



Investment & Financial Services Association Ltd

ACN 080 744 163

4 December 2007

Mr Geoff McCarthy  
Technical Leader Financial Services  
Australian Securities & Investment Commission

**By Email:** geoff.mccarthy@asic.gov.au

Dear Geoff

## **GROUP INSURANCE ARRANGEMENTS**

Thank you for meeting with IFSA on Thursday 15 November to discuss the proposed Class Order relief.

We welcome the additional opportunity to detail the specific reservations we have regarding a number of the proposed conditions contained in ASIC's discussion paper.

As discussed, IFSA members retain considerable concerns about the implications which would arise if the proposed class order were introduced as proposed.

Our concerns stem from the new regulatory burden that the class order would create for group insurance arrangers. The size and structure of insurance arrangers varies widely and we submit that many will not be in a position to meet the additional obligations that might be imposed on them.

The proposed class order would, however, have the effect of discouraging these firms from helping members and employees due to the additional regulatory burden.

The effect of this will be to reduce the availability and affordability of insurance to the community.

In addition to these comments, it was agreed at the at the meeting that ASIC consider the following points in relation to the impact that proposed relief may have on group insurance arrangements as outlined in our previous submissions dated 30 July 2007 and 5 September 2007.

## Background

ASIC have been asked to confirm whether:

- Group arrangers are required to hold an AFS licence;
- Group arrangers are required to register as a managed investment scheme;
- Insurers are required to take reasonable steps to ensure such group arrangers have provided a PDS prior to their inclusion in a scheme.

It is ASIC's belief that the relevant sections of the Corporations Act do apply but that this is not the intent behind the legislation.

IFSA agrees with this position and supports the intent of the relief. On the surface, it seems like a positive initiative by ASIC that could act to offer certainty to group insurance arrangers from a legal perspective.

However, some of the associated conditions will impose onerous requirements on insurers and arrangers that would potentially reverse the effect of the relief. We submit that the proposed relief as proposed will discourage group insurance arrangements and contribute to the underinsurance problem.

While group insurance arrangements have been around for a number of years, they are still in their infancy when viewed in light of the substantial structural changes the industry has undergone since the 1970's.

Employers, as policy holders, also help reduce underinsurance as they use their policy as a means of attracting and retaining staff. Similarly, member organisations use it as a way of adding benefits and promoting growth in their membership base.

Generally, the benefits of these arrangements to consumers are more generous underwriting terms and reduced premium rates compared to standard insurance policies.

## **IFSA's plan for the life insurance industry**

In July 2007, IFSA released the Headland Statement '**Securing Australians' Financial Wellbeing**' after 12 months of reviewing the life insurance industry outlook. The Statement provides a framework to increase the financial security of families, individuals and small business owners and outlines key objectives to increase awareness of, support for and simplification of life insurance products and regulation.

The broad direction of the Headland Statement is very much aligned with ASIC's regulatory principles. This Class Order relief in such a critical area to our industry is an important step forward, however it must ensure that:

- it removes existing uncertainties for insurers and arrangers;
- it protects the interests of consumers;
- it doesn't impede on arrangements that are already in place; and,
- it doesn't impose any additional compliance burdens that would reduce the attractiveness of future arrangements.

We understand this to be broadly consistent with ASIC's own principles and we want to work with ASIC on refining the conditions.

As a consequence IFSA submits an alternative proposal that's still consistent with the stated objectives of the Class Order relief. Our alternative proposal is derived primarily from discussions with ASIC during our recent meeting.

### **Proposed condition 3.3**

#### **(a) Independence of the group purchasing body**

We note that under point (iii) a group purchasing body may not rely upon the proposed relief where it receives any payments related to the purchase of the group policy not passed on to the persons who pay for cover.

Under Multinational Pooling Arrangements, remuneration does not pass from the insurer to the group purchasing body, however under some arrangements remuneration may be received from the multi-national company. These amounts may be returned to members, or retained by the national company. Due to the nature of the pooling arrangement, we submit that these amounts are not directly attributable to any individual person who pays for cover, but rather relate to the overall experience of the worldwide claims pool.

#### **Submission**

In order to preserve MPAs we request, subject to the disclosure and participation submissions outlined below, that either:

- (i) Remuneration paid to the group purchaser be allowable within condition 3.3(a); OR
- (ii) Remuneration amounts for the purpose of distributing the profits from pooling arrangements be allowed within condition 3.3(a); OR
- (iii) Remuneration amounts for the purpose of distributing the profits from pooling arrangements be allowed within condition 3.3(a) provided the following tests are met:
  - A. At policy inception, the terms and conditions under the MPA are equal or better to those available to the group purchasing body under a standard group policy arrangement offered by the Australian insurer offering the MPA policy; and
  - B. The remuneration amounts are solely calculated by reference to objective actuarial or statistical measures of the worldwide pool's experience OR
- (iv) MPAs be distinguished as a separate type of group purchasing body, expressly allowed to receive remuneration amounts provided two threshold tests are met:
  - A. The arrangement must be substantially negotiated offshore; and,
  - B. More than 50% of the insured lives must be foreign residents.

We further note that the requirement for the arrangement to be substantially negotiated offshore may be practically difficult for Australian group purchasing bodies as we understand that the details of these arrangements are not typically distributed to all multi-national employer groups worldwide. Added to this, we imagine that the arrangements would be potentially complex, possibly reflecting a multitude of relationships between numerous foreign entities.

We also understand the proposed 50% foreign residency requirement is intended to ensure that the arrangement should not be unnecessarily hampered by Australian regulation. We note however that this could also be achieved by the following test:

B. At least one of the multinational corporate entities participating in the MPA must be a foreign entity.

This would comply with the jurisdictional argument, and also be easily proved, and therefore be less likely to prove a disincentive for a group purchasing body to implement these beneficial arrangements.

*(b) Basic information about the product*

In relation to part (b), which requires disclosure before commencement we retain a concern that this requirement may delay the commencement of cover and create administrative difficulties for employers in terms of ensuring that cover is not enabled until they are sure that information has been provided to all employees. This requirement will delay the issue of cover for *group policies*, and seems unnecessary particularly when the person to be covered is not liable for the cost of the policy.

**Submission**

This condition can be retained but with a change to the requirement to disclose *before a person is covered*. Disclosure requirements should apply as soon as practicable after they are covered. This is the simplest approach. Depending on the nature of the arrangement, there are many cases where a PDS will be provided in advance, such as when a new corporate insurance plan is created for existing staff.

*Additional issue with multi-national pooling arrangements*

Point (iii) of the proposed condition appears to be intended to require disclosure of amounts that are payable to persons covered. This is problematic for participants of MPAs since rebates are at the discretion of the multi-national pool and timing difficulties may arise as the amounts of the rebate are not known before a person is covered.

**Submission**

We propose the following:

- (i) Condition 3.3(b)(iii) be amended to require the body to disclose the existence of the rebate, and to state that the rebate amount will be disclosed to the group purchasing body upon distribution of the rebate.
- (ii) Condition 3.3(b) also note that it is a general feature of MPAs and group insurance policies that a person who does not wish to participate is able to opt out of the insurance.

(c) *Copies of group policy*

We support this condition in its current form.

(d) *Sources of advice about the product*

We support this condition in its current form however we propose a change to the requirement to disclose *before a person is covered*. Disclosure requirements should apply as soon as practicable after they are covered.

As a further note, this condition can be merged with condition (b) under one disclosure requirement.

(e) *Receipt of money*

This is a key concern for the industry in that it opens up a potentially serious liability to an insurer in the event an employer fails to pay premiums, through insolvency or fraud.

We respect ASIC's rationale that persons who pay money for insurance cover are not denied cover because of failure by the group purchasing body to pay the insurer – however we do not support the rationale that an insurer holds the ultimate liability.

**Submission**

We consider that this provision raises a number of issues that have the effect of imposing additional financial and legal risk on the insurer.

A proposal to impose a liability ahead of the receipt of associated revenue is inconsistent with normal commercial practice, certainly in the insurance sector,

This is not lessened by the argument that the insurer has the right to ultimately recover amounts receivable from the insured under normal contractual terms.

Given the breadth of the other changes proposed we submit that the purpose and effect of the class order would not be lessened through the removal of this condition.

(f) *Cancellation or non-renewal of cover*

The requirement that the insurer would need to notify each insured life under a group policy of the cancellation of that policy is a major disincentive for all group insurance arrangements. In many cases, the details of each insured life is not known unless there is a claim.

**Submission**

An alternative approach would be for group purchasing bodies to provide a means or facility by which an insured person or person covered under a group policy can check whether the group policy is still active.

Typically, this would simply involve the disclosure of the group policy number and relevant contact number for an individual member of the scheme to call to confirm whether the policy is active.

Given the nature of the group arrangement, it would not be possible for an insurer to confirm whether a member is covered under the scheme; they simply must confirm whether the scheme itself has not been cancelled (due to non-payment of premium) or has not been renewed.

**Additional comments**

*Employers*

In addition, we would note that the general view of employers as arrangers of group insurance is not necessarily the view held by insurers. Where an employee has entered into an insurance policy to provide coverage on behalf of staff, the employer is the policy holder. Employees are a beneficiary of that policy but do not influence policy selection and are not a client of the arranger or the insurer.

The scope of the proposed class order is indifferent to such arrangements by acting to interpose, in a legal sense, additional employer obligations to individuals even where the underlying contractual relationship is between the insurer and employer.

We submit that group insurance arrangements are not homogenous and that there is a need for careful consideration about the intent and purpose of the amendments on these different segments.

*Member-based organisations*

With regard to member based organisations, we note that they are typified by a constitution or deed that has the effect of enshrining the interests of members. This ensures that there is already reasonable protection for the interests of members.

## Concluding comments

Thank you for this opportunity to provide further comments on the impact of the proposed relief upon the Group Risk market.

Notwithstanding scope for refinement of these conditions, as outlined above, we submit that the proposed class order raises new policy matters that had not previously been contemplated by government.

Further the proposed class order has the effect of raising considerable policy matters that would not normally be contemplated through a class order relief process.

With the uncertainty surrounding the application of the Corporations Act to such arrangements, many group purchasing bodies have never had any compliance requirements associated with a group insurance policy.

The application of relief with associated conditions would act in the same way as regulation from the arranger's perspective.

Currently insurance arrangers, and employer policyholders, facilitate access to insurance in a straight-forward way that helps meet the insurance needs of millions of Australian's.

As noted in our earlier submissions, under group insurance arrangements, insurers are able to offer consumers lower premiums and reduced or nil underwriting requirements.

We have concerns that the proposal in its current form will have a detrimental effect on this important area of the broader life insurance market.

Should you have any questions in relation to this submission, please do not hesitate to contact me or Daniel Newlan on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Gilbert', is positioned to the left of a vertical red line.

**Richard Gilbert**  
Chief Executive Officer