company meetings are replaced by companies to suit their own needs.

This will force individual and institutional shareholders to review all company constitutions to determine, for example, when proxy votes must be lodged and how they are to be voted at the meeting.

PART 8: OTHER SIGNIFICANT MATTERS

8.1 SECONDARY SERVICES PROVIDERS

IFSA Response to consultation topic 1.16: Secondary Services Providers should be relieved of their obligations to retail clients where:

- i. the intermediary passes on a secondary service to retail clients without authorisation or contrary to agreement between the parties; or
- ii. services or information which are provided by the SSP to the intermediary for their use, which inadvertently become financial services when passed on to a retail client.

We refer to consultation topic 1.16 and broadly support the proposal that Relief could be provided where the intermediary accepts responsibility to the retail client for the financial services provided by both.

In line with the current relief under Regulation 7.7.02(7), provided that there is a written agreement between the parties as to who accepts responsibility for the financial service/s provided by either the Secondary Service Provider (SSP) or the Intermediary, then the party who is not responsible should be provided with relief from all other obligations to the retail client. In this way the parties can negotiate between themselves to ensure the best outcome whilst maintaining protection for the client. In this way the obligations to the retail client can be provided by the party to the transaction who is in the best position to do so.

Where the parties are unable to agree who is to be responsible then the status quo is maintained and each respective party maintains their existing obligations to the retail client. However the relief should specify that a SSP is not providing a financial service to retail clients where:

- (a) the intermediary passes on to retail clients, information or services provided by the SSP without their authorisation or contrary to any agreement between the parties; or
- (b) services or information which are provided by the SSP to the intermediary for their use, which are not financial services, become financial services when passed on to a retail client.

8.2 AUTHORISED REPRESENTATIVES (CROSS ENDORSEMENT)

IFSA response to consultation proposal 1.23: IFSA supports the proposition of refining the cross-endorsement requirements of the legislation. We submit, however, that the current liability arrangements in relation to 'cross endorsement' affect more than just general insurance agents. The law should be changed to refer to classes of financial products (not just risk insurance products as suggested) this will encourage more to agree to cross endorse resulting in many more clients receiving the majority of their financial service requirements from their chosen provider.

We refer to consultation proposal 1.23.

It is submitted that the current liability arrangements in relation to 'cross endorsement' affect more than just general insurance agents. Concerns over liability result in many licensees refusing to cross endorse with other licensees even where the class of financial products (as opposed to services) differ, consumers are thus prevented from dealing with one licensee who can arrange a broad range of services.

Life and general insurance brokers and financial planning licensees often have a licence that covers advice and dealing as well as common authorised financial products and yet refuse to 'cross endorse' with one another where the authorised representative wishes to provide the client with financial services covered by both licenses. Where licensees do agree to cross endorse the risk is partly managed at present by 'tailoring' FSGs and while this provides some protection from joint liability under s917D, a greater degree of certainty would be welcomed and should encourage a greater level of cross endorsement and therefore the ability for more clients to access complementary financial services from the one authorised representative.

For example, licensee A might specialise in personal lines of general insurance and have that class of financial product on their licence but also have life risk insurance on their licence for the odd occasion that they arrange it for clients. Licensee B may specialise in financial planning having managed investments and life insurance on their licence but also have general insurance on its licence for the odd occasion they arrange that for clients. Adviser C may be qualified to provide financial planning, life insurance and general insurance advice and authorised by B for financial planning but because of the broad range of general insurance available via A wish to be authorised by A for personal lines business. Because A & B have 'advise and deal' as financial services on their licence and both have life and general insurance on their licence both would be reluctant to agree to cross endorsement. If however the law could be changed to refer to classes of financial products (not just risk insurance products as suggested) this may well encourage more to agree to cross endorse resulting in many more clients receiving the majority of their financial service requirements from their chosen provider.

To achieve this it would be necessary to modify certain definitions and paragraphs that refer to financial services to also refer to financial products and classes of financial products. For example s916A(1), (2) & (3) could be modified as follows:

How representatives are authorised

- (1) A financial services licensee may give a person (the *authorised representative*) a written notice authorising the person, for the purposes of this Chapter, to provide a specified financial service or financial services which may be in relation to a specified financial product or class of financial products on behalf of the licensee.
- (2) The financial services and any financial products specified may be some or all of the financial services or financial products covered by the licensee's licence.
- (3) An authorisation under subsection (1) is void to the extent that it purports to authorise a person to provide a financial service whether or not in relation to a financial product:
 - (a) that is not covered by the licensee's licence; or
 - (b) contrary to a banning order or disqualification order under Division 8.

8.3 ANNUAL REPORT REQUIREMENTS FOR MANAGED INVESTMENTS AND SUPERANNUATION FUNDS

IFSA Proposal: We request that annual report requirements for both managed investments and super be harmonised and further clarification for the distribution of these reports.

We refer to Recommendation 5.20 of the Rethinking Regulation Report which seeks comments on the merits of introducing amendments to allow companies to make annual reports available on the internet and require hard copies to be sent only to investors who request them.

The Report indicates that the underlying policy objective of promoting informed investors would still be achieved by establishing, as a default requirement, that companies make their annual reports available on the internet. The Report also notes that there would be merit in extending such arrangements to other entities such as superannuation funds and managed investment schemes.

The annual report requirements for managed investments and superannuation funds are currently contained in separate sections of the Corporations Act (section 314(5) for managed investments and section 1017DA for superannuation products). Difficulties (and indeed confusion) can arise in the practical application of separate Corporations Act provisions for similar product sets. IFSA considers that, to the extent possible, the annual report requirements should be merged into one section, preferably Part 7.9 of the Corporations Act.

IFSA also considers that further clarification is required regarding distribution of annual reports. Further consideration needs to be given to a default requirement that superannuation funds and managed investments be allowed to make their respective annual reports available on the internet.

IFSA's rationale for supporting these amendments is the same as that outlined in the Report, namely:

- Approaching individual investors to obtain positive consent would be a time-consuming and costly task, and response rates are often low.
- In light of the increasingly widespread availability and uptake of information technology in Australia, disclosure obligations to investors would still be achieved by establishing as a default requirement that issuers make their annual reports for their respective products available on the internet (or via email).
- This should be accompanied by a safeguard that the annual report would be made available in hard copy at no charge to any investors upon request.

This would enable annual reports for both managed investments and superannuation funds to be provided to members electronically (for example, by sending them a link containing the report, by emailing the report to them or alternatively, by including the report on the issuer's website).

Finally, IFSA considers that the existing "opt out provisions" in section 316(1)(a) should be extended to cover superannuation funds.

8.4 ELECTRONIC RETENTION OF RECORDS

IFSA proposal: IFSA requests that a consistent approach be adopted across all legislative regimes in relation to the ability to retain documentation electronically.

A systematic approach to the management of records is essential to protect and reserve records as evidence of actions. There are two broad components of record retention:

- (a) Legal requirement to retain records. For example, the requirement under the Life Insurance Act to retain a register of assignments of life policies.
- (b) For other business/commercial reasons. For example, for the purpose of litigation and/or complaints handling.

The *Evidence Act 1995* (Cth) provides that an electronic record of a document is an acceptable form of evidence in court. That is, an electronic copy of a document is considered a true copy of that document.

In addition, the *Electronic Transactions Act 1999* (Cth) permits, among other things, the following requirements to have been met if the person records the information in electronic form:

- (a) requirement to provide information in writing;
- (b) requirement to produce a document; and
- (c) requirement to record information.

However, the Electronic Transactions Regulations 2000 (Cth) exclude certain legislation from having the benefit of that provision. Relevantly, the Superannuation Industry (Supervision) Act, Life Insurance Act, Corporations Law, Insurance Contracts Act, Insurance Act, Proceeds of Crimes Act, Trade Practices Act and Workplace Relations Act are all excluded Acts.

Accordingly, if there is a requirement under any of the excluded Acts to maintain a document in writing, then it is not possible to rely on the Electronic Transactions Act to maintain that document in electronic form.

The policy rationale for excluding these Acts is unclear. Therefore, given the cost impost involved in unnecessarily maintaining documents in writing, we request that the list of excluded legislation in the Electronic Transactions Regulations be revised.

More specifically, legislation included on the excluded list that is relevant to the financial services industry should be removed by a corresponding amendment to the relevant regulations.

Clearly the Electronic Transactions Regulations are out of date and are not reflective of current business practices in light of the widespread usage of information technology in Australia. The costs of storing hard copies of documentation far outweighs any benefit given the fact that a replica of the document can be maintained in its original form and accessed electronically on request.

We also request that there be a formal acknowledgment that, for the purposes of the financial services industry, electronic retention of records required to be maintained under Federal legislation purposes is acceptable.

8.5 OTHER MATTERS

8.5.1 Threshold requirements for Statements of Advice (Topic 1.19)

We refer to our submission relating to SoA for life insurance. We believe there is merit to consider similar SoA relief for superannuation and managed investment products in relation to minor advice occurring with respect to these products.

IFSA has not considered this proposal in full and may provide further material.

8.5.2 Overlap of requirements in the Corporations Act and ASX Market Rules (Topic 1.23)

IFSA welcomes the ASX's proposal to refine and rationalise its Market Rules, particularly in relation to removing overlap between the Rules and the Corporations Act.

8.5.3 Sophisticated investors (Topic 1.22)

IFSA supports accreditation of retail investors as wholesale and consider that accreditation should be made available for dealing in the full breadth of financial products, not just those traded on market.

8.5.4 Group Licensing (Topic 1.24)

IFSA is not in a position to comment on why group licensing has not been taken up. We believe, however, that members companies have chosen not to avail themselves of group licensing for their own reasons.

8.5.5 Policy Statement 146 – training requirements (Topic 1.26)

IFSA is unclear if there is a need to consider streamlining the training requirements as PS 146 already provide the minimum standards.

8.5.6 Jurisdictional Reach

We refer to consultation proposal topic 1.13.2. We are supportive of any attempt that could clarify the extent of jurisdictional reach of offshore branches of Australian AFSL's. Products and services offered by AFSL holders to overseas investors should logically be governed by overseas law.

8.5.6 Anomalies arising from CLERP 9

IFSA supports addressing the identified anomalies.

IFSA believes it is excessive for regulations to hinder activity which is not inappropriate and which would otherwise be carried on in the "ordinary course of business".