EIL submission CP 294

Introduction

Two reform proposals are articulated:

1. A Deferred Sales Model (DSM): Applicable to 'add-on' insurance and warranties regulated by the Corporations Act (other than comprehensive or CTP). The proposal is that a deferral period of between four to thirty days must elapse before dealership intermediaries could sell an add-on insurance product to the consumer. The DSM proposal is product and not channel specific. ASIC have not set out a specific trigger event for the commencement of the deferral period and seek stakeholders' views on this aspect.

ASIC considers that:

i) a well-designed model would give consumers additional time to navigate the 'complexities' of add-on products and facilitate improved decision making;
ii) the deferral period should be of sufficient duration to give consumers the opportunity to assess their needs, consider the scope of cover offered to them and match their needs to those products;
iii) the commencement trigger for the deferral period should be a point in time or an event that can be easily documented and readily verified by all relevant parties;
iv) there is a need to balance, in the context of the consumer communication, providing sufficient relevant material about each different product with the risk of burdening the consumer with too much information; and
v) a different deferral period could apply to mechanical breakdown products (i.e. until or even after delivery of the car, given that cover may not commence for three to seven years).

2. The introduction of enhanced supervision and monitoring obligations for insurers in relation to their Intermediary network: ASIC are seeking to introduce specific requirements for insurers to supervise and monitor their authorised representatives selling add-on insurance products. ASIC does not consider that it is appropriate for the amount or rate at which commissions are payable to be reviewed as part of this process, and it is therefore seeking to drive changes by requiring providers to exercise more control over the conduct of their authorised representatives.

Proposal E1

Deferred sales model

Q1 Do you consider that it is appropriate to apply a deferral period to the sale of add-on products by caryard intermediaries?

We are supportive of a deferral period. An appropriate deferral period should be embedded in a deferred sales model (DSM) that is broadly consistent with the features attached to the DSM utilised for the distribution of GAP Insurance in the United Kingdom. We are not aware of any information indicating that the UK model is not yielding the benefits intended for it.

A DSM is not a panacea of itself but should form part of a complementary suite of processes which, collectively, best ensure the consumer is fully informed of the features, benefits and financial impacts of a decision to purchase financial products.

We intend to embed a DSM within a new sales process framework featuring a customer portal through which key consumer information inclusive of disclosure documents, cost information and compliance statements absent undue formality can be accessed by the consumer away from the sale environment.

We believe that a DSM should possess a high degree of flexibility to avoid a one-size-fits all approach where applicable.

Q2 To what extent would a deferral address the consumer harms identified in this market?

We believe an appropriate DSM will address issues such as consumer fatigue, low levels of consumer awareness, the absence of constructive consent and the appropriateness or otherwise of the cover offered.

However, we reiterate that a DSM will not of itself preclude some of the behaviours identified by ASIC in recent reports.

We believe it is also critical that the consumer is fully informed of the features, benefits and cost of the products in an engaged and transparent manner. Consumers must make an informed decision to *buy* the products, and not have such products sold to them in a non-compliant manner.

A deferral period will address some of the consumer harms identified in this market but it must be supported, complemented and enhanced by improved sales practices and product design informed by a need to treat the customer fairly.

Q3 How would the proposal affect businesses (e.g. insurers, car dealers, finance brokers, credit providers)? Would it have a different impact on small businesses?

We expect that there will be a process of adjustment for many businesses whose income streams in part or whole are dependent on the distribution of financial products and services. However, we also believe that the adjustment period will not be protracted.

Whilst there will be impact in the short and perhaps the medium term, we believe the greater concern is to ensure consumers are protected by and benefit from, the sales process.

Q4 Would the model need to apply differently to the new and used cars markets? In what ways could the model differ to be effective across the two markets?

We do not believe there ought to be variations of a DSM as between the new and used vehicles markets.

In essence, if there was sufficient flexibility imported into the DSM to accommodate an opt out mechanism (an option which can only be initiated / exercised by the consumer) for short vehicle deliveries or availability, complemented by additional checks, balances and controls to validate the consumer is both 'confident' and informed, then a DSM would not need to be structured differently to be effective across the two markets.

Q5 What are the preconditions for a competitive online market? How can a deferred sales model contribute to this outcome?

Effectively, the only barriers to a competitive online market are product and brand awareness. In the current environment in this market, providers are contemplating the creation of on line and digital distribution channels for the 'add on' product groups. We don't believe that a DSM is necessary in order to establish such channels and we don't believe that a DSM is in fact required in the on-line space given the absence of the practices identified by ASIC in the intermediated, point of sale dealership market.

Q6 Could the objectives of a deferred sales model be achieved in a different way or could any complementary measures better ensure our objectives are achieved?

The DSM will be complemented by better consumer engagement; more effective consumer communication; enhanced sales processes constructed with the consumer at the centre, and rigorous training, monitoring and supervision of Intermediaries.

Q7 If a deferred sales model was introduced, are there any existing related obligations on insurers, finance providers and car dealers that would no longer be appropriate and could be removed?

None that we are aware of at this point.

Q8 What is the most effective way of testing whether consumer understanding has improved due to a deferred sales model? What metrics would provide the best way of measuring consumer comprehension?

A comparative exercise of this nature is qualitatively difficult. We do believe that innovative, informative, transparent and compliant sales processes will result in enhanced consumer comprehension of product features, benefits, costs and suitability. It is important for such sales practices to be overlaid with rigorous training, monitoring and supervision of Intermediaries.

Q9 Should a consumer opt-out mechanism be included?

Yes.

We query whether an informed, confident consumer should be restricted from initiating the purchase of an add on product during the deferral period. We do need to think about this issue from a consumer's perspective. The model we implement must not be a barrier to consumers purchasing insurance they need and understand, provided the consumer's choice is exercised in an informed, constructive manner, accompanied by appropriate checks and balances.

As currently framed, the proposal may have unintended negative impacts upon consumers who wish to purchase vehicles available to be driven from the dealership at or soon after their first attendance at the dealership (but within a 4-day deferral period). In the absence of the ability to opt out of a deferral period in an informed and constructive manner in those circumstances, a consumer in this scenario may have requisite insurance protection withheld from them.

PROPOSAL E 1.1

Commencement of the deferral period

Q1 Which of the proposed options in paragraph 193 for commencement of the deferral period would be preferable and why (please suggest other options if relevant)?

Option (a) because in the context of an innovative and compliant sales process, the date and time at which effective consumer communication is first provided can be objectively verified. The purchasing decision around financial products in this market is inextricably linked to the acquisition of a vehicle and, if applicable, the financing of that vehicle. We therefore believe that information as to insurance options should be provided to the consumer as soon as is practicable after a consumer attends a dealership, without need for a purchasing commitment from the consumer.

Requiring a deferral period to commence at the point of vehicle delivery will have a significant impact upon the channel and upon the consumer (please also refer to our comments below in this regard).

Q2 Which sales sequence (see Figure 1) is most likely to meet our stated objectives, and why?

An effective DSM, accompanied by an innovative and compliant sales process would not, in our view, feature sequencing of a rigid nature. Vehicle, finance and insurance purchase can be integrated without the corrosive consumer impact identified in ASIC's various reports. We do not support the adoption of any specific sequencing.

Whilst we understand why ASIC would advocate for the uncoupling of insurance, finance and the purchase of a vehicle, we nonetheless believe insurers should be at liberty to innovate and structure their sale processes and procedures in a proprietorial, innovative and compliant fashion within the framework of a DSM.

Q3 How could the point at which the deferral period commences be easily documented to be readily verified by all relevant parties?

Electronically / digitally - particularly if the commencement is synonymous with the first provision of consumer communication.

Q4 If the deferral period commenced at vehicle delivery, could short-term 'bridging' insurance be offered to cover the deferral period (only)?

We do not see the provision of "bridging" insurance as a solution. Such insurance would present administrative and logistic difficulties. Further, it would be difficult to price and we wonder how concepts such as cooling-off would operate in such a product construct. We do not believe the deferral period should commence at the point of vehicle delivery.

PROPOSAL E 1.2

Duration of the deferral period

Q1 What would be the appropriate duration of the deferral period within the range of 4–30 days and why?

We are supportive of a 4-day deferral period, supplemented by a degree of flexibility and an opt out mechanism (as articulated earlier) in respect of vehicles delivered or available within 4 days, including used vehicles or demonstration vehicles. The informed exercise of an opt out mechanism by a consumer could be restricted to such specific scenarios so that it is not abused and would be reinforced with additional consumer protection.

We believe that a deferral period, calibrated in the manner described above and operating within the context of an innovative, compliant and informative sales process, gives consumers sufficient resources to assess their needs, consider the scope of cover offered to them and then match their needs to those products, whilst allowing the consumer some time to obtain any other information relevant to the purchasing decision.

We also note that the end of the deferral period will be followed by the commencement of a cooling off period.

Q2 Should the duration of the deferral period be different for new and used cars?

We do not believe so. Please refer to our previous responses in relation to this aspect.

Q3 What is the average period of time between the sale of a new car or a used car and its delivery to the consumer? What is the shortest period of time and how common is it?

The Insurance Council are procuring data from the AADA as to the average time of delivery and the percentage of vehicles delivered within 4 days. Our understanding is that the substantial majority of new vehicles are in fact delivered after 4 days, and so the need to exercise an opt-out option for shorter deliverable / available vehicles would only be applicable to a relatively small group of consumers.

PROPOSAL E 1.3

Consumer communication (delivery and content)

Q1 Should providers be required to take active steps to ensure consumers read and understand information about their products before they can buy them?

Insurers do take active steps to ensure that consumers receive and read the product information sent or provided to them. However, it is extremely difficult to measure comprehension and understandability, though we acknowledge more can be done to ensure effective communication is provided in respect of consumers for whom English is not a primary language, for indigenous consumers, for consumers with low financial literacy levels or the visually impaired. Of course, these challenges apply not only to financial products and services but also to the vehicle purchase itself and to finance.

Q2 What forms of innovative disclosure could be used to better inform consumers about their insurance decision?

We concur that paper-based disclosure has inherent limitations and that consumer communication should feature innovative and interactive forms of engagement that better assist consumers while still being cost effective. Consumer portals, on line applications, 'kiosks' featuring touch screen technology, narration & video content are just some of the disclosure options open to insurers in this space.

Q3 What information should the consumer communication include?

- Cost – on a cover by cover basis and whole of insurance cost, by week, month and annually;
- Options in relation to funding the cost inclusive of cash and periodic payments;
- A description of the deferral period, the consumer's ability to opt-out and any concomitant risks;
- Key product information inclusive of risks covered and not covered;

Such information must be provided in a succinct and plain English manner so as not to burden the consumer.

Perhaps ASIC and the industry could come to a consensus position in relation to minimum content which could be broadly spelled out in Code principles and guidance?

Consumer communication (other products)

Q4 Should providers be required to inform consumers about the availability of other products that provide similar cover, but may be cheaper?

A generic, boiler plate statement to such effect is unlikely to be effective. More detailed information is unlikely to be available to providers.

PROPOSAL E 1.4

Mechanical breakdown insurance and warranties

Q1 Should a separate deferred sales model be introduced for these products? If not, how could the particular risks associated with these products be addressed?

We are not supportive of different deferral periods applying to warranties, even in situations where these products are sold with new cars or used cars that are still covered by the manufacturer's warranty. We are however supportive of tailored consumer communication which explains that cover will not commence until, for example, the expiration of the manufacturer or statutory warranty, as applicable.

An alternative option to a separate deferral period is to extend the cooling off period for these products so that the cooling off period does not commence until cover under the product commences. It is not practical to have different deferral periods for different products – in fact, it will be burdensome from a monitoring, compliance and operational perspective.

We would also recommend that all mechanical extended warranty products and associated distribution processes be regulated and brought within the licensing and conduct obligations of the Corporations Act to ensure that the implementation of any reforms, including price reform, has the broadest possible application to prospective affected consumers.

Proposal E2

Enhanced supervision obligations for product providers

Q1 Given the limitations in monitoring conduct at the point of sale, what changes would be necessary to ensure providers are effectively supervising their representatives?

The key is for providers to have an appropriate compliance framework suitable for the nature, scale and complexity of their respective businesses. The framework must feature an accreditation and training regime which best ensures that intermediaries are appropriately trained and monitored / supervised using data and other recorded information. Effective oversight and control of the sales process is therefore of paramount importance.

The monitoring procedures need to address consumer outputs (that is, such procedures need to enable providers to assess whether a sale is appropriate, made without unfair manipulation of the consumer, and in accordance with all relevant regulation).

A sufficient level or number of sales must be monitored to be able to provide assurance that there is a clear view of conduct across the Intermediary network. There should be absolute independence of compliance monitoring teams. Reporting lines for, and remuneration structures of, compliance / compliance monitoring team must not compromise their independence. This also applies to other teams that may be providing reporting to Boards and/or relevant Committees.

Q2 What risk indicators could be introduced to improve the capacity of providers to monitor their representatives?

Enhanced visibility of any potential trends that may suggest unfair conduct at the point of sale is critical. Systems which integrate relevant information (for example, lapse rates and complaints and claims data, and perhaps initiatives like keystroke analysis if possible) into supervision and monitoring activities, are required.

In terms of indicators, they may include: sales trends (including penetration rates and identification of systemic issues); trends identified in complaints and claims outcomes, especially where these relate to an issue at the point of sale (for example, the sale of a policy to a person who is ineligible to claim under it); information gleaned from post-sale surveys of a sample of consumers.

Q3 What sanctions would be most effective in deterring representatives from engaging in unfair practices at the point of sale?

Adverse consequences to remuneration, (including claw back of commission), eligibility for bonuses and other non-monetary incentives, and career progression. This would apply to both Intermediaries and internal compliance staff.

At Eric, we are incorporating a compliance gateway in to our Dealer remuneration arrangements. Failure at this gateway will lead to financial penalties and authorisation sanctions.

DSM scope

We believe there is no real basis or need for the application of a DSM to novated lease and salary package channels. Primarily, these distribution channels distribute financial products and services on line and / or by telephone, in an environment that does not resemble the motor dealership. In a typical scenario, the acquisition of a financial product occurs without face-to-face contact. There is little or no opportunity for the manifestation of aggressive or unfair sales techniques.

The typical sales process in these channels does not prevent the consumer from obtaining and comparing policies and quotes from other providers. Furthermore, the risk that consumers may be asked to sign multiple documents under pressure, and without the ability to seek independent advice, does not eventuate. It may therefore be argued that the sale process operating in these channels already incorporates a constructive deferral period.

We also note that the novated lease and salary packaging channels have not hitherto been raised by ASIC as a concern and are qualitatively different from motor vehicle dealerships in terms of not only the context of interactions with customers but also the profile of their customer base.

Notwithstanding the above, our developed monitoring and supervision framework will apply to the novated lease and salary packaging channels.