

7 May 2010

Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Mr Andrew Sellars
Via email: ICARReview@treasury.gov.au

Dear Mr Sellars,

Unfair terms in insurance contracts: Options Paper

Thank you for the opportunity to comment on the Treasury Options Paper in relation to the topic above.

ING Australia (INGA) is one of Australia's leading fund managers, life insurers, general insurers, superannuation providers and providers of financial advice. INGA is wholly owned by the Australia and New Zealand Banking Group Limited (ANZ). ANZ is one of the ten largest and most successful companies in Australia and the number one bank in New Zealand. It employs more than 44,000 staff and operates in more than 30 countries.

INGA provides a broad range of financial products and services through an extensive network of professional financial advisers, as well as directly to customers. We distribute our products and services through our network of advisers licensed to our dealer groups, as well as through thousands of other financial advisers across Australia. These advisers trust that INGA products and services will help Australians achieve their wealth creation and income protection objectives.

INGA provides employer based superannuation products and services to around 28,000 employers including some of Australia's largest and smallest employers across a diverse range of industries throughout Australia.

We represent approximately 670,000 employer based members in addition to 202,000 personal superannuation members. This roughly equates to 1 in 12 working Australians having an employer or personal superannuation account with us. In addition, we attend to the needs of some 61,000 pension members. Many Australian's who have a superannuation account with us also have a life insurance policy with us.

INGA is a member of both the Insurance Council of Australia (ICA) and the Investment and Financial Services Association Limited (IFSA). INGA contributed to the submissions of both industry associations' in relation to Treasury's options paper on unfair terms in insurance contracts and we support the submissions from those bodies.

The Insurance Contracts Act already provides a high level of protection to consumers from unfair terms and practices in relation to insurance contracts. This is particularly true given some important recent and proposed amendments to the consumer protection mechanisms that have existed in the past. INGA asserts that additional regulation is not required to achieve the Government's objective of protecting consumers from unfair terms in insurance contracts.

It is important to consider that:

- Unlike the types of standard consumer contracts for which the Unfair Contracts regime has been developed (by amendments to the Trade Practices and ASIC Acts), in insurance it is the contract itself which is the product provided to consumers. This vital difference has led to the development of specialised legislative and case-law for the regulation of insurance contracts, and it is appropriate that consumer protection in insurance continues to be afforded within that body of law, rather than by a separate catch-all regime.
- Insurance products and insurers are already subject to a rigorous regulatory regime, incorporating important concepts such as the duty of utmost good faith, which is absent from the broader consumer economy to which the unfair contracts regime applies.

INGA submits that the current regulatory regime provides consumers with a system that is fair, equitable and robust and that unfair contract terms are neither a systemic nor prevailing concern in either life insurance or general insurance.

INGA feels that it is important to have regard to the following when considering the options presented in the Treasury Paper:

- The existing insurance law does not prevent the application of the ASIC Act unfair contract provisions, or other legislation, to the extent that they allow for compensatory damages to consumers. Section 15 of the Insurance Contracts Act, 1984, provides that “A contract of insurance is not capable of being made the subject of relief under: ...any other Act... but does not include relief in the form of compensatory damages” (emphasis added). The practical effect of this is that a consumer or ASIC could take action under the ASIC Act in relation to an unfair term in an insurance contract and could obtain compensation for damage. However, they could not be given any other form of relief available under the ASIC Act e.g. voiding the unfair term.
- The already valuable consumer protection afforded by the duty of utmost good faith requirement is due to be significantly enhanced by the proposed amendments to s13 and s14 of the Insurance Contracts Act, 1984, importantly:
 - making a breach of the duty of utmost good faith a breach of the Act, which has consequences for AFSL holders in terms of their Corporations Act obligations not to breach financial services laws;
 - providing for ASIC intervention in the event of a breach of the duty of utmost good faith, a change of emphasis that means that it will now not be up to the consumer alone to seek redress for an insurer’s breach of that duty.
- Consumers in insurance are provided with a cost-free, efficient and robust mechanism of dispute resolution in the Financial Ombudsman Service. FOS is bound by its Terms of Reference to do “what is fair in all the circumstances”. The FOS forum supplements consumers’ existing opportunities to seek protection from the Courts and from anti-discrimination tribunals.

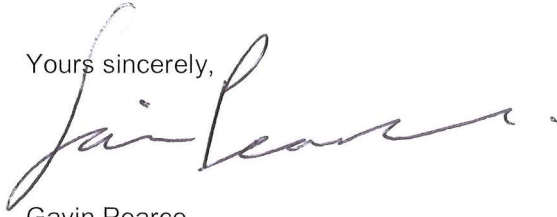
The regulatory regime as it stands provides consumers and insurers with significant and appropriate protection, and certainty. Importantly, the internal dispute resolution and external dispute resolution mechanisms continues to serve all consumers efficiently, effectively and at marginal cost.

If you have any questions relating to the matters identified in this letter, please do not hesitate to contact Suresh Manickam, Government Relations Specialist, ING Australia on suresh.manickam@ing.com.au or (02) 9234 6871.

We would appreciate the opportunity to meet with you in the near future to discuss this submission.

Thank you again for the opportunity to comment on Treasury's options paper.

Yours sincerely,



Gavin Pearce
General Manager, Insurance
ING Australia