

# AUTOMOTIVE COMPLIANCE

Driving Revenue with Compliance

## AUSTRALIA

We thank ASIC for the opportunity to respond to Consultation 294.

### **About us:**

- Automotive Compliance Asia Pacific Pty Ltd (AC-APAC), trading as Automotive Compliance Australia is an associated company of Automotive Compliance Ltd (AC)
- AC are market leading pioneers in regulatory compliance in the UK Motor Industry space, working alongside insurers and financiers, assuming responsibility for Major plc and independent Motor Dealerships across the UK
- Our four directors each have an average of 30+ years' experience. They are:
  - Paul Bennett, Commercial Director
  - Paul Guy, Operations Director
  - Andrew Sinclair, Managing Director
  - Paul Speakman, Strategy and Regulatory Director
- Controlled Functions as Approved Persons under the Financial Conduct Authority (FCA) are held by Paul Speakman (CF1 – Director, CF28 – Systems and Controls and Responsible for Insurance Mediation) and Paul Guy (CF1 – Director and Responsible for Insurance Mediation)
- We offer a comprehensive compliance solution for OEMs, financiers and insurers selling via third party networks or directly to customers

### **Automotive Compliance Australia will:**

- Implement and ensure that due regulatory process is followed, embedding Treating Customers Fairly principles and culture into both financiers, insurers and car dealer networks
- Monitor the compliance processes, procedures and culture in dealerships to meet all requirements
- Provide our web-based Showroom Manager® system to ascertain the customers' "Demands and Needs" and eligibility to ensure all customers are able to make an informed decision in minimising the risk of miss-selling
- Provide compliance monitoring and auditing of the method of sale process
- Make available our reporting suite to support monitoring of the compliance activity through KPI's and management information
- Deliver comprehensive ongoing training with e-learning, providing regulatory updates and procedural enhancements

### **Our web-based Showroom Manager® system:**

- Supports both the sales person and the customer through the entire sales process, ensuring a compliant sales process throughout
- Includes several 'checks and balances' and 'gates' that the sales person needs to go through, to ensure the customers eligibility, and that they have clear information in a non-pressured environment
- Gives clear KPI's and management information in auditing unfair practices
- And, electronic signatures are date and time stamped and stored along with all documentation, meaning multiple documents and customer confirmations are recorded and available in a durable medium, proving all pertinent information was presented, as well as that customers were provided adequate time to consider their purchasing decisions

### **In response to the questions posed in Consultation Paper 294:**

***"E1) We propose that the sale of add-on products by caryard intermediaries for a new or used car should be permitted only after a certain period of time has elapsed (the deferral period).***

***During the deferral period:***

***(a) providers would be restricted from offering, or entering into, a contract for an add-on product with a consumer;***

***(b) caryard intermediaries would be restricted from:***

***(i) arranging for a consumer to apply for an add-on product; or***

***(ii) referring a consumer to a product provider in relation to an add-on product; and***

***(c) consumers would be restricted from initiating the purchase of an add-on product directly with the provider, or opting-out of the deferral period.***

***Table 10 sets out key issues in the design of any deferred sales model.***

***Note: The proposed options in Table 10 are not intended to be definitive. We welcome further suggestions."***

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

Yes, based on experience in the UK with work conducted by the FCA, coupled with ASIC's review of the add-on insurance market in Reports 470, 471 and 492 it is clear further actions are needed, including the introduction of the deferred sales model. Addressing product design and value without addressing sales practices does not go far enough in addressing customer detriment and risk of mis-selling. A deferred sales model gives customers an opportunity to 'absorb' information in their own time, without the pressure and emotion of being influenced and persuaded by the salesperson.

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

The introduction of a deferred sales model will lead to positive and consistent customer outcomes, and supports "Treating Customers Fairly" (TCF), but must be supported by robust and pro-active monitoring and oversight with reporting and auditing that can clearly identify risk and harm within

the method of sale, reinforced by annual regulatory training and accreditation (all of which are offered by us). A fully compliant online system, such as Automotive Compliance Showroom Manager® (which has been adapted for the Australian market), after being successfully deployed in the UK for 10 years, has been a keystone in addressing customer detriment and a change in “TCF” culture, linked to buyer fatigue and pressure selling. Our Showroom Manager® system tracks dates and times across a series of 'gates' and retains customers and intermediaries' signatures, evidencing that the method of sale is auditable and has been carried at the correct times, as well as locking intermediaries out from selling products during the deferred period. A deferred sales model will address a proportion of inappropriate behaviour ASIC has called out and this needs to be achieved at an industry wide level.

**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?**

Historical industry-wide practices have led to customer detriment and the change is needed regardless of the affect to the commercial aspects of the businesses as there is a need to change the culture within this marketplace. After a period of change, and as we have seen in the UK, the market will adapt and embrace this customer centric processes and method of sale. Small operators may be affected more in relative terms, but regardless, customers' approach each of these sources and customer protection should be consistent regardless of the channel they utilise. An 'uneven' playing field would create more distress for businesses, as evidenced by differing reactions of insurers to ASIC findings on add-on insurance to date.

**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 a perfect world, consistent with used cars being sold out of stock, a shorter deferred selling period could be adopted, but considering the market and the participants operating as franchised new, franchised used and non-franchised used, we consider the most appropriate model is one that offers the same level of protection for all new and used customers. Hence, a consideration to adopt a shorter deferred sales period for used purchases is not viable, as this could lead to abuse in a disjointed marketplace, although we recognise there may be a call for it.

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

As there is not a significant or established online presence for a standalone online offering of these products, we do not consider this method of selling is the optimal solution in creating a competitive market. The product should be presented at point of sale and at the time of financing, where the customer is given clear prescriptive information, allowing them time to make an informed decision.

**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?**

If there are clear boundaries where complementary measures are prescriptive in their directive, then they could be a consideration for adoption, but based on our experience in the UK and knowledge of the Australian market, we fully support and endorse an enforceable deferred sales model being introduced.

**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?**

No, we see the introduction of a deferred sales model increasing the obligations on insurers, finance providers and car dealers (which is not a bad thing), leading to a well-informed customer and positive outcomes in “TCF”.

**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?**

Communication with the customer in a clear, fair and not misleading manner, this can be in a durable medium or email, that gives the customer key information on the products they are eligible for. To evidence that the customer is making an informed decision, which is auditable, they should be able to answer clear questions to measure their understanding of the products as part of the “TCF” policy, which is supported in our Showroom Manager® compliance system. This can be treated as a gate, which needs to be 'passed' before a customer can transact on the product. It will also identify disadvantaged clients.

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

Yes, but this not be a straight forward one step process, as we have outlined above. Rather it should involve 'heightened' security and 'interrogation', and be auditable, in ensuring that that the correct oversight and monitoring of this process is achieved, and evidences clear steps in supporting the “TCF” policy, which is catered for in our Showroom Manager® system.

***"Commencement of the deferral period***

***E1.1 We do not propose in this paper a specific trigger event for the commencement of the deferral period and seek stakeholders' views on this. The period could commence when the consumer:***

***(a) receives a consumer communication (with mandated content);***

***(b) finalises the vehicle purchase and receives the consumer communication; or***

***(c) takes delivery of the vehicle and receives the consumer communication."***

**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)?**

We consider the first option best, this consumer communication should be clearly documented as to when this information is provided, and can be monitored in improving and measured against the sales practices of intermediaries, which will lead to higher levels of consumer protection. The process should clearly signpost key time-points, and support key information the customer is provided with, and how that information is provided and the choices they are able to make in a reasonable and fair time-frame. This information should be introduced at the point-of-sale for the vehicle, where these interactions are date and time stamped and recorded for future reporting, monitoring, auditing and 'calling out' inappropriate behaviour we consider the commencement less important. The key here is to make 'meaningful' change in practices, and create a positive “TCF” culture, with the relevant controls.

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

Whilst there are arguments for each sales sequence, the decision should be based on the primary sale (vehicle & finance), as the funding method, term and balance funded could be a deciding factor in the optional add-on products recommended.

Sales sequence B lends itself more to this approach, with the support of the lenders in having a tolerance in adjusting the loan amount, without the need for an additional credit search. In this case, a customer has a clear level of understanding how the primary sale is constructed, which leads to a more structured upsell of the optional add-on products, without these being bundled into the sale of the vehicle, which could lead to fatigue and mis-understanding of.

This can be supported by the customer with a clear disclosure of the total cost of each product they are eligible for and an illustration of how this could affect the overall balance funded in the case of finance, and the additional monthly payment, showing the total cost, including interest, for the funding of these products over the term of the agreement.

The deferred process will allow the customer to step away from the primary sale and in their own time, decide on the optional products they are eligible for, leading to them making an informed judgement on these products, without the pressure of sales techniques and sales processes currently adopted by the car yards.

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

Our online solution, which has been operating in the UK for close to 10 years and which has been refined and enhanced for Australia, caters for electronic date and time stamping, with system lock out functionality. Our solution also stores signatures and provides PIN's and email confirmations to ensure customer awareness and understanding. Our system also stores all records and provides reporting.

**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?**

In this marketplace, we consider this would introduce further confusion into the sales process and we do not support it.

***"Duration of the deferral period***

***E1.2 We propose that the total duration of the deferral period for add-on products (except those discussed in proposal E1.4) could be a:***

***(a) minimum of four days; and***

***(b) maximum of 30 days."***

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

4 days as this is key to ensure customers understand, and are making an informed decision, of the products they are eligible for when initiating their purchase. This can be achieved and monitored, in a 4-day deferred period (2 clear days), but we do not consider this should be shorter.

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

No, as noted above, considering the market and the participants operating as franchised new, franchised used and non-franchised used, the most appropriate model is one that offers the same level of protection for new and used customers. Hence, we do not support a shorter deferred sales period for used purchases, although we recognise there may be a call for it.

**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?**

Average time for a new car is distorted by pre-ordered vehicles, vehicles in stock or easily attainable the average period would be 4 days or more, used cars would be 2 days, however it is not uncommon for vehicles to be delivered "on the spot" or same day, but this should not have a bearing on treating these sales differently from a deferred sales process point of view.

**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?**

Depending on the financier, our experience in the Australian market since the introduction of automated scorecards is that generally, upwards of 75% of consumer applications are auto-approved (and therefore immediate), with the balance generally approved within 24 hours.

***"Consumer communication***

***E1.3 We propose that the consumer communication should:***

***(a) address the current limitations in consumers making informed decisions (as discussed in Section C);***

***(b) include information about each type of add-on product being offered through the car dealership (e.g. in a standardised format) and how they interact with other elements of the transaction;***

***(c) provide information to consumers that is accessible and addresses different levels of comprehension or financial literacy; and***

***(d) make use of innovative techniques to deliver this information to the consumer."***

**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?**

Yes, absolutely and this should be recorded, tracked, monitored and reported on, supported by clear management information, with system blocks in place, as we have called out above, where, if this level of assurance is not evident, then this will instigate the sale not proceeding.

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

Policy summary information, in a clear and transparent manner, should be made available to the customer. This can also be supported by signposting the customer to the <https://www.moneysmart.gov.au/> website, in giving the customer an impartial overview of the products available.

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

The information should clearly outline the major benefits and exclusions, how to claim, how to cancel and disclose the total cost of the policy and duration for the add-on products the customer is

eligible for., this can be provided in a durable medium or by email. This should also be supported by “Frequently Asked Questions” to give the customer answers to key questions in understanding the deferred process, and how they have the option to opt-in.

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

Providers should present products for which they are accredited and authorised to offer, however in “Treating Customers Fairly”, the customer should be made aware that there are other products available in the market place.

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

A statement given in a durable medium or by email as part of the information given to the customer; *"Name insurance is available elsewhere in the market place and may provide the same or similar level of cover"*

*"Mechanical breakdown insurance and warranties*

**E1.4 Where these products are sold with new cars or used cars that are still covered by the manufacturer's warranty, we consider that:**

**(a) a different deferral period could apply; and**

**(b) the consumer communication could be tailored to explain that cover will not commence for some time and set out the consequent risks in buying the product."**

**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?**

No, to ensure a level of simplicity for intermediaries and customers to navigate, the same deferred sales model should be adopted for these products, with the same protections and controls as described throughout.

**E2 We propose to introduce specific requirements for the supervision and monitoring of a provider's authorised representatives, based on the risks for consumers in this distribution channel.**

**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?**

The providers need to be more hands-on, with meaningful management information being available, making the provider more accountable for oversight and monitoring, with measurable controls which identify risk within the method of sale, that could lead to customer detriment. As we have outlined above we have an online system that enforces robust controls during the point of sale process, which provides real time management information via KPI risk scorecards.

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

This should be based around the monitoring of the method of sale, in having clear KPI's and management information in place that can identify the risks and key stages of when the initial disclosure has taken place with the customer, through to the completed transaction. Key risk indicators should evidence that customers have been taken through a structured eligibility process,

provided with clear information, which is measurable and auditable by key dates and times during the sales process.

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

The contract between the provider and the car dealer should have enforceable actions that can be instigated if there is a breach of these terms. If unfair practices are identified, and depending on the scale of risk, the provider has the power to suspend or terminate these representative's regulatory status in being able to carry out these activities as a representative of the insurer.

**In closing**

We appreciated being able to meet with members of ASIC earlier this year and we thank you for seeking our input in relation to the market, moving forward.

If further clarification is sought by ASIC in relation to any of our responses, we would welcome the opportunity to provide further information.

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