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By email: product.regulation@asic.gov.au

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Dear Christian

Product intervention: Extending obligations on mechanical risk products to all sales channels

We refer to your email dated 20 January 2020 following our submission to *ASIC Consultation Paper 324: Product intervention: The sale of add-on financial products through caryard intermediaries (CP324)*.¹ Consumer Action Law Centre and Financial Rights Legal Centre welcome the opportunity to comment on ASIC's additional proposal to extend the obligations on mechanical risk products (MRPs) in CP324 to all sales, irrespective of the sales channel.

ASIC's additional proposal

In CP324, ASIC consulted on obligations specific to mechanical risk products, which include mechanical breakdown insurance and extended warranties sold with motor vehicles. Clause 10 of the draft Product Intervention Order (Draft PIO)² requires that the terms of an MRP:

- a) must not overlap with the period or terms of coverage of any manufacturer warranty or statutory warranty;
- b) must not have a maximum individual claim amount of less than \$2,000;
- c) must confer on the holder of the product a right to cancel the product at any time during the period of coverage and, if the right is exercised, to oblige the product issuer to refund any monies paid by the holder to the product issuer on a pro-rata basis that corresponds to the remaining period of coverage that would have applied but for the cancellation;
- d) must not include a requirement for the motor vehicle to be serviced by the person from whom the vehicle was purchased or leased or any of their associates; and
- e) for new motor vehicles or used motor vehicles less than 10 years old— must not include a requirement for the vehicle to be serviced that is more onerous (including more frequently) than that specified in the manufacturer's warranty that covered the vehicle.

¹ Available at: https://consumeraction.org.au/wp-content/uploads/2020/01/191220_JointSubmission_ASIC_CP324_CALC_FRLC.pdf.

² Available at: <https://download.asic.gov.au/media/5286419/attachment-to-cp324-published-1-october-2019.pdf>.

We supported these obligations in our submission to CP324, including that the obligations apply to 'dealer-issued' warranties.

We understand that ASIC now proposes to apply the obligations in Clause 10 of the Draft PIO to all MRPs, regardless of the sales channel (**Additional Proposal**). This would mean that MRPs for motor vehicles sold by direct sales would also be captured by the product intervention, such as extended warranties bought online from a warranty provider.³

Our views

We strongly support ASIC's additional proposal.

The harm caused by junk warranties and mechanical breakdown insurance occurs regardless of whether the product is bought through a caryard intermediary, or directly from an insurer or warranty provider. Our submission to CP324 sets out detailed data on extended warranties from DemandaRefund.com across sales channels. It is clear that 'significant consumer detriment' arises irrespective of sales channel for these junk products.

There is no good reason in principle or practice that direct sales should be carved out from the product intervention. These failings are a result of product design, so the intervention is required for all products.

ASIC's additional proposal will have a number of benefits:

- Fairer and more equitable treatment of consumers of MRPs regardless of sales channel – it would be unfair that some people would not be entitled to a pro-rata refund, or must endure onerous servicing requirements, simply because they bought directly from a warranty provider;
- Avoid the consumer confusion that would otherwise arise from having different consumer rights and remedies depending on the sales channel;
- Reduce the risk of avoidance and regulatory arbitrage, where junk warranties move from intermediated sales through car dealers to direct sales; and
- Remove the commercial disadvantage that would be faced by insurers or warranty providers that wanted to apply the obligations to all MRPs regardless of sales channel.

We strongly encourage ASIC to make its other interventions on add-on products sales channel neutral. For example, consumer credit insurance sold by banks is not captured by the draft PIO, despite ASIC's findings of similar product design failures and rampant mis-selling.⁴

Outstanding issues

Trigger for deferred sales period

We repeat our recommendations on the draft PIO, summarised at page 4 of our submission to CP324.

Our primary position remains that **junk add-on insurance and warranties should be banned in caryards**.

Short of a ban, our most pressing concern remains that the trigger for the start of the 4-day deferred sales period **must** align with delivery of the car, otherwise the intervention will fail. If ASIC does not heed our warning, this is will mean:

- ongoing significant consumer detriment when dealers pressure-sell add-ons at delivery of the car;
- another 18 months of monitoring and then inevitable changes to the intervention;

³ See, for example, <https://ericinsurance.com.au/products-direct/>.

⁴ <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-18omr-asic-finds-unacceptable-sales-practices-poor-product-design-and-significant-remediation-costs-in-cci-sold-by-major-banks-and-lenders/>.

- years of ongoing work for underfunded consumer organisations that have already spent decades demonstrating the problem and the solutions to caryard junk insurance;
- continuing consumer distrust in car dealers, insurers, and warranty providers.

Consumers and consumer advocates have been waiting on an end to the junk insurance scandal for decades. ASIC has committed significant resources of its own to this issue. ASIC must permanently fix this problem now and prevent any further consumer harm.

Unlicensed car dealers

We are aware that junk add-on insurance and extended warranties may be sold by unlicensed car dealers. ASIC should review the terms of the final PIO to ensure that it applies to add-on products sold with cars, regardless of the licensing arrangements of the car seller.

Contact details

Please contact Senior Policy Officer Cat Newton at Consumer Action Law Centre on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



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CONSUMER ACTION LAW CENTRE



Karen Cox | CEO
FINANCIAL RIGHTS LEGAL CENTRE

Appendix A: About the Contributors

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.