



The changing face of Insurance Distribution & Product Design

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Opinions expressed are the personal views of Paul Muir.
This presentation is not intended to be legal advice and
should not be relied upon as such.





About Paul Muir

- Over 35 years in the Insurance Industry
- Governance, risk and compliance specialist
- Passionate about diversity and inclusivity
- Bachelor of Laws (Honours), Fellow ANZIIF, Diploma of Management and Graduate of the Australian Institute of Company Directors.
- Alternate Industry Representative on GI Code Governance Committee (however views expressed are my own)

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Agenda

- Let's reflect. From then to now...
- The customer journey – General Insurance – 2021
- Product Governance Framework
- An analysis of the new obligations (& interactions with the 2020 GI Code of Practice)
 - Product design & distribution obligations
 - Unfair contract terms regime
 - Duty not to make a misrepresentation
 - No hawking
 - Add-On insurance deferred sales model
- A final word on the relationship between Distributor & Insurer



Let's reflect. From then to now...

What was the customer harm?	Hayne's recommendation	Responses
<p>Disclosure can be ineffective. Consumers may not seek advice at all, or may receive poor-quality advice. Poor product design & distribution practices that disregarded consumer behavioural biases & information imbalances' played a significant role in financial losses. Such issues have contributed to consumer detriment from financial investment failures, such as Storm Financial, Opes Prime, Westpoint, agribusiness schemes and unlisted debentures</p>	<p>The final report of the 2014 <i>Financial System Inquiry (FSI)</i> made a number of recommendations to improve the financial system in order to better meet the needs of individual Australians. In his interim report Hayne acknowledged that legislation which would improve the design & distribution of financial products had been introduced recognising that 'current disclosure requirements are not, on their own, sufficient to fully inform consumers'</p>	<ul style="list-style-type: none"> • Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 • ASIC Consultation Paper 325 (RG <i>in draft</i>) • 2020 GI Code of Practice (The 'Code') Parts 3,4, 6 & 9; Guide on best practice disclosure; Guide for the design and distribution of add-on insurance through motor dealer intermediaries.
<p>I consider that the root of the problem with unsolicited offers and sales of insurance is that the potential acquirer is 'unsuspecting'. (Hayne Vol 1 p278)</p>	<ul style="list-style-type: none"> • Hayne referred to ASIC Report 587: <i>The Sale of Direct Life Insurance</i>. • Recommendation 4.1 – No hawking of insurance 	<ul style="list-style-type: none"> • Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Hawking of financial products • The Code – Part 6 paragraph 44 – Pressure selling is prohibited. Widely defined (Part 16)
<ul style="list-style-type: none"> • combining the sale of the car, finance and add-on products into one process restricts the capacity of consumers to consider these matters and make rational, informed purchasing decisions. • commissions and volume-based bonuses paid to dealers are a significant cause of the problems 	<ul style="list-style-type: none"> • Hayne referred to ASIC's proposal in its Consultation Paper 294: <i>The Sale of Add-on Insurance and Warranties Through Caryard Intermediaries</i> • Recommendation 4.3 – Deferred sales model for add-on insurance 	<ul style="list-style-type: none"> • Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add-on insurance • The Code – Part 6 paragraph 54 – deferred sales model for CCI. Guide for the design and distribution of add-on insurance through motor dealer intermediaries.

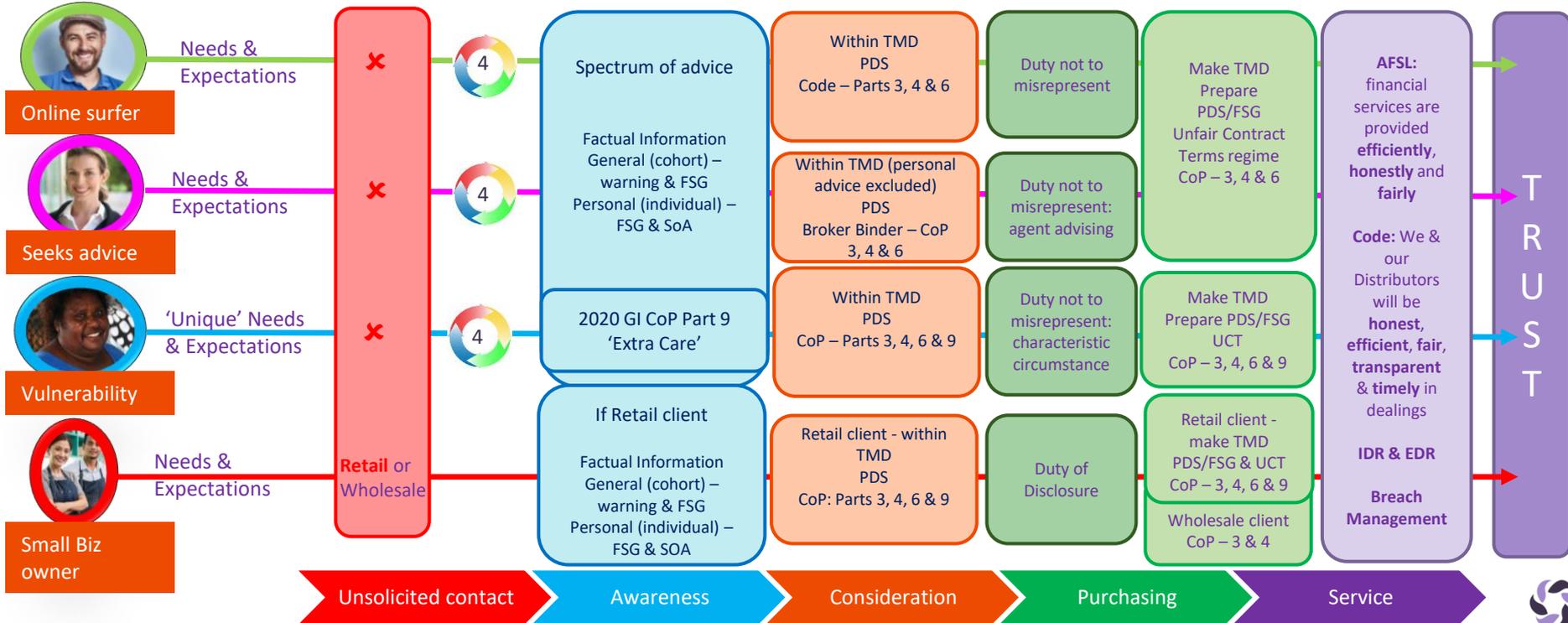
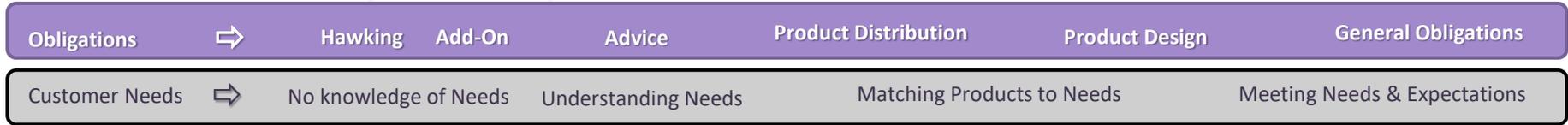


Let's reflect. From then to now...

What was the customer harm?	Hayne's recommendation	Responses
<p>The duty of disclosure fails to recognise the extent of the information asymmetry between a consumer and an insurer. And that gap is not closed by referring to what 'a reasonable person in the circumstances could be expected to know to be a matter so relevant'. It is not closed because the question will always arise <i>after</i> the insurer has said that certain information <i>was</i> relevant and has said <i>why</i> it is relevant. Policyholders may be denied claims even when they act honestly and reasonably.</p>	<p>Hayne referred to the <i>Consumer Insurance (Disclosure and Representations) Act 2012</i> (UK) which was enacted following a consideration of these issues by the UK Law Commission and the Scottish Law Commission in their 2009 report entitled <i>Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation</i></p> <p>Recommendation 4.5 – Duty to take reasonable care not to make a misrepresentation to an insurer</p>	<ul style="list-style-type: none">Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: FSRC rec 4.5 (duty of disclosure to insurer)
<p>A term in a consumer or small business contract that is 'unfair', in the sense that it causes a significant imbalance in the contracting parties' rights and obligations, it is not reasonably necessary to protect the legitimate interests of the party that receives the benefit of the term, and it would cause detriment to a party if it were relied upon</p>	<p>'The considerations that render a UCT regime appropriate for other contracts for financial products and services apply equally to insurance contracts. None of the matters raised against the extension of the regime suggests to me that contracts regulated by the Insurance Contracts Act should stand apart from UCT provisions' (Hayne)</p> <p>Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts</p>	<ul style="list-style-type: none">Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020



The customer journey – General Insurance – 2021 ⇨



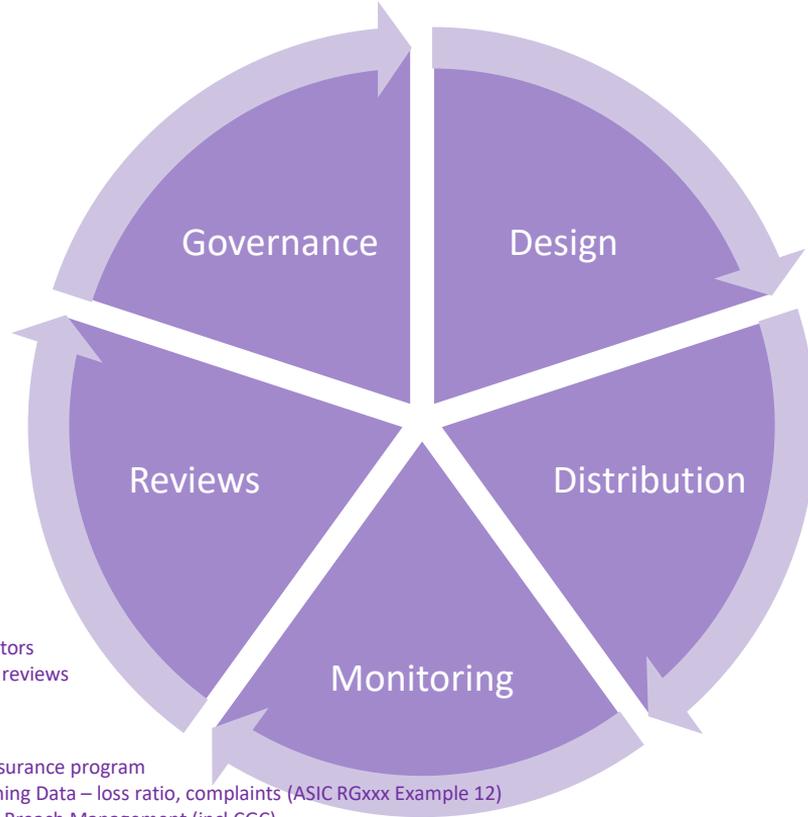
Product Governance Framework

(ASIC Draft RG xxx.30)

- Product Governance Committee
- Board & management reporting
- 3 lines of defence accountabilities
- Risk management framework
- Risk Appetite Statement
- Financial Accountability Regime
- Product Accountability
- Consequence management
- Regulator – significant dealings
- CGC – Code breaches

- Risk based review approach
- Consumer-centric approach
- Periodical review
- Review triggers – data
- Customer harm – data
- Procedures to stop issuing product
- Information required from Distributors
- External data sources – AFCA, ASIC reviews
- Review methodology

- Quality Assurance program
- Early Warning Data – loss ratio, complaints (ASIC RGxxx Example 12)
- Incident & Breach Management (incl CGC)
- Regulator – Significant dealings



- Target Market Determination s994B
- Include APRA GPG 240 Insurance Risk
- Product Approval process (sign-offs)
- Consumer Stress testing
- Product Exclusions
- Consumer outcome metrics
- Customer profiles – Journey
- Compliance Plans & controls
- Training & education
- Policy & procedures
- Record keeping
- Policy renewal mechanisms

- Partner selection – due diligence
- Alignment with TMD
- Conditions & restrictions
- Distribution Channel(s)
- Choice architecture
- Marketing & promotional materials
- Risk assessment – risk based approach
- Communication & reporting
- Training & education
- Policy, procedures & reporting
- Supervision & Monitoring – conduct
- Conflicts of Interest
- Incentivisation
- Compliance Plans & controls
- Consequence management
- Compliance with Distribution obligations
- Interaction with Personal Advice





An analysis of the new obligations and interactions with the 2020 GI Code of Practice

Product design & distribution obligations

Purpose – The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products. The obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance processes across the lifecycle of financial products. **Effective 5th April 2021**

Key features

- Product issuer obligations
 - Prepare a Target Market Determination (TMD) that meets minimum requirements and is publicly available
 - Formulate metrics & other indicators to identify when a review trigger has arisen that indicates that the TMD may no longer be appropriate
 - Distribute products consistently with the TMD
 - Notify ASIC of significant dealings that are inconsistent with TMD
- Distributor obligations
 - Distribute products in accordance with TMD
 - Provide information to issuers
 - Notify issuers of significant dealings that are inconsistent with the TMD

Interaction with 2020 GI Code

- Part 3 – overarching obligation to customers
- Part 6 – Buying insurance. Policy on website for design and distribution of products for target markets
- Part 9 – Customers experiencing vulnerability. Consider as part of TMD
- Part 11 – Complaints
- Part 13 - Enforcement



Unfair contract terms regime

Purpose – Treasury has released a Bill (now passed) that amends the Insurance Contracts Act to enable the UCT regime under the ASIC Act to apply to insurance contracts covered by the Insurance Contracts Act. **Effective 5th April 2021**

Key features

- The Act excludes the subject matter of an insurance contract. The Act provides a narrow definition of the main subject matter limited to the description of what is being insured.
- The Act exclude terms that set the quantum or existence of the excess or deductible in an insurance contract from the UCT regime, as long as they are presented transparently.
- A term in a standard form contract is 'unfair' if it would cause a significant imbalance in the parties' rights and obligations arising under the contract.
- Applies to insurance contracts for a consumer or small business

FSRC – case study

- If we decide to pay you what it would cost us to rebuild or repair ... we will pay you ... the amount that we determine to be the reasonable cost of repairing or rebuilding. *The amount that we determine to be the reasonable cost will be the lesser amount of any quotes obtained by us and/or by you for the rebuild or repair. Discounts may be available to us if we were to rebuild or repair.*
- Terms that permit an insurer to pay a claim based on the cost of repair or replacement that may be achieved by the insurer, but could not be reasonably achieved by the policyholder, are terms that may be unfair (Treasury – quoted by Hayne).

Interaction with 2020 GI Code

- Part 3 – Overarching obligation
- Part 6 – Buying insurance
- Part 9 – Customers experiencing vulnerability



Duty not to make a misrepresentation

Purpose – To replace the existing duty of disclosure with a new duty for an insured to take reasonable care not to make a misrepresentation when entering into, varying, extending or renewing a consumer insurance contract. The new duty applies only to contracts of insurance (including general and life insurance contracts) obtained for the insured's personal, domestic or household purposes . **Consultation ends 28th February 2020. Amendments take effect from 5th April 2021 (Paused)**

Key features

- Whether the consumer has complied with the duty will depend upon a number of factors
 - if the customer is within the target market (refer design & distribution laws)
 - material provided by the insurer to help the customer understand the duty
 - how clear & specific underwriting questions are
 - how clearly the insurer communicated the importance of the questions
 - Particular characteristics of the customer, known or ought to be known by the insurer. (aligns to vulnerability factors in 2020 Code)

Interaction with 2020 GI Code

- Part 3 – Overarching obligations
- Part 4 – Standards for distributors
- Part 6 – Buying insurance
- Part 9 – Customers experiencing vulnerability
- Part 11 – Complaints
- Part 13 - Enforcement



No hawking

Purpose – The Bill amends the *Corporations Act 2001* to ban the hawking of insurance products during the course of, or because of, unsolicited contact with a consumer. **Consultation ends 28th February 2020 with the new law to commence 1st July 2020 (paused)**

Key features

- The proposed law has been broadened to include contact which creates an expectation of an immediate response & will capture any conversations or discussions which happen in real-time where a consumer may feel obligated to respond to an offer (online).
- Unsolicited contact is any contact which is not in response to a consumer request and which is made by telephone, in face-to-face meetings or by any other form which creates an expectation of an immediate response
- The Bill also gives consumers the power to specify how they can be contacted and withdraw or vary a request at any time

Interaction with 2020 GI Code

- Part 1 – Objectives
- Part 3 – Obligations
- Part 4 – Distribution Standards
- Part 6 – Buying insurance (Clause 44 Pressure selling defined in Part 16)
- Part 9 – Vulnerability
- Part 11 – Complaints
- Part 13 – Enforcement
- Part 16 – Definitions

- Also Guide on best practice disclosure



Add-on insurance deferred sales model

Purpose – The Bill implements an industry-wide deferred sales model for the sale of add-on insurance products. **Consultation ends 28th February 2020 with the law to commence 12 months from the date of Royal Assent. (paused)**

Key features

- Add-on insurance has been defined broadly as insurance products that are sold alongside, or in relation to, the offer or sale of a principal good or service and include pet and travel insurance
- The deferral period ends 4 days from the time the customer enters into a commitment to acquire the original product to which the add-on insurance applies

Interaction with 2020 GI Code

- Part 4 – Distribution Standards – would non-compliance with the deferred sales model be an unacceptable sales practice?



A final word on the relationship between Distributor & Insurer

- Insurer more accountable for conduct of its Distributors (& absolutely under Code)
- No longer arms-length relationship but hand-in-hand
- Relationship will require alignment of Purpose, values and customer-centric principles
- Robust due diligence including analysis on culture and conduct
- Quality Assurance program as part of supervision & monitoring
- Reporting on the right metrics in a timely fashion
- Managing conflicts of interest
- Incentivisation programs must include consequence management
- Alignment but independent when managing Breaches/Significant Dealings and complaints. Although obligations may be slightly different, they will be based upon the same factual scenario.



Thank you – take care & stay safe 😊

