Submission from Australian Salary Packaging Industry Association
in response to *ASIC Consultation Paper 294*

The sale of add-on insurance and warranties through caryard intermediaries

The Australian Salary Packaging Industry Association (ASPIA) welcomes this opportunity to respond to the *ASIC review of Dealer based insurance programs.*

By way of background, the Australian Salary Packaging Industry Association (ASPIA) was formed in 2007 to provide a forum for discussing the overarching legislative and taxation issues affecting organisations within the growing outsourced salary packaging industry and their corporate and individual employee clients.

Since then the Association has evolved to more broadly represent and promote the industry, particularly engaging with Government and regulators. It also performs an educative role, striving to build an understanding of the industry by publishing information about its impact and economic importance.

Furthermore, the Association plays a role in setting and maintaining the standards of the industry, establishing minimum guidelines in relation to service and inter-provider engagement, as well as providing a complaints-handling facility for member firms' customers.

ASPIA currently represents more than 30 organisations involved in the salary packaging industry in Australia, and together they employ more than 2,000 people. The Association is run by a small, voluntary Board, who hold senior positions in companies that operate in the industry.

Our members service more than 6,200 organisations, ranging from corporations and government departments, to various Not-For-Profit (NFP) organisations, including Public Benevolent Institutions (PBIs), Health Promotion Charities and Public Hospitals. Close to 3 million employees are eligible for benefits, with an estimated 50% of eligible employees taking advantage of their entitlement. ASPIA's members administer at least $500-750 million in benefits each month.

In the following pages, you will find our detailed response to questions we feel qualified to comment on which have been raised in Consultation Paper 294. We welcome the opportunity to elaborate on any of our views and should you need further information, please contact Leigh Penberthy, Chairman by emailing leigh.penberthy@aspia.com.au or by calling 1300 766 064.

Leigh Penberthy
Chairman

Australian Salary Packaging Industry Association (ASPIA)
PO BOX 7622
MELBOURNE VIC 3004
http://www.aspia.com.au

Introduction

The Australian salary packaging industry provides a valuable service, helping employees utilise pre-tax personal income to package a number of different benefits. One of the most frequent benefits is a novated lease, which allows them to acquire and operate a vehicle.

This can be a complex area, and in joining the Association, each of our members has committed to a **code of practice**, at the core of which is ensuring that **employees are well equipped and informed to make the right decision for their personal needs and lifestyle.** We take a consultative approach, which is deliberately designed to improve consumers' financial literacy and encourage consumers to seek independent financial advice before making a final decision.

To ensure employees are fully informed, members not only have a lot of information available on our websites but actively seek to educate employees, even before they are taking up a package with a member. This ranges from in-house workshops and team meetings, online tools and calculators, to face-to-face conversations and direct telephone access.

In *principle,* a deferral period could be implemented within a salary packaging context, but only ***if*** the unique requirements of the salary packaging sector are taken into consideration in the design of any mandated deferral period and processes. Any such deferral period must also ensure that it doesn't disadvantage the consumer. To operate effectively, we believe there would need to be the ability to opt out of any deferral period, to ensure consumers were not disadvantaged in any way. Consumers may not choose to do so, but it would be critical for them to have the option, if any such scheme were introduced.

However, in the salary packaging context, it is important to note that there is already a natural deferral process, as most transactions take at least 30 days to come to fruition.

By the very nature of salary packaging, there are natural pauses in the process – from initial exploratory conversations, to a formal quote, to answering questions about the quote and inclusions, a decision by the consumer, approval by their employer, and only then the final contract. Even then, consumers can withdraw from the arrangement at any time, right up until they take possession of the vehicle. This extended process provides them with considerable time to think through the product offers and ongoing financing options.

At least 90% of the time, consumers come to us with a predetermined vehicle in mind, having already done considerable online research, factoring in their budget and lifestyle considerations. This is supported by research conducted by the Federal Chamber of Automotive Industries. The conversations they have with our members are not 'sales' conversations in the traditional sense, in that they have decided to acquire a car. It is more about trying to understand if the arrangement we are proposing is going to work for them.

Responses to questions

E1Q1: Do you consider that it is appropriate to apply a deferral period to the sale of add-on products by caryard intermediaries?

As noted in our introductory comments, by its very nature, the salary packaging process has a natural deferral period, with transactions typically taking at least 30 days from first contact until settlement. In that time, our members spend considerable effort ensuring that consumers (which we will also refer to throughout this submission as employees) are well-informed about all the options available to them.

This is achieved through several mechanisms, including the provision of general information via websites and in seminars, although most is done via one-on-one conversations, which take account of an individual's personal circumstances. In this scenario, in line with their obligations as members of ASPIA, they seek to ensure consumers are fully informed.

This is quite a different process to someone having an Insurance and Financing person putting options to them in a caryard, trying to sign them up for various insurance and other financing products as part of closing the sale of the car.

As noted earlier, in 90% of cases, people come to us already knowing the vehicle that they want, so our conversations are more about how to ensure they can package it – with the appropriate protections in place.

The key questions become whether salary packaging organisations are deemed to be 'caryard intermediaries' **and** whether any mandated deferral period would result in consumers making a more informed decision.

If ASIC deems that salary packaging organisations do fall into this category and that a deferral period is warranted – despite the natural deferral process – then the timing and design of the processes around this deferral period will be critical.

As noted earlier, in principle a short – four day – deferral period could be implemented. But it needs to be designed in such a way as to not stop employees from benefitting from any special offers or other market driven programs that could be of financial benefit to the employee.

In a salary packaging scenario, the only time that a deferral would work is if the period started when the consumer is offered insurance products or receives a quote from the provider which includes insurance products. It would need to stop before vehicle settlement, to ensure that the full benefits of packaging insurances could be realised, as once the vehicle is settled then the salary packaging benefits for such Insurance based products cannot be provided.

E1Q2: To what extent would a deferral address the consumer harms identified in this market?

ASPIA believes that given the already noted additional checks, and designated pauses in the completion of a salary packaged vehicle through a novated lease, we are already providing and protecting the consumer from such considered harm.

As noted, the salary packaging experience is completely different to a consumer experience in a car dealership. In the salary-packaging environment, the sale of add-on insurance products occurs at a later stage in the process – the vehicle is chosen, and then financing and insurance arrangements are explored, depending on individual circumstances and lifestyle requirements.

Key differences between an employee salary packaging sale and an in-dealership sale include:

- The sales process is rarely conducted face to face.
- The majority of employees do not make decisions at the same time or immediately after the purchase of the vehicle. There is a process of conversations and exploration of options, without a time pressure.
- The relationship is ongoing. Our members don't simply sell someone a vehicle, then see them again in five years. We interact regularly, so it is critical that we build trust, rapport and confidence through this process and, at all times, act in the consumers' best interests.

This approach ensures that employees have sufficient time to make informed decisions at every step along the way - on the type of vehicle, price, financing and add-on insurance options that suits their personal situation.

All of this research and decision making occurs away from a car dealership environment and ASPIA's members ensure that the employees are provided an educational experience and are always advised to seek independent financial advice.

ASPIA therefore believes that a mandated deferral period relating to add-on insurance products – for salary packaging employees – would not provide additional consumer protections.

E1Q3: How would the proposal affect businesses (e.g. insurers, car dealers, finance brokers, credit providers)? Would it have a different impact on small businesses?

It would add to the administrative burden that employers need to manage, ensuring that any such deferral had been observed, monitored and reported upon, as well as adding additional administrative processes to a program that already has many of the safeguards inbuilt, or are required due to legislative or regulatory mandated requirements.

Importantly, the most significant impacts would be on employees, whom you call consumers. When salary packaging a motor vehicle, the employee utilises pre-tax personal income to acquire and operate the vehicle. The timing of decisions about eligible insurance in this process is therefore critical.

If the deferral period were to commence after the signing of the novated lease finance agreements or the delivery of the vehicle, it would disrupt the process for employees wanting to salary package a novated lease and insurances for their vehicle. Any such delay could increase costs, reduce choices and, if poorly timed in the process, remove the ability to fully leverage the benefits of packaging.

If a mandated deferred sales model is necessary for add-on insurance products acquired as part of salary packaging arrangements, then the conclusion of the deferral period would need to occur well in advance of the date of settlement to ensure we continue to remain compliant with the legislation.

E1Q4 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?

In the event of a mandated deferral period, ASPIA **endorses a consistent approach** for new and used car sales.

The novated lease sales process does not materially differ between new and used cars, and applying a different model across the new and used car markets would create unnecessary administration complexity, as well as the potential to confuse or harm the consumer financially.

E1Q5: What are the preconditions for a competitive online market? How can a deferred sales model contribute to this outcome?

We do not believe that a mandated deferred sales model would contribute to a competitive online market in any way.

The salary packaging process is already a competitive online environment. Most ASPIA members work largely with large corporate, not-for-profit and government agencies. In many cases, our customers operate a panel arrangement with two—or three providers, and ask their employees to seek independent quotes from the panel members to find the provider and / or offer that best suits their needs – including those for insurances. It is important to note that this research process is not a commitment to acquire or lease a vehicle. They are just getting a quote and comparing packaging arrangements. It again provides a natural deferment process possibly non-existent across other segments.

As part of the process, employees / consumers are educating themselves about the different offers and components of those offers. Employees come to us after conducting considerable research and feeling educated and informed of their decision making process. Therefore, the current online marketplace has ensured that consumers in the salary packaging novated lease space, are well informed of their choices.

E1Q6: 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?

ASPIA contends that the salary packaging process, by its very nature, offers a real and viable alternative to a deferred sales model. As previously mentioned, our members take a consultative and educating process with our clients to find the best fit for their requirements. This provides an elongated process by the nature of our service. We have a two-way dialogue on how the product or service will impact on them, which includes ample time for employees to ask questions, seek advice and do additional research. A further step in the salary packaging process is that employers must also acknowledge / approve their employee to take the product. We believe that this process already achieves the objectives of the review.

E1Q7: 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?

In our space, we would need to continue to follow and meet all of our existing obligations, whether the deferred model existed or not, so there would be no change to our obligations and commitments.

E1Q8: 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?

We do not believe that our salary packaging clients would notice the effect of a deferred sales model, due to the natural pauses throughout our existing processes.

However, you could survey consumers, both those who purchased and those who elected not to purchase. This would need to be baselined with consumers who purchased 'before' and 'after' the mandatory deferred sales process was implemented. To do this though, would have a significant administrative cost impost on our members for what we believe would be of little benefit or outcome.

E1Q9: Should a consumer opt-out mechanism be included?

In the event that a deferral period is mandated, **ASPIA strongly supports an opt-out mechanism.** Many customers use salary packaging 'for life' and are well-informed of the product. They should not be forced to defer their decision if they simply wanted to renew or extend a lease. That process would naturally involve revisiting insurance arrangements anyway.

While most salary packaging decisions do take upwards of 30 days, from time to time, people need to move more quickly – in just one or two days – so there needs to be provision for consumers to opt-out of any deferral period to ensure we can meet their needs.

Consumers could be asked to submit some simple questions to test their understanding before being able to opt-out.

If there is no opt-out option, there would be a risk that salary packaging consumers would not be able to include their selected insurance in their financing arrangements, and would therefore need to bear those costs post-tax, or they may simply not take out the insurance, leaving them unprotected in some instances.

Importantly, as part of employer salary packaging arrangements, some employers require or recommend that their employees take out certain additional insurance products as part of their vehicle acquisition.

A deferred sales model may cause delays that would impact on the consumer under such circumstances. In these situations, an opt-out mechanism would enable salary packaging providers to meet these customers' objectives.

Your feedback: Commencement of the deferral period

E1.1Q1: 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, per paragraph 193, is the only viable option.

To ensure no degradation of disruption to consumer choice or experience, we believe any deferral period should **commence on the date that the salary packaging provider first provides the mandated consumer communication** to the customer. This can be provided:

- during the first interaction with the consumer;
- immediately following the first interaction with the consumer; or
- when a quote is given.

We also reiterate that if introduced, a mandated consumer communication and deferral period should apply regardless of the medium for sale, that being direct, online (web-based) or over the phone.

E1.1Q2: Which sales sequence (see Figure 1) is most likely to meet our stated objectives, and why?

The options provided within the paper don't reflect the way in which decisions are made in a salary packaging arrangement. By its very nature, packaging involves bundling various options relating to the purchase and operation of the vehicle. Considerations such as lease term, annual kilometres and generally the whole of life costs need to be contemplated as part of the overall novated lease establishment process, which **do not** necessarily fit into either Sales Sequence A, B or C, as outlined in paragraph 204.

The novated lease establishment process already takes several well-documented and considered steps to ensure consumers make informed decisions.

1. Consultants speak with customers to understand their personal situation and lifestyle considerations.
2. Customers receive an estimate (or quote) on the effect on take home pay for the novated lease, which can be based on either an estimate of the vehicle price, or the actual price of the vehicle. This is accompanied by product information regarding any and all add-on insurance products.

   During this period, the customer has time to review and consider all the information (add-on insurance, finance amount, tax concepts associated with the novated lease, underlying cost of the vehicle).

3. Consumers usually seek multiple quotes, and ask questions to understand the inclusions and obligations of different options before they make a choice.
4. Once they confirm they would like to proceed, the final price for the vehicle is determined, a final 'whole of life' cost of the novated lease transaction is prepared and is sent to the customer for review.
5. The novated lease transaction is also sent to the consumer's employer to confirm eligibility.
6. If approved by the employer and acceptable to the consumer, the quote is signed as acceptance.
7. Once the consumer acceptance is attained, the vehicle is subsequently ordered, and the finance / credit application is completed.

ASPIA believes therefore that where salary packaging arrangements apply, it is neither desirable or necessary to mandate a process as outlined in Sales Sequence A, B and C as outlined in paragraph 204.

These sequences **do not** take into consideration the manner in which decision making occurs under a salary packaging arrangement.

If a mandated deferred sales process is implemented, then the required timing to commence a deferral period for products sold in a salary packaging context needs to be when the **mandated consumer communication is provided (such mandated information is to be provided when the consumer is offered the product or is given a quote)**, with the deferral period to cease sufficiently prior to vehicle settlement.

E1.1Q3: How could the point at which the deferral period commences be easily documented to be readily verified by all relevant parties?

From our industry's perspective, we have provided you with a few options for when or if a deferment period starts or commences. These could be easily documented, or date and time stamped to ensure compliance and accuracy for reporting or audit purposes.

Please recognise that most organisations do not currently store or hold such data on a regular basis, if at all, and therefore its development would be as an added expense to the provider to support such additional compliance. For an industry with an already large array of additional regulations and compliance requirements, this would create a further burden with potentially little or no benefit or protection for the consumer, given our already deferred model approach.

E1.1Q4: If the deferral period commenced at vehicle delivery, could short-term 'bridging' insurance be offered to cover the deferral period (only)? What does insurers' claims data demonstrate about the likelihood of a claim shortly after delivery?

ASPIA reiterates that if a mandated deferred sales model is deemed necessary for add-on insurance products acquired as part of salary packaging arrangements, the conclusion of the deferral period needs to occur **well in advance of settlement of the novated lease**.

Any deferral after settlement would create material financial disadvantage for those employees wanting to salary package costs associated with insurances. Therefore, short-term bridging finance **would not** address this issue.

Your feedback: Duration of the deferral period

E1.2Q1: What would be the appropriate duration of the deferral period within the range of 4–30 days and why?

ASPIA submits that if a period is to be mandated, no longer than a four-day timeframe is more than adequate time for a customer to make an informed purchasing decision. We still contend however, that the natural delays in the salary packaging decision making process make a mandated deferral period unnecessary.

However, as noted above, any regulatory change that did not give consumers the ability to elect these products **before** settlement of the novated lease and payment for the vehicle is likely to financially disadvantage consumers utilising our arrangements.

Any short or defined period of time may focus the consumer's consideration of the various products which they may require in support of the purchase of their vehicle. However, again, we contend strongly that there would need to be an opt-out measure, even for a short timeframe.

If consumers are not ready or they have more questions, they can engage with the provider at that time and the period will naturally be as long as required by the consumer to make such an informed decision.

E1.2Q2: Should the duration of the deferral period be different for new and used cars?

ASPIA strongly favours consistency in the application of any deferral period. We **do not recommend** the introduction of different sales processes and obligations across add-on insurance products relating to new and used vehicles.

This would add increased complexity and expense to the implementation and management of any changes. ASPIA would want to ensure that any regulatory change was designed to meet the varying market requirements of both new and used vehicles.

As previously outlined, salary packaging arrangements do not materially differ between new and used cars.

E1.2Q3: 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?

From initial contact with a customer, acquiring a vehicle via a novated lease arrangement, to completion (settlement) of all documentation and financing, the average period across the salary packaging sector is just over **30 days**.

There are unusual situations where the customer requires a much faster completion time period – perhaps as little as 24-48 hours. In these cases, the time requirement is driven by the need / request of the consumer, not by the salary packaging novated lease provider. Again, all the necessary checks and balances already outlined need to be completed, documented and checked prior to proceeding with the lease.

E1.2Q4: What is the average period of time between when a consumer applies for finance and approval? What is the shortest period of time and how common is it?

The application for finance and approval for finance is one step within the novated lease establishment process. As explained in E1.2Q3, the total customer journey is typically in the order of more than **30** days.

Novated lease establishment process steps:

1. Consumer completes a finance application.
2. Financier provides conditional finance approval.
3. Post conditional approval, the consumer is provided with an estimate of the effect on take home pay for the novated lease, which can be based on either an estimate of the vehicle price, or the actual price of the vehicle.
4. Final finance approval is obtained after all the novated lease documents, including the lease agreement and Deed of Novation (signed by Employer) are signed and lodged with the financier.

While shorter turnarounds are possible, they are the exception rather than the rule, as noted in our response to E1.2Q3.

Your feedback: Consumer communication (delivery and content)

E1.3Q1: Should providers be required to take active steps to ensure consumers read and understand information about their products before they can buy them?

As noted elsewhere in our response, ASPIA strongly believes that the current sales cycle for salary packaged motor vehicles means that there is already ample opportunity for consumers to read, understand and query product information. There is no physical way to mandate that consumers read this information, however our members have obligations as members of ASPIA to ensure, to the best of their ability, that consumers are making well-informed decisions. It is of course also in our best interests, as salary packaging is usually a long-term relationship, so we need to be proactive and support our clients to ensure we communicate effectively, using simple plain English.

For this reason, ASPIA members provide significant information online, as well as conducting workshops, face-to-face meetings and one-to-one phone calls to support consumers in their research and education.

Salary packaging organisations provide product data sheets with their quotes and then follow up with the customer to answer relevant questions and finalise the quote. This process occurs over multiple interactions and a significant period of time.

If a consumer is provided with all the relevant and required information in a clear and concise format and has adequate opportunity to review it and ask questions, then we consider that this should be sufficient and there should not be further onus upon the provider to ‘test’ their understanding.

E1.3Q2: What forms of innovative disclosure could be used to better inform consumers about their insurance decision?

Across the salary packaging sector, electronic forms of communication are already in place to provide product and related information, together with the provision of such information via websites and other means. Many salary packaging providers have also developed apps and calculators that highlight the various options and obligations, remembering of course that consumers are already sourcing information from the internet for both service and product information and can do so at any time of the day or night

ASPIA acknowledges that by their very nature, Product Disclosure Statements (PDS) are complex, long and full of industry jargon or acronyms. Their current design and content may provide a barrier to improved product understanding. However, we are always available to answer questions either in person or over the phone to ensure consumers have a clear understanding of the agreement.

E1.3Q3: What information should the consumer communication include?

It is ASPIA's view that in our sector our members are already providing the consumer with more than enough information in regard to both the vehicle under consideration, as well as specific information about how a novated lease works, along with information for any and all Insurance products available or discussed.

Your feedback: Consumer communication (other products)

E1.3Q4: Should providers be required to inform consumers about the availability of other products that provide similar cover, but may be cheaper?

As noted earlier, many employers operate a panel of salary packaging providers and employees are encouraged to seek multiple quotes.

However, our members would be very reluctant to refer a customer to another provider's products. The product may have different coverage and terms and may not be suitable to them. We consider this would verge dangerously on the potential provision of financial advice, which most intermediaries are not licenced nor qualified to provide.

That said, our obligation is to ensure that employees make well-informed decisions, and we encourage them to seek professional financial advice before making any decisions.

Providers could be required to remind consumers that the insurance products are not mandatory and similar products are available from alternate insurers. However, if a consumer wanted to source alternative add-on insurance, it would be difficult for the consumer to organise the premium to be included in the total amount financed under lease. This would be required as the consumer would want to access the tax benefits associated with including the insurance premiums within the novated lease construct.

E1.3Q5: If so, what information should the consumer communication include?

No Comment

Your feedback: Mechanical breakdown insurance and warranties

E1.4Q1: Should a separate deferred sales model be introduced for these products? If not, how could the particular risks associated with these products be addressed?

As noted above (E1.2Q2) ASPIA would be concerned if ASIC introduced different regulations for sales processes relating to different, albeit similar products.

Introducing such a differential within the novated lease establishment process would add increased complexity and costs to both the provider and the consumer, and in our view, would not add material value to the consumer. Additionally, it would add to the already varying regulatory environment in which our members operate.

It would be a serious challenge to have created a separate deferred sales model for these products within the novated lease sales process, as the consumer would not be able to take advantage of the tax benefits associated with novated leasing if such a deferred payment method existed for such programs.

Your feedback: Monitoring & Supervision

E2Q1: Given the limitations in monitoring conduct at the point of sale, what changes would be necessary to ensure providers are effectively supervising their representatives?

As noted already, the salary packaging experience is completely different to a consumer experience in a car dealership. In the salary packaging environment, the sale of add-on insurance products occurs at a later stage in the process – the vehicle is chosen, and then financing and insurance arrangements are explored, depending on individual circumstances and lifestyle requirements.

Therefore, we cannot comment on changes required for providers to supervise 'point of sale' conduct in the car dealership environment.

E2Q2: What risk indicators could be introduced to improve the capacity of providers to monitor their representatives?

Within the salary packaging environment, our members' staff are already required to uphold higher standards than exist within most dealers or used caryards. Added to this is the ASPIA accredited training program, which goes to great lengths not only to provide online training on matters relating to the delivery of our industry's FBT based programs, but it also includes a code of conduct as well as a behavioural approach that supports, encourages and upholds the values that ASPIA espouses.

E2Q3: What sanctions would be most effective in deterring representatives from engaging in unfair practices at the point of sale?

As stated in E1Q2 and E2Q1, this is not relevant in the salary packaging context because this is not the practice that this industry undertakes to deliver insurance products.