



**Consumer Credit
Law Centre SA**

Legal Advice and Services
Credit • Debt • Financial Counselling



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Manager
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Dear Manager

Exposure draft – Deferred sales model for add-on insurance – FSRC Rec 4.3

Thank you for the opportunity to comment on Exposure Draft Materials to create an industry-wide deferred sales model for add-on insurance, implementing Recommendation 4.3 of the Financial Services Royal Commission.¹ This submission comments on the consultation materials, including:

- Exposure draft—Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers [2020 Measures]) Bill 2020: Deferred sales model for add-on insurance (**Draft Bill**);
- Exposure draft— Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers [2020 Measures]) Regulations 2020: Deferred sales model for add-on insurance;
- Exposure Draft Explanatory Materials (**Draft EM**).²

This submission has been prepared by Consumer Action Law Centre with contributions and endorsement from the following organisations:

- Financial Rights Legal Centre
- Financial Counselling Australia
- CHOICE
- Consumer Credit Law Centre SA

¹ Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (FSRC or Financial Services Royal Commission): <https://financialservices.royalcommission.gov.au/Pages/default.aspx>.

² Consultation materials available at: <https://treasury.gov.au/consultation/c2020-4891qi>.

- Consumer Credit Legal Service (WA) Inc
- Australian Communications Consumer Action Network

Information about the contributors to this submission is available at **Appendix A**.

This submission should be read in conjunction with a joint consumer submission to The Treasury Proposals Paper for this reform.³

Executive Summary

We strongly support the Government’s commitment to implement Recommendation 4.3 of the Financial Services Royal Commission.

Insurance is a complex – and sometimes worthless – product. It cannot be safely sold when added on at the tail-end of purchasing of a car, home, loan, mobile phone, ticket or pet. People need time and meaningful information to assess their need for insurance, compare deals, understand complex policy terms, and make their own decision, free from the high-pressure sales environment fuelled by commissions. Known behavioural biases inherent in the add-on sales process have been long exploited by the insurance industry and their retailing partners, which have prioritised making a quick buck over selling suitable insurance products that people want and need.

This harmful sales practice, together with conflicted remuneration and poor product design, has led to the estimated \$1 billion clean-up bill for the multi-decade scandal of junk add-on insurance. Similar scandals in the United Kingdom are estimated to reach £53 billion.⁴

Since 2016, Consumer Action’s free tool [DemandaRefund.com](https://demandarefund.com) has helped people to demand over **\$23 million** in refunds for junk add-on insurance and warranties. Most damning of all, not a single person responded that they would have bought the add-on product, knowing what they know now.

An effective deferred sales model, as recommended by Commissioner Hayne, could stop the ongoing harm by requiring a break between buying the main product and buying the insurance offered by that retailer. This break is critical, as it gives consumers time to assess the value and suitability of the insurance in their own time, rather than when they are focused on the purchase of a car, loan, flight or phone.

This submission makes the following comments and recommendations to ensure the deferred sales model is effective and aligns with the spirit and intention of Commissioner Hayne’s recommendations:

- **Products that should be covered:**
 - Extended warranties, insurance-like add-ons, and dealer-issued warranties must be included in the deferred sales model.
 - The FSRC insurance reforms should apply to ‘complimentary’ insurances.
- **Operation of the deferred sales model:**
 - Provide clarity on when a consumer ‘indicates an intention to acquire’ the principal product or service.
 - Provide clarity on when a consumer ‘enters into a commitment to acquire’ the principal product or service.
 - The trigger should align with delivery – exceptional cases, where insurance is needed well in advance, can set out in regulations.

³ Joint consumer submission to The Treasury, *Reforms to the sale of add on insurance: Proposals Paper*, 4 October 2019, p22: <https://consumeraction.org.au/20191008-insurance-sales-practices/>.

⁴ BBC News, *Industry bill for PPI claims could hit £53bn*, 5 September 2019, accessed 30 September 2019: <https://www.bbc.com/news/business-49592643>.

- We support the absence of any 'customer-initiated' completion of sale during the deferral period, which would be open to abuse.
- Firms should not be able to contact consumers after the deferral period commences, other than where initiated by the consumer.
- **Exemptions:**
 - The criteria for exemption by ASIC in s 12DY should also largely apply to an exemption by regulations in s 12DX, meaning the Minister should also have regard to whether there is a high risk of underinsurance; whether the add-on is well understood by consumers, and any differences between the product when sold as an add-on or by another channel.
 - The exemption criterion of 'good value for money' should require insurers to provide detailed data, which we set out in this submission.
 - ASIC should publicly consult before granting an exemption.
- **Travel insurance:** We are strongly opposed to add-on travel insurance receiving an exemption by legislation or regulation, which will lead to consumer detriment and undermine the intention of this reform, as set out in detail at page 15.
- **Home and contents:** We do not support home and contents insurance receiving a class-based exemption, no matter how much large firms want to cross-sell insurance to their lending customers.
- **Comprehensive car insurance:** This legislative exemption is at risk of abuse by insurers creating new junk bundled policies, such as bundled comprehensive car insurance with consumer credit insurance.
- **Compliance:** The Bill should include obligations on firms to document compliance and provide that information to consumers and regulators upon request.
- **Penalties:** We strongly support the penalty framework.

A full list of recommendations is available at **Appendix B**.

Definition of 'add-on insurance product' (s 12DO)

It is unclear whether extended warranties, dealer warranties, and insurance-like products are captured by the proposed section 12DO(2)(b) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). These products must be covered by the deferred sales model.

Extended warranties

We understand from Treasury that extended warranties sold by retailers, such as Harvey Norman and Myer, at the point of sale are not intended to be captured by this reform, and do not fall within the definition of 'add-on insurance product' in proposed section 12DO of the ASIC Act.

This is very disappointing, and a missed opportunity to clean up add-ons sold by retailers and ensure consistent processes at the point-of-sale. We note that Treasury is consulting with the retail sector in respect of add-on insurance, as well as point-of-sale exemptions for credit (FSRC Rec 1.7).

Extended warranties sold by retailers are similar to junk add-on insurance policies, as they offer very little real value, are sold through a similar process, and play on the same vulnerabilities and fears. Consumers are made to feel that they should purchase the product, as it is better to be "safe than sorry". This is a deceptive sales pitch, however, as consumers are already protected by the consumer guarantee provisions of the Australian Consumer Law (**ACL**) — a fact which people are not always made aware of when purchasing the good.⁵ For example, a phone sold must comply with the guarantee of acceptable quality in section 54 of the ACL. While there has been legal action taken by consumer affairs regulators in relation to these forms of warranties, the outcomes have not resolved the consumer harm but have instead revealed deficiencies in the general law.⁶

The only reason extended warranties sold by retailers have any value to consumers is because the very same retailers (and their manufacturing suppliers) make it so difficult for consumers to get the remedies they are entitled to under the consumer law, and courts and tribunals are often too hard to navigate for small consumer claims.⁷ Why does this insurance-like add-on product get a carve out because retailers and manufacturers breach the consumer laws and then make it difficult for consumers to enforce their rights?

If consumers want protections additional to the consumer guarantees under the ACL, they may be better off taking out a contents insurance policy, which can be cheaper than an extended warranty and covers more items.

The loophole for extended warranties means that some add-ons sold at the point of sale will be subject to different requirements depending on technical definitions of what is and is not an insurance product. Some products (insurance) will be subject to a 4-day deferred sales period, and others (extended warranties) will not. This will be extremely confusing for shoppers and for sales staff to understand and convey. It will also cause significant compliance issues.

Example: Telecommunications add-on products

The telecommunications sector provides a useful example of the poor consumer outcomes and confusion that will result from insurance-like add-ons being excluded from the Draft Bill.

The major carriers and some major electronics retailers offer handset insurance, or insurance-like products, sold as an add-on when a consumer purchases a mobile phone. When providers don't classify insurance-like add-on products that promise to repair or replace phone handsets as insurance, no insurance-related protections apply.

⁵ For more information, see Consumer Action Law Centre, Submission to Consumer Affairs Australia New Zealand, *Australian Consumer Law Review*, 30 May 2016, pages 28-9: <https://consumeraction.org.au/wp-content/uploads/2016/05/Consumer-Action-ACL-Review-Submission-FINAL.pdf>.

⁶ *Australian Competition & Consumer Commission v LG Electronics Australia Pty Ltd* [2018] FCAFC 96; *Director of Consumer Affairs Victoria v The Good Guys Discount Warehouses (Australia) Pty Ltd* [2016] FCA 22.

⁷ See, e.g. Cameronralph Navigator, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal*, July 2016: <https://consumeraction.org.au/review-tenants-consumers-experience-victorian-civil-administrative-tribunal/>.

For example, Telstra states that its StayConnected product,⁸ the new iteration of its previous device replacement scheme offered at point of sale, is not insurance because it does not require an 'event' and it includes data backup.⁹

Telecommunications add-ons appear to be of significant cost and low value. Consumer Action has acted for clients where the not-insignificant premiums for these products were not disclosed in the mobile phone plan contracts. These insurance products are mostly available either only at the point of sale or, in Vodafone's case, for a very limited time with proof of purchase and a device in "perfect condition".¹⁰ Customers are encouraged to add these low-value products onto their contracts or they will miss out. See the current pressure sales pitches for Vodafone's insurance promotions:¹¹

"When you sign up to an \$80 Red Plus Plan before 10/03/20, you'll receive a \$10 credit each billing month for up to 36 months on either our Keep Talking or Keeping Talking Plus insurance. Eligibility criteria and T&C apply.

*"When you sign up to Keep Talking or Keep Talking Plus for the first time on selected plans, the premium for your first month's cover will be free. Offer ends 30/06/20. Terms and conditions apply.***"*

In addition to concerns about these products being pushed during a mobile plan sales transaction, we have concerns about the terms of coverage. For example, Vodafone purports to exclude a person from making an insurance claim if they have an overdue phone bill. It also purports to exclude coverage where the mobile phone has been "left behind in an unknown location or You have misplaced or forgotten its whereabouts" as part of its 'loss' cover.¹²

	Optus Device Protect Insurance ¹³	Vodafone Keep Talking and Keep Talking Plus Insurance ¹⁴	Telstra – Stay Connected Advanced subscription ¹⁵
Covered by Draft Bill	Yes, if sold as add-on	Yes, if sold as add-on	No
Type of cover	Accidental damage, theft and loss	1. Accidental damage only 2. Accidental damage, loss or theft	Repair or replace and 10gb data backup
Premium	\$14 - \$19 per month	\$10 - \$15 per month	\$15 per month
Excess	\$100 - \$350	\$50 - \$400	"Service fee" \$59 - \$270
Replacement equipment	Remanufactured/used	Repaired or refurbished	Same or similar and refurbished
Sign up time	Only at the time of purchasing a new device	With proof of purchase and a device in "perfect condition" within a set time period	Only at the time of purchasing a new device

⁸ See: <https://www.telstra.com.au/support/category/mobiles-tablets/plans/stayconnected-plus> (accessed 25 February 2020).

⁹ See: <https://crowdsupport.telstra.com.au/t5/Mobiles-Tablets/Stay-Connected-FAQ-s/ta-p/386601> (accessed 25 February 2020).

¹⁰ Vodafone, *Keep Talking Insurance: Combined Financial Services Guide and Product Disclosure Statement*, V15983, definition of 'device', p 6: <https://www.vodafone.com.au/doc/dl-insurance-10-pds.pdf>.

¹¹ Vodafone, *Protecting your device*: <https://www.vodafone.com.au/insurance> (accessed 25 February 2020).

¹² Ibid.

¹³ Optus, *Device Protect Insurance: Combined product disclosure statement, policy terms and conditions and financial services guide*:

https://smb.optus.com.au/opfiles/Shop/Consumer/Assets/PDFs/Device_Protect_Insurance_Jan_19.pdf?_ga=2.153619441.810048532.1582178720-1229356667.1578892061; see <https://www.optus.com.au/shop/mobile/extras/insurance>.

¹⁴ Vodafone, *Protecting your device*: <https://www.vodafone.com.au/insurance> (accessed 25 February 2020).

¹⁵ Telstra, *Stay Connected Advanced*: <https://www.telstra.com.au/mobile-phones/mobiles-on-a-plan/stayconnected#staycon-features> (accessed 25 February 2020); Telstra, *Stay Connected Advanced – Critical Information Summary*, MOSC1800-27082019: <https://www.telstra.com.au/help/critical-information-summaries/personal/mobile/stay-connected-advanced/stay-connected-advanced>.

Liability limits	\$2,000 - \$3,000 (amounts include up to \$600 unauthorised usage)	\$3,000	
Other		Ineligible to make an insurance claim if you have an overdue phone bill; loss cover doesn't cover loss if you misplaced it.	Not insurance, just swap or replace, includes data backup. Not eligible to lodge claim if any overdue fees.

As this table shows, there is little difference between the insurance and insurance-like add-on products.

The simple solution to our concerns about retailer extended warranties and insurance-like add-on products is to bring them within the deferred sales model. This will improve consumer outcomes, deter regulatory arbitrage, ensure consistency of process at the retail counter, and avoid confusion for consumers and sales staff alike.

RECOMMENDATION 1. Amend the Bill to specifically include extended warranties sold by retailers within the definition of 'add-on insurance product' in section 12DO.

Dealer-issued warranties

Junk 'dealer-issued' warranties mis-sold in caryards are among the worst add-on products. There is extensive evidence of the harm caused by these products, which continue to be sold. In a blatant attempt to avoid regulation by ASIC and redress for consumers through external dispute resolution, a number of the providers that previously structured their warranty offering as a regulated product, have shifted to become 'dealer-issued' in recent years, while the underlying offer and branding remains the same.

It is likely that these products may be covered by ASIC proposed product intervention in caryards.¹⁶ However, the product intervention order has not been made, and even once made, will only last for 18 months and then be subject to a Ministerial process. It is by no means certain that the problems with junk 'dealer warranties' will be solved through that process.

Commissioner Hayne's intention to include all add-on products including warranties is clear. The FSRC Final Report states that the recommended reform is:

consistent with ASIC's proposal in its *Consultation Paper 294: The Sale of Add-on Insurance and Warranties Through Caryard Intermediaries*.¹⁷

ASIC's Consultation Paper 294 recommended the application of:

a deferred sales model which would insert a pause into the sales process for add-on insurance and warranties regulated by the *Corporations Act 2001* other than comprehensive or compulsory third party (CTP) insurance products (Proposal 1).¹⁸

Treasury should confirm that junk 'dealer warranties' will be covered by the deferred sales model, in the absence of an ASIC product intervention order. To the extent they are not, the Draft Bill and EM must be amended to bring these junk products within the definition of 'add-on insurance product' within proposed section 12DO of the ASIC Act. This is a critical back-stop to ensure these junk products do not fall between the cracks of various reform and regulatory measures.

RECOMMENDATION 2. Confirm that 'dealer issued' warranties will be covered by this reform.

¹⁶ See ASIC, CP324: *Product intervention: The sale of add-on financial products through caryard intermediaries*.

¹⁷ FSRC, Final Report, Volume 1, p 288.

¹⁸ ASIC, CP294: *The sale of add-on insurance and warranties through caryard intermediaries*, 24 August 2017, p 6: <https://download.asic.gov.au/media/4422973/cp294-published-24-august-2017.pdf>.

“Complimentary” insurances

On our reading of the Draft Bill, “complimentary” insurances will not be captured by the deferred sales model. We are very concerned that the industry will increasingly move to “complimentary” insurance products once the FSRC reforms close existing avenues for flogging low-value insurance products.

We note that the General Insurance Code Governance Committee (CGC) considers complimentary products as an add-on insurance product stating in a 2018 own motion inquiry:

consumers may reasonably regard as add-on insurance products. This is because consumers might decide to acquire a particular credit card on the basis that the credit card includes travel insurance as a complimentary benefit.¹⁹

The decades-long mis-selling of junk consumer credit insurance (CCI) has been one of the worst scandals in financial services and was the basis for this very reform. While many, but not all, lenders stopped selling CCI, we note that the Commonwealth Bank has recently released a new a “complimentary” consumer credit insurance product called Home Loan Compassionate Care.²⁰

Lenders and car dealerships may throw in “complimentary” insurances and warranties as a sweetener to get the deal done on the primary product. The reality is that the consumer *always* pays for the product, one way or another. We are concerned that creating this loophole will incentivise firms to restructure the payment of add-ons to appear free and hide the cost in other products. Where there is such limited levels of price competition in relation to the primary products (as the Productivity Commission has found in relation to banking),²¹ providers can bundle and hide the cost of ‘complimentary’ products which serves to ensure profits of related providers.

Complimentary insurances discourage engagement from consumers, with many consumers assuming that they will be covered for any problems that arise despite the fact that the complimentary cover is not necessarily suitable to their circumstances and requirements. This can lead to poor consumer outcomes.

Similarly, we see problems with “complimentary” travel insurance offered with credit cards even when there is customer engagement.

Complimentary travel insurance

One consumer recently contacted Consumer Action Law Centre and shared this experience:

“I am writing to raise an issue that may affect other listeners, namely, “junk” complimentary travel insurance policies on credit cards.

I have been a Bankwest credit card customer for many years. The bank has provided complimentary travel insurance, including the refund of expenses in the event of trip cancellation. The only cost to customers for insurance cover was a small fee for assessment of pre-existing medical conditions. For example, in 2016 I paid around \$50.

From 9 December 2019 Bankwest changed its complimentary cover, removing the refund of cancellation costs for Platinum and Gold Mastercard holders. Their web page (<https://www.bankwest.com.au/help/cards/credit-card-insurance>) asks customers to call them to ask about an upgrade.

Imagine my surprise when I rang this week to ask for a modest upgrade to cover refund of \$5000 cancellation costs and my pre-existing medical condition for an 11-day trip to Thailand, and was quoted over \$350 for this

¹⁹ General Insurance Code Governance Committee, *Who is selling insurance? 2014 General Insurance Code of Practice Own Motion Inquiry*, June 2018, p 26: <https://www.fos.org.au/custom/files/docs/code-governance-committee-who-is-selling-insurance-report.pdf>.

²⁰ See <https://www.commbank.com.au/home-loans/compassionate-care.html> (accessed 26 February 2020).

²¹ Productivity Commission, *Competition in the Australian Finance System*, June 2018, Finding 3.1: <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system-overview.pdf>.

"complimentary" policy!!! I told them to stick it where the sun don't shine, as I was quoted only \$280 from another provider.

I'm now considering taking my credit card elsewhere, and will probably opt for a low fee card with no "complimentary" travel insurance, rather than wasting \$160 on an annual fee with Bankwest."

The CGC also notes growth in the complimentary travel insurance market and poor consumer outcomes:

The growth in group insurance policies issued in 2016–17, for example, was driven largely by an increase in group travel insurance policies, typically acquired as a complimentary benefit of a credit card facility. While it appears that individual travel insurance policies are increasingly being displaced by group policies, the Committee's claims data also reveals that the travel claims acceptance rate is low and decreasing – in part because consumers are not meeting the activation requirements of complimentary travel policies.²²

Contrary to our strong recommendation, complimentary insurances have already been excluded from the Unfair Contract Terms laws, despite often containing unfair terms.²³ This is because, disappointingly, group insurance has been carved out of the reform. Complimentary insurance, including travel insurance with a credit card, is a group product bought by a sophisticated purchaser (i.e. a bank) from an insurer, and the consumer is a third-party beneficiary. We have raised similar concerns with ASIC's proposed product intervention in caryard add-ons, which exclude add-ons offered for "free".²⁴

We strongly recommend that Treasury immediately address the loopholes in the Hayne exposure draft reforms for "complimentary" insurances and warranties. This includes travel and consumer credit insurances offered by banks with loans and credit cards, and "free" extended warranties offered by car yards. This might be achieved by prohibiting the bundling of multiple products and having one price for the bundle.

RECOMMENDATION 3. Immediately review and remove the loopholes for "complimentary" insurances to bring these products within the spirit and intent of the FSRC reforms.

Drafting issues

We recommend that the Draft Bill, Draft EM, and ASIC Regulatory Guidance (as appropriate) provide further clarity on the following drafting issues:

- When a "consumer indicates an intention to acquire" the principal product or service in section 12DP(3) – this is vague, confusing, and difficult to enforce.
- When a "consumer enters into the commitment to acquire" the principal product or service in section 12DP and others.
- Whether the deferred sales model or the hawking ban applies to the sale of an add-on insurance product that is *unrelated* to the principal product – such as the sale of income protection insurance with the purchase of a pet (see proposed section 12DR(3)(c)).

²² Code Governance Committee, *General insurance in Australia 2016–17 Industry practice and Code compliance*, March 2018, p 1: <https://www.fos.org.au/custom/files/docs/cgc-report-general-insurance-in-australia-201617.pdf>.

²³ See CALC, FRLC, WestJustice, Submission to Treasury, *Extending unfair contract terms laws to insurance contracts – Exposure draft legislation*, 30 August 2019, p 6: <https://consumeraction.org.au/20190830-treasury-uct/>.

²⁴ CALC and FRLC, Submission to ASIC, *Consultation Paper 324: Product Intervention: The sale of add-on financial products through caryard intermediaries*, October 2019, 20 December 2019, p 22: <https://consumeraction.org.au/critical-moment-to-fix-and-prevent-systemic-mis-selling-of-junk-insurance-and-warranties-through-caryards/>.

Trigger for the deferral period (s12DP)

The 'commitment to acquire' element of the trigger to start the 4-day deferral period in proposed section 12DP(2)(b)(i) will be difficult to apply in practice.

The preferred position of consumer advocates remains that the deferral period should only start after the good or service is a) bought b) any finance approved and c) delivered. Otherwise, there is a continuing risk of pressure-selling, as outlined in our submission to the Proposals Paper.²⁵

There may be exceptional cases where insurance cover is needed well in advance of delivery, such as travel insurance for a non-refundable deposit on a cruise ship holiday. However, these rare cases should not dictate the primary position. Instead, the exceptional cases can be set out in the Regulations under proposed section 12DO(3) of the ASIC Act, which allows Regulations to determine for a specified class of products the time that a consumer is taken to have entered a 'commitment to acquire'.

We acknowledge that, in some cases, there may be an issue for insurers to know when a particular good or service is delivered to the consumer, however we do not believe that this is necessarily insurmountable. We believe the incentive is there for the market to adjust and for primary product sellers to provide delivery information to the insurer as a matter of course.

RECOMMENDATION 4. The deferral period should only begin once the primary good or service has been purchased, financed and delivered to the consumer, and the prescribed information has been provided. Rare cases where the insurance is needed well in advance of delivery can have an alternative trigger set out in Regulations.

Consumer-initiated completion of sale

At the Proposals Paper consultation, consumer advocates strongly opposed any ability for a 'customer-initiated' completion of sale during the deferral period, which would be at risk of abuse and regulatory arbitrage by firms. We strongly support the Government's decision to not to include a customer-initiated completion of sale in the Draft Bill.

Contacting consumers (s12DR(4))

We have concerns about the following changes in the Draft Bill regarding contacting consumers:

- At the end of the deferral period, the firm can contact the consumer in writing as many times as it likes – only one written contact was proposed in the Proposals Paper;
- If consumers enquire directly about the product during the deferral period, the firm/retailer can respond in any manner but not complete the sale – new in the Draft Bill;
- If consumers enquire directly about the product after the deferral period, the firm/retailer can respond in any manner – new in Draft Bill;

These forms of contact are outlined at page 7 of the Draft EM, excepted below.

²⁵ Joint consumer submission to The Treasury, *Reforms to the sale of add on insurance: Proposals Paper*, 4 October 2019, p 22-24: <https://consumeraction.org.au/20191008-insurance-sales-practices/>

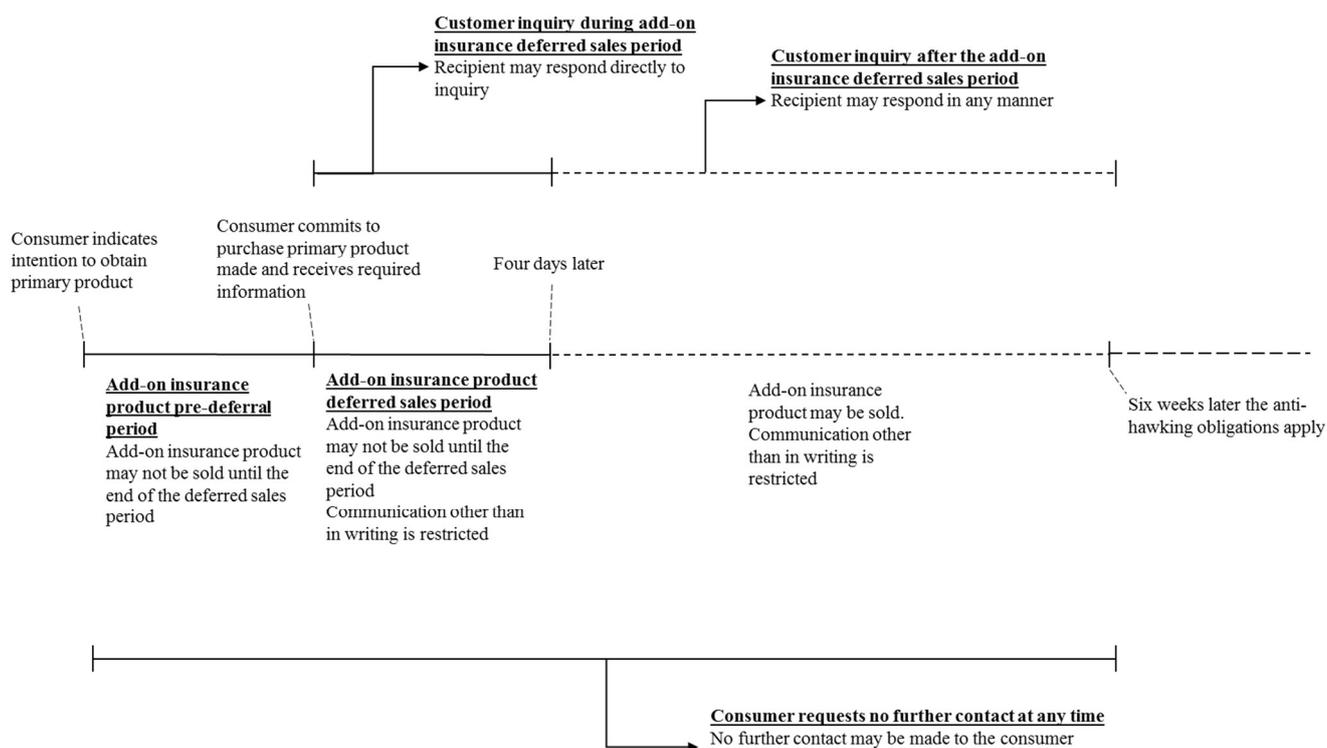


Figure 1 Outline of the deferred sales model for add-on insurance, page 7, Draft Explanatory Memorandum

We do not support these changes, which are open to gaming.

For example, there are many ways to encourage a consumer to initiate a call that falls short of the “request or invites the consumer to ask or apply for a financial product” (e.g. in s 12DR(1)(b)) through cultivating a sense of urgency, necessity or increased risk.

We maintain our position that the most effective model would require that only the consumer, not the retailer, could initiate contact to accept (or decline) the add-on insurance at the end of the deferral period. That is, firms should be prohibited from contacting consumers during or after the deferral period. Our recommendation would better achieve the intent of the reform, which is to prevent pressure-sales of insurance.

Alternatively, the Government’s position in the Proposals Paper that the retailer could only contact the consumer once via written correspondence at the end of the deferral period is preferable to the position in the Draft Bill.

There is overwhelming evidence of the harm caused by high pressure phone sales, including through the Financial Services Royal Commission and ASIC’s work into outbound sales of life and consumer credit insurance. Telephone contact at the end of the deferral period should be prohibited to prevent the issues arising from direct selling of life insurance and CCI shifting to other forms of add-on insurance.

To ensure this reform works in practice, there must be obligations on insurers and third parties selling add-on products to document these conversations and timeframes, and provide such evidence to the consumer and regulators, upon request. As discussed in our comments on travel insurance below, people struggle to enforce their rights when, months later, they are forced to recall the dates and content of conversations without the benefit of call recordings.

Again, this is why the direct sales channel – rather than add-ons sold by retail sales staff – tend to be preferable. As Example 1.8 in the Draft EM shows, an optometrist should be focussed on eye health and glasses needs, not responding to questions about claims ratios.

RECOMMENDATION 5. Ban contact with consumers after the deferral period starts, other than customer-initiated contact. Alternatively, firms/retailer should only be permitted to contact the consumer once, in writing, at the end of the deferral period.

Exemptions

The Financial Services Royal Commission highlighted that the current laws were not working for consumers and that, under those laws, the conduct and behaviour of some financial firms caused significant consumer detriment. FSRC Recommendation 4.3, and these draft laws, are designed to ensure that the significant consumer detriment that was occurring does not continue to occur. The Financial Services Royal Commission also recommended that that the law should be simplified and that exemptions and loopholes must be minimised (Recommendation 7.3).

As a result, in our view, for any exemptions to be considered from the law for an industry or product should have to establish to Treasury that significant consumer detriment will occur to consumers if the exemption is *not* granted. An exemption should not be granted from these laws if it might cause inconvenience to a small group of consumers.

Exemption by Regulations (s12DX)

The ability for a Minister to exempt a class of add-on product from the deferred sales model by regulations is new in the Draft Bill and was not consulted on at the Proposals Paper stage. The criteria for an exemption by regulations (s12DX) and exemption by ASIC (s12DY) are different, as outlined below. We strongly recommend that the ASIC exemption criteria apply to exemptions by regulations, which are preferable.

Difference / relevant matter	Regulations (s12DX)	ASIC (s12DY)	Comments
Exempt a class and/or individual products?	Class of products	Class or individual	The ability to exempt both is useful.
Value for money: current or historical?	Current	Historical	Both current and historical value should be relevant to both forms of exemption
Extent of potential financial consequences for consumers of not being covered by the products	Relevant matter	n/a	Difficult for the Minister to know this for an entire class of products, particularly in absence of an effective standard cover regime – there is huge variation in conditions, benefits, exclusions and definitions, even within policies of a 'class'.
Extent of potential financial consequences for Australian Governments of consumers not being covered by the products	Relevant matter	n/a	Agree this is a relevant criterion for the Minister but not for ASIC.
Risk of underinsurance?	n/a	Relevant matter	Should be relevant to both forms of exemption
Product well understood by consumers?	n/a	Relevant matter	Should be relevant to both forms of exemption
Any differences between the product when sold as an add-on or not (i.e. direct sales)	n/a	Relevant matter	Should be relevant to both forms of exemption

It is critical that a Minister has access to the same information as ASIC in considering exemptions. Otherwise, the process would be open to significant political lobbying efforts by a well-resourced sector.

RECOMMENDATION 6. The criteria for exemption by ASIC in s 12DY should also largely apply to an exemption by regulations in s 12DX, meaning the Minister should also have regard

to whether there is a high risk of underinsurance; whether the add-on is well understood by consumers, and any differences between the product when sold as an add-on or by another channel.

Public consultations on exemption applications

We were dismayed to hear that general insurers may make 30-40 applications for exemption. To ensure confidence in the process and assist ASIC in identifying potential consumer harm from casework agencies, we recommend that ASIC be required to publicly consult before granting an exemption under section 12DY.

RECOMMENDATION 7. Amend the Bill to require ASIC to publicly consult on applications for exemptions.

Evidence required by ASIC for consideration of an application for an exemption

We support the criteria listed at s12DY(2)(a)-(e), including whether the product is good value for money and well-understood by consumers, whether there is a high risk of underinsurance, and any differences between direct and add-on products. However, these criteria are vague and open to interpretation.

In considering an application for a class or individual exemption, ASIC (or the Minister via ASIC) should require and consider the following evidence from insurers, including but not limited to:

1. Policy data for insurance contracts in the market including:
 - a. insurance type
 - b. policy benefits
 - c. policy exemptions
 - d. policy definitions
 - e. policy excesses
2. Numbers of insurance contracts in the market
 - a. Total insurance contracts in the class
 - b. Number of direct insurance contracts in the class
 - c. Number of add-on insurance contracts in the class
 - d. Number of insurance contracts in the class for each insurer
 - e. Number of insurance contracts in the class for each insurer's product line.
3. Premiums for insurance contracts in the market for each category above
4. Claims outcomes for each category above
 - a. Claims reported
 - b. Claims ratios
 - c. Claims finalised
 - d. Claims withdrawn
 - e. Claims withdrawn reasons
 - f. Claims admitted
 - g. Claims declined, but an ex gratia payment is made
 - h. Claims declined but admitted under a different type of cover
 - i. Claims declined, with policy benefit or policy contract cancelled and premiums refunded
 - j. Other claims outcomes
 - k. Reasons for decline
 - l. Claims amounts
 - m. Claims sum insured
 - n. Claims processing duration
5. Disputes (IDR and EDR)
 - a. Disputes lodged

- b. Disputes lodged reasons
- c. Disputes resolved:
 - i. With no further payment made
 - ii. With full benefit
 - iii. With a partial benefit
 - iv. With payment made on an ex-gratia basis
 - v. With a non-cash benefit
 - vi. With payment made under another cover type
 - vii. With claim denied, with contract cancelled and premiums refunded
 - viii. Through other means
- d. Disputes withdrawn
- e. Disputes withdrawn reasons
- f. Undetermined claims
- g. Disputes with original decision maintained
- h. Disputes with original decision reversed

6. Distribution channel

This should be broken down even further to identify the claims outcomes for add-on and direct insurance products claims made within *four days of sale* of the product. We note that firms will be required to provide similar information under the Government's 2018 reform to create an Internal Dispute Resolution data reporting framework following the Ramsay Review.²⁶

The above data should also be collected for a period longer than simply for the current year of an application to establish the "historical" nature of an add-on product's value for money. We suggest at least 10 years.

ASIC and APRA's transparent public reporting regime for life insurance claims information provides a relevant working model upon which any consistent data gathering effort can be based and quickly implemented.²⁷ This has been implemented quickly. The above data should be publicly available to promote transparency and enable stakeholders to engage in public consultation on exemption applications.

The above data collection will assist ASIC to genuinely evaluate any claim that an add-on product is historically good value for money and identify the differences between the add-on and direct markets. They may also assist in any evaluation of the risk of underinsurance, however it will not completely satisfy this. Evidence will need to be collected regarding the ease in which consumers can obtain a class of insurance by means other than add-on and the extent to which the market has structurally shifted away from direct sales. Any assertion that the direct insurance market for a particular class will not step in to cover the risks consumers wish to cover simply because the direct market has shrunk due to insurers shifting to an add-on model should not be taken at face value.

With respect to whether a product is well understood by consumers, ASIC should undertake independent research or survey work with consumers to be able to genuinely gauge consumer understanding. This should not simply be about awareness of a product class but should go to the specifics of the differences in add-on products versus products obtained directly or by other means, the differences in costs between channels, and the awareness of the risks that they are seeking to cover and whether they will be covered by certain products in certain channels. In our experience, consumers regularly misunderstand insurance product coverage, are unaware of key exclusions or definitions and are constantly surprised at claims time when they are denied. These problems are unlikely to be fixed under the Government progresses reforms to standard cover.

²⁶ Treasury Laws Amendment (Putting Customers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth); ASIC, CP 311 Internal dispute resolution: Update to RG 165, 15 March 2019: <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-311-internal-dispute-resolution-update-to-rg-165/>.

²⁷ APRA, Life insurance claims and disputes statistics: <https://www.apra.gov.au/life-insurance-claims-and-disputes-statistics>.

Claims ratio

In supporting an exemption for comprehensive car insurance, Commissioner Hayne cited²⁸ the Productivity Commission's view that comprehensive car insurance rates among the highest value to consumers as measured by the share premiums returned in claims and claims acceptance rates.²⁹

We recommend a claims ratio of 90 per cent as a baseline for exemption. This is based on the comprehensive car insurance claims ratio of 89 per cent,³⁰ and therefore consistent with the recommendations of Commissioner Hayne and the Productivity Commission.

Other conditions and criteria for exemption

We repeat our comments on criteria and conditions for exemption in our submission to the Proposals Paper at pages 13-14, particularly on commissions. Much of the harm and impetus to mis-sell add-on insurance has come from the astronomical commissions paid by insurers to distributors to push a particular product. In addition to motivating mis-selling, commissions increase the cost of the insurance to the consumer dramatically, which is a poor and unfair outcome. As the Proposals Paper notes, commissions paid on add-on travel insurance can be up to 65% of gross written premiums.

RECOMMENDATION 8. Progress reforms to standard cover and standard definitions in insurance.

RECOMMENDATION 9. In considering applications for exemption, a product must meet an historical and ongoing claims ratio of at least 90% to be considered 'good value for money,'

RECOMMENDATION 10. Exemptions should be time-limited to ensure the product continues to meet the criteria.

Comprehensive car insurance – risk of bundled junk policies

We accept that Commissioner Hayne recommended comprehensive car insurance be excluded from the deferred sales model. We suspect this mostly relates to the need for compulsory third party insurance once the car leaves the dealer.

However, we are concerned that the exemption for "comprehensive car insurance" in proposed section 12DW(1)(b) could be flouted by development of bundling junk insurance products – such as comprehensive insurance with consumer credit insurance – through the words "whether or not the product also provides insurance cover in respect of other matters". This would be a perverse outcome for a reform designed to apply a deferred sales model to junk insurance like CCI. One solution would be to link this definition to the definition under the standard cover regime. This issue should be monitored by ASIC, and the legislative exemption removed in the event of regulatory arbitrage by insurers.

Home and contents insurance

We support the deferred sales model applying to home and contents insurance sold as an add-on with, for example, a home loan. However strong the desire for large firms to profitably cross-sell insurance to their lending clients, this alone is not a sufficient justification for an exemption from the deferred sales model. Home and contents insurance is also likely to be better priced when sold directly, rather than as an add-on, as there is less likely to be a commission, paid from insurer to the lender, included in the price.

²⁸ FSRC, *Final Report*, Volume 1, p 290.

²⁹ Productivity Commission, *Final Report: Competition in the Australian Financial System*, 29 June 2018, p 430: <https://www.pc.gov.au/inquiries/completed/financial-system#report>.

³⁰ ASIC, Consultation Paper 324, *Product Intervention Power: The sale of add-on financial products through caryard intermediaries*, October 2019, para 23; see also the Productivity Commission's analysis of claims ratios between 2012 and 2018, which ranged between 83-98%: *Final Report: Competition in the Australian Financial System*, 29 June 2018, Figure 14.6, p 415.

Travel insurance

We understand that the travel sector is seeking an exemption, either as a legislated exemption in line with the proposed exemption for comprehensive car insurance or, pre-emptively, as a Ministerial exemption by regulation under proposed section 12DX of the Draft Bill.

We are strongly opposed to *any* exemption for add-on travel insurance as a class of product.

Add-on travel insurance is a high cost, poor value product, particularly when compared to direct travel insurance. Add-on travel insurance has created serious issues for travelling Australians through the sale of inappropriate, low quality coverage via high-pressure sales.

The deferred sales model that the Government has committed to should in fact lead to improved coverage and reduced underinsurance.

Add-on travel insurance exhibits all the characteristic problems of add-on insurance more generally, as identified by Commissioner Hayne. The dynamics of add-on sales processes mean that people do not have the time or space, free from pressure sales fuelled by commissions, to obtain insurance that meets their needs.

We outline in more detail the issues that are raised by travel insurance below.

Add-on travel insurance has not been good value for money historically

Add-on travel insurance is more expensive than travel insurance obtained directly.

CHOICE's 2017 investigation into insurance provided by travel agents found that add-on insurance purchased through Flight Centre costs up to 90% more than similar policies purchased directly through Cover-more.³¹ It also found that add-on STA Travel insurance cost up to 58% more than similar policies provided by Allianz.³²

A quick comparison by CHOICE revealed that add-on travel insurance with Qantas costs \$105 for a 7-day trip to Singapore, while it costs \$61.50 with Good2Go travel insurance, which holds a similar level of cover.³³

It's not surprising that insurance sold as an add-on is more expensive, because it factors in the commission that the retailer takes as a cut on the way through. It's also likely that insurers and retailers are price discriminating, because they know people are less engaged, time-pressured, and are not shopping around.

We understand travel insurance commissions regularly exceed the 20% commissions cap that applies to consumer credit insurance. We note that the Government is progressing reforms to cap commissions on all dealers in relation to the sale of add-on insurance products (FSRC Recommendation 4.4). We consider that commission payments for add-on insurance products should be banned, as it is with other financial products being sold to retail consumers. However, short of a ban, we support the commissions cap. Before granting any exemption, ASIC and the Minister should ensure commissions for that product meet the commissions cap add-ons in caryards. It would be a perverse outcome were add-on travel insurance found to be 'good value for money' while paying commissions well in excess of those permitted for caryard add-ons.

Add-on travel insurance has led to underinsurance for travelling Australians

Add-on travel insurance generally has lower levels of coverage for risks than direct travel insurance products. This leads to Australians travelling overseas misunderstanding their policy's coverage. The problems arise much later, at claim time, well after the medical and other costs have been incurred, when consumers find out the policy does not cover what they expected or were told.

³¹ CHOICE, *Double (the cost) agents*, January 2018.

³² CHOICE, *Double (the cost) agents*, January 2018.

³³ As at 27 February 2020.

CHOICE's 2017 investigation found that travel insurance bought through travel agents generally offers worse coverage than those obtained directly, and could not recommend any add-on products.

Research by the Department of Foreign Affairs and Trade and Insurance Council of Australia shows that the greater risk of underinsurance is from getting the wrong insurance.³⁴ This report found that:

- 87% of travellers were not clear that insurance policies do not cover all destinations as standard;
- 84% were not clear that travel insurance won't cover them in countries where the government recommends against travel;
- 70% were not clear that travel insurance won't cover claims as a result of alcohol; and
- 87% were not clear whether they're covered for riding a motorcycle overseas.³⁵

A recent example of the risks of underinsurance through the add-on channel:

Coronavirus coverage – Add-on versus direct

If a consumer had purchased an add-on travel insurance product through Australia's biggest travel agent, Flight Centre, on the 20 January 2020 – when Chinese authorities identified an outbreak of coronavirus – they would not have been covered for any form of ticket cancellation. Nor would they have been covered by Aussietravelcover, an add-on insurance product primarily sold through travel agents. If, however, they had bought travel insurance through a direct sales channel, such as Insure and Go, Good2Go or Travel Insurance Direct, they would have been covered.³⁶

The add-on travel insurance channel exhibits all the same problems as other add-on products

Travel agents are not trained to appropriately engage a consumer to purchase the right insurance product. Travel agencies are generally only affiliated with one add-on product which may not be the best product in the circumstances or fit their customer's requirements.

Financial Rights' casework has found a large number of disputes arising out of the travel agent channel because:

- insufficient explanations are given regarding the coverage being offered;
- agents fill in the forms for the consumer and conversations are not recorded, leading to arguments over disclosure obligations at claims time;
- travel agents have a lack of knowledge of the relevant features of the affiliated insurance product, let alone other, more appropriate options, that are available; and
- there is rarely any interrogation of pre-existing conditions or other matters relevant to the circumstances of the traveller.

Sarah's story – Add-on Travel Insurance

Sarah took out travel insurance at a large travel agency franchise. Sarah cannot remember getting copy of the PDS or policy schedule.

Sarah unexpectedly needed heart surgery two weeks before her trip in June 2019. Sarah made a claim on her travel insurance which she was denied.

³⁴ Quantum Market Research, *Survey of Australians' Travel Insurance Behaviour*, Prepared for the Insurance Council of Australia and the Department of Foreign Affairs and Trade, 2017.

³⁵ Ibid, p 15.

³⁶ CHOICE, *Does travel insurance cover a pandemic?* 7 February 2020.

She had heart issues previously and sees a cardiologist once a year. The insurer declined her claim on the grounds she had breached her duty of disclosure.

Sarah does not recall the travel agent asking her any questions relating to medical issues and did not recall her warning her of her duty of disclosure. Sarah only recalls the agent asking if she was happy with the price.

Sarah spoke to the travel agent after the claim was denied, and the travel agent said she couldn't remember if she asked any medical questions. The insurer however told Sarah that the travel agent had told them that she did ask medical questions.

Case study provided by Financial Rights Legal Centre (S241295)

Consumers are often tripped up at claims time with huge variance in definitions. This includes definitions of 'relative' for the purposes of cancellation or return on the basis of a death or sickness in the family, and definitions relating to pre-existing conditions.

The deregulation of the travel industry also means that travel agents are probably not best placed to be selling important and complex financial products—like insurance—at the point of sale. There are few, if any, obligations on travel agents to understand the products they are selling,³⁷ nor are there any obligations to engage more broadly with the insurance market to understand what other insurance products may be available to better serve their customer's needs and requirements.

The point of the FSRC reforms is to ensure that financial products are sold appropriately by skilled professionals who understand and act in consumer's interests – rather than earning a quick buck.

There are problems in the online add-on travel channel

Online add-on products promote consumer disengagement with the product and its coverage. They are generally a tick-a-box scenario that does not take into account the consumer's particular circumstances or requirements. There are rarely any filtering questions or underwriting in the online add-on channel.

Online add-on channels promote speed of purchase to the detriment of engagement, as the following example demonstrates:

Can you read an add-on travel insurance PDS before the website times out?

The Qantas travel insurance Product Disclosure Statement (PDS) is 30 pages and 15,494 words long.³⁸ The average reading speed for an adult is 200-250 words per minute. Assuming 250 words per minute, it would take over an hour to read the PDS. The Qantas website, however, times out a user after 10 minutes. This means it is highly unlikely that a consumer could read the PDS before completing the purchase of insurance added-on at the time of buying the flight.

Fundamentally, the add-on online channel does not separate the purchasing decision for the flight or travel experience from the purchase of insurance. The sale of insurance is always left to the end when a user is hoping to wrap-up quickly to secure their flight at the advertised price. After considerable time spent researching and deciding on a flight, consumers are generally not focussed on their risks and particular insurance needs. Rather, they assume that obtaining *any* travel insurance at all will cover them and want to get the task over and done with. It is this behavioural bias that insurers and their retail partners seek to exploit.

³⁷ There is only a general requirement to "competently and efficiently perform their duties to the standard expected under the AFTA Travel Accreditation Scheme" Clause 3.7 p 5, ATAS Code of Conduct.

³⁸ Qantas Insurance, *International Comprehensive Travel Insurance (0-69 Years), Combined Financial Services Guide, Product Disclosure Statement and Policy Wording*, effective 1 March 2019.

This behavioural bias is further exacerbated where someone is purchasing a flight within four days of travel. People often prioritise speed in purchasing the flight rather than any consideration of their subsequent risks and insurance needs. They are therefore highly susceptible to add-on insurance sales pitches and end up being underinsured.

If appropriately encouraged and guided by independent information, such as the Government's Smarttraveller website, to the direct sales channel – as the deferred sales model is meant to achieve – consumers' insurance needs should be better served.

Applying the deferred sales model to add-on travel insurance will lead to better targeted insurance

There are a range of sales channels for travel insurance. In practice, deferring the sale of an add-on travel insurance only means deferring the sale of the retailer's aligned travel insurance product. It does not inhibit the sale of travel insurance more broadly, directly from an insurer over the phone, online, or in bricks-and-mortar shops after the deferral period ends.

If appropriately encouraged and guided to the direct sales channel as the deferred sales model is designed to achieve, consumers will find that the coverage is cheaper, as well as being of higher quality.

We agree that people should take out travel insurance that suits their risks and needs. Rather than pressure-selling a retailer's aligned policy, a better solution is to refer consumers to a neutral source of information about how and where to take out appropriate travel insurance.

The DFAT/ICA research found that people who visit the Government's Smarttraveller website³⁹ are significantly more likely to read their travel insurance product disclosure statement.⁴⁰ The prescribed information under the Bill could contain a link to the Smarttraveller website. This will prompt people to take out suitable travel insurance, reducing underinsurance and calls on the Government to assist when people are stranded without appropriate cover – all without the conflicts and vested interests inherent in add-on sales.

RECOMMENDATION 11. To better address risks of inappropriate travel cover and underinsurance, include a link to a neutral source of information, such as [smarttraveller.gov.au](https://www.smarttraveller.gov.au/), in the prescribed information for add-on travel insurance.

For these reasons, our organisations do not support any exemption for travel insurance products from the deferral sales model for add-on insurance.

Compliance and remedies

There is little point in having laws unless there is a meaningful deterrent associated with breach. The community expects that breaches of consumer and financial services laws will be treated seriously and with appropriate consequences.

Penalties

We strongly support the penalties for a breach of the deferred sales model aligning with section 12GB of the ASIC Act, being a maximum of 2000 penalty units for an individual (\$420,000) and 20,000 for a body corporate (\$4,200,000). The history of rampant mis-selling of low value add-on insurance justifies the need for effective deterrence and swift action for breaches.

Obligations to maintain and provide records of compliance

The timeframes and stages in the deferred sales model are incredibly complex, as Figure 1 above reveals.

³⁹ <https://www.smarttraveller.gov.au/>

⁴⁰ Quantum Market Research, *Survey of Australians' Travel Insurance Behaviour*, Prepared for the Insurance Council of Australia and the Department of Foreign Affairs and Trade, 2017, page 14.

Consumers are highly unlikely to be aware of their rights under the deferred sales model, and may not present to casework agencies for months or years. Our casework and data from DemandaRefund demonstrates that the clean-up process from the add-on insurance scandal can take years or even decades. It will be very difficult for consumers, and caseworkers advising them on their rights, to work out the relevant time periods, and dates of contact, from memory in the absence of call recordings.

Even once aware of a breach, consumers need an easy way to obtain evidence of breaches to substantiate their complaints to the Australian Financial Complaints Authority (**AFCA**). We note the ongoing problems with firms, in AFCA disputes, failing to provide the information needed to establish consumer's claims.

Firms must have a positive obligation to document and keep records of their contact with consumer to show that the sale of add-on insurance was compliant with the Bill, to provide this information on request by the regulator or consumer (without discovery proceedings). Obligations to maintain and provide access to records will incentivise compliance with the ban and facilitate access to justice.

RECOMMENDATION 12. Ensure firms have a positive obligation to demonstrate compliance with the ban and make that evidence easily available to regulators and affected consumers.

ASIC Regulatory Guidance

ASIC guidance will be required for a number of the reforms but specifically we are keen to ensure that ASIC guidance is provided with respect to the information that a consumer is told in the pre-deferral period or at the time of deferral period begins. It is critical to ensure that:

- Consumers are clearly informed that they do not have to purchase the insurance from the salesperson/primary product provider;
- Information about alternative products/options is provided;
- A mechanism is in place to ensure that consumers can obtain these alternative insurances as simply and easily as at the point of sale of the primary product.

The success or otherwise of addressing any potential for underinsurance or non-insurance is based in large part on the information provided to consumers at this point. Consumers should not be left with the impression that the only choice they have is to wait for the four days. Consideration needs to be given to ensure that prescribed information is provided to the consumer at this point based upon the above information. Ideally this would also be consumer tested to ensure that the information provided is effectiveness in terms of comprehension and subsequent action.

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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APPENDIX A – ABOUT THE CONTRIBUTORS

ACCAN

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communications consumer organisation representing individuals, small businesses and not-for-profit groups as consumers of communications products and services. ACCAN focuses on goods and services encompassed by the converged areas of telecommunications, broadcasting, the internet and online services, including both current and emerging technologies. We aim to empower consumers to make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get a better outcome for all communications consumers. Member groups include community legal centres, disability advocates, indigenous organisations, financial counsellors, regional organisations, farmers' federations, parents groups, seniors organisations and other individual members.

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, campaigns, outreach, community engagement and more. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Consumer Credit Law Centre SA

The Consumer Credit Law Centre South Australia (CCLCSA) was established in 2014 to provide free legal advice and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The Centre also provides legal education and advocacy in the areas of credit, banking and financial services. The CCLCSA is managed by Uniting Communities who also provide an extensive range of financial counselling and community legal services as well as a large number of services to low income and disadvantaged people including mental health, drug and alcohol and disability services.

Consumer Credit Legal Service (WA) Inc

Consumer Credit Legal Service (WA) is a not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of banking and finance, and consumer law. We strengthen the consumer voice in WA by advocating for, and educating people about, consumer and financial, rights and responsibilities. In the 2018/2019 financial year, we represented over 100 clients in their disputes, and participated in over 40 law reform activities.

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. We are the voice for the financial counselling profession and provide support to financial counsellors including by sharing information and providing training and resources. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

Financial Rights Legal Centre

Financial Rights 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.

Appendix B – List of Recommendations

- RECOMMENDATION 1. Amend the Bill to specifically include extended warranties sold by retailers within the definition of 'add-on insurance product' in section 12DO.
- RECOMMENDATION 2. Confirm that 'dealer issued' warranties will be covered by this reform.
- RECOMMENDATION 3. Immediately review and remove the loopholes for "complimentary" insurances to bring these products within the spirit and intent of the FSRC reforms.
- RECOMMENDATION 4. The deferral period should only begin once the primary good or service has been purchased, financed and delivered to the consumer, and the prescribed information has been provided. Rare cases where the insurance is needed well in advance of delivery can have an alternative trigger set out in Regulations.
- RECOMMENDATION 5. Ban contact with consumers after the deferral period starts, other than customer-initiated contact. Alternatively, firms/retailer should only be permitted to contact the consumer once, in writing, at the end of the deferral period.
- RECOMMENDATION 6. The criteria for exemption by ASIC in s 12DY should also largely apply to an exemption by regulations in s 12DX, meaning the Minister should also have regard to whether there is a high risk of underinsurance; whether the add-on is well understood by consumers, and any differences between the product when sold as an add-on or by another channel.
- RECOMMENDATION 7. Amend the Bill to require ASIC to publicly consult on applications for exemptions.
- RECOMMENDATION 8. Progress reforms to standard cover and standard definitions in insurance.
- RECOMMENDATION 9. In considering applications for exemption, a product must meet an historical and ongoing claims ratio of at least 90% to be considered 'good value for money.'
- RECOMMENDATION 10. Exemptions should be time-limited to ensure the product continues to meet the criteria.
- RECOMMENDATION 11. To better address risks of inappropriate travel cover and underinsurance, include a link to a neutral source of information, such as smartraveller.gov.au, in the prescribed information for add-on travel insurance.
- RECOMMENDATION 12. Ensure firms have a positive obligation to demonstrate compliance with the ban and make that evidence easily available to regulators and affected consumers.