

13 December 2021

Ms Dianne Cameron
Market Conduct Division, Markets Group
The Treasury, Langton Crescent, Parkes ACT 2600
By email: mbcomms@treasury.gov.au

Dear Ms Cameron,

**FSC Submission: Corporations Amendment (Meeting and Documents) Bill 2021 Exposure Draft legislation –
Modernising Business Communications project – Phase One**

The FSC welcomes the Corporations Amendment (Meeting and Documents) Bill 2021 Exposure Draft legislation as part of Phase One of the legislative program of its *Modernising Business Communications* project. The FSC welcomes the reforms to the Electronic Transactions Act 1999, product disclosure, and record keeping, and changes allowing for a more seamless interaction with regulators. Amendments to sections 223 and 224 of the Life Insurance Act 1995 (**“the Life Act”**) are also welcome steps in securing the technology neutrality of this legislation. We note several amendments, not included under this first phase of the project and we would request they be legislated in the second phase.

For the remainder of this submission, all legislative references are to the Life Act unless otherwise stated.

Section 191 of the Life Act

The FSC supports amendments to section 191 of the Life Act and regulation 9.02 of the Life Insurance Regulations. We support the removal of the requirement to publish a notice in the newspaper and Gazette about a transfer or amalgamation of life insurance under Part 9. Under the proposed subsections 191(2)(b) and 191(2A), this requirement is replaced with a requirement to publish a notice that is “accessible to the public” and “reasonably prominent”.

We submit that some guidance be provided in the explanatory material as to what is meant by these terms “accessible to the public” and “reasonably prominent”. We understand that it may likely be Government’s intention for these terms to be phrased as broadly as possible to accommodate any future technological advancements or developments and future communication methods. However, for the foreseeable future we understand that it is common for life insurers to include these notices on their websites.

It may also be common to include these notices on an insurer’s social media pages. Specifying, for example in the explanatory material, that the criterion of “accessible to the public” will be satisfied if the notice is

published on the insurer's websites and social media pages (if this is in fact the intention of the legislation), would alleviate some uncertainty in the meaning of this phrase.

Further amendments to the Life Act

There are some further amendments the life insurance industry seeks to ensure that the Life Act reflects modern business practices and developments in technology that have occurred since the inception of the Life Act. We submit that these amendments be included in the next phase of the Government's proposed "technology neutral" laws.

Section 200 Assignment of policy. Subsection 200(2)(b) of the Life Act requires a life insurer to "endorse" a policy document as part of the memorandum of transfer process, when transferring ownership of a life policy. This requirement has recently been amended to allow for endorsement "including by electronic means". However, this endorsement requirement should be removed, by repealing section 200(2)(b). Doing so will reduce red tape and uncertainty, if section 200(2)(b) was repealed, so that an assignment of a policy may occur by completing the many other robust requirements of section 200 (which includes the section 200(2)(d) requirement for the assignment to be registered in a register of assignments kept by the life company). Prior to life insurers keeping very sound electronic records, it was very important for policy owners to keep the original insurance policy document, but this is not the case in the 21st century. Electronic storage is the norm and ubiquitous, so that the requirement for each party to mark or "endorse" a policy is out-dated and should be repealed.

Sections 221 and 222 relate to lost policy documents. Under section 221, a life insurer must be satisfied as to consumer evidence of loss of a policy document. If the insurer is not satisfied, an application can be made to court, if the life insurer does not issue the replacement policy document. Under section 222, a replacement policy document must as far as possible copy the original, include any endorsements and state the reasons for its issue. In the 22 years since the current Life Act commenced, technological advances have greatly reduced the reliance on paper as the sole source of identification and evidence of a life insurance policy. The concept of a lost or destroyed policy document has ceased to be relevant. Life insurers maintain their own records of policy documents that they issue electronically. Section 74 of the Insurance Contracts Act 1984 (**ICA**) requires insurers to provide to insureds a statement of all the provisions of the contract on request. Failure to do so is an offence attracting 300 penalty units.

Amendments to the Corporations Act 2001

The scope of the lost member provisions should be broadened to also reference Chapter 7 of the Corporations Act and the Insurance Contracts Act. This will mitigate the risk of sending the statutory notices (such as annual statements, annual reports) required under the legislation to consumers that are no longer at the address to alleviate the associated privacy risk of continuing to send correspondence to the wrong address.

Document execution and electronic signatures

In the interests of ensuring sustainable legislation that anticipates dynamic changes in how consents are facilitated in future, the legislation should be clearer as to how it applies to the following scenarios:

- online claims submission and consent to collect information from health providers
- inclusion of biometric checks within the scope of an electronic signature in future
- defining electronic signatures broadly with regard to a check box online for customers to tick with the agreed terms and conditions

- Storage of a customer's IP address along with the electronic signature
- arrangements around multi-factor authentication along with electronic signatures

The FSC welcomes the opportunity to submit. Please contact Zach Castles, Policy Director, Advice by email to zcastles@fsc.org.au should Treasury have any questions or wishes to discuss this submission further.

Yours faithfully,



Zach Castles
Policy Director
Advice