

# **ASIC Consultation – Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance**

Submission by Legal Aid Queensland

## ASIC Consultation - Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance

### Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission in response to ASIC's consultation on Consultation Paper 339 – Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Civil Justice Services Unit lawyers provide advice and representation in banking and finance, credit and debt, insurance and consumer law. We work with clients who experience significant detriment as a result of specific products in a market such as the market for add on products sold by car yard intermediaries. This submission is informed by that knowledge and experience.

We welcomed the proposed introduction of a Product Intervention Power (PIP) by ASIC to address products that cause or are likely cause significant detriment for consumers.

### General Comments

The sale of add on financial products through car yard intermediaries has caused widespread and significant detriment to the vulnerable consumers that LAQ assists.

Significant consumer detriment can be caused by the high cost of these products and the number of them sold has resulted in higher rates of default and enforcement action. These rates of default and the subsequent enforcement action taken impact on the most vulnerable consumers in the community and the rates of default are higher than would have been experienced had the consumer not been sold these products.

We have previously provided comment to Consultation Paper 294 and 324 addressing issues with the sale of add on insurance and this submission builds on the previous LAQ submissions made to ASIC in this area.

There has been significant focus of the deleterious effects on consumers (particularly vulnerable consumers) on the sale of add on insurance and warranties for many years. We acknowledge that ASIC's intervention in this area has resulted in significant remediation for consumers over the past few years.

However, that remediation represents a small proportion of the policies and warranties that were sold to consumers over many years that caused consumers significant detriment.

As previously noted in our submission to consultation paper 294 the issues we identified with the sale of add on insurance included:

- (a) Consumers are not aware that they have been sold add-on insurance products.
- (b) Consumers are sold products that are not suitable or necessary for them, for example, insurance cover significantly higher than the replacement value of the car.
- (c) Consumers are sold products which they could never claim the benefit, for example pensioners sold unemployment insurance.
- (d) Consumers are sold products that have poor value.
- (e) Consumers have often been kept at the car yard for many hours as part of the sales process before the issue of insurance is raised. In these circumstances consumers will often agree to any product that is offered to them in order to finalise the sales process.
- (f) Add on insurance products can be marketed as a standard part of any car purchase rather than an optional extra to the purchase.
- (g) Add on insurance products are complex and often poorly explained by car yard intermediaries.
- (h) Products are sold to consumers on the basis of the commission earned by the salesperson and not the suitability of the product.

In addition

- consumers were either told or it was implied that it was a condition of finance that they accept insurance;
- brokers, caryards or lenders implied that the insurance or warranty offered was free; or
- that consumers were sold “warranties” that were insurance like but did not meet the definition of “insurance”.

The reasons for aggressive selling of these products had much to do with the financial benefit gained by the following parties involved:

- Brokers, caryards and or lenders receiving commission for the sale;
- Insurers who benefited from very low claim percentages; and
- Lenders who financed premiums and warranties thereby increasing the amount lent and increasing profit on higher interest payments.

Whilst the deferred sales model is directed towards reducing the high pressure selling of these products at the time of purchase of a product/loan and advising consumers of their right not to take insurance it will not address the following issues:

- Selling of inappropriate policies,
- Poor value of policies,
- The complexity of product offering,
- The sale of “warranties” if they do not meet the definition of “insurance”,
- Avoidance schemes developed by brokers, caryards, lenders and insurers to circumvent the deferred sale model.

## Access to Complaints Mechanisms for breaches of the Deferred sale model

If a person enters a contract of insurance or purchases a financial product, we presume that complaints about the failure to comply with the requirements of the deferred sales model can be made to the Australian Financial Complaints Authority (AFCA).

However where a person does not purchase the add on insurance policy and the seller of the underlying product is not required to be a member of an approved external dispute resolution scheme, consumers have no avenue of redress. For example, AFCA can only consider complaints that fall within its jurisdiction. AFCA's jurisdiction requires that a complaint must arise from or relate to the provision of a financial service by the financial firm to the complainant.<sup>1</sup>

If the insurance policy is not purchased and the underlying product that it was an add on is not a financial service then AFCA will not be able to consider the complaint even if the insurer is a member of AFCA.

Changes to the jurisdiction of AFCA will need to be made to enable these complaints to be within AFCA's jurisdiction.

### Review

Given the substantial detriment experienced by consumers, it is our view that the ASIC guidance and required customer information that an insurer/seller must provide to a customer should be reviewed within 3 years or earlier if there is evidence of the existence of avoidance schemes by Industry. As part of the review, ASIC should collect relevant data from the Industry and consult with relevant stakeholders

That data should then be made publicly available as part of the review on an aggregated basis, as a minimum, to allow proper consideration of the effectiveness of the PIO in curbing the detriment experienced by consumers as a result of buying these products.

## Answers to specific questions

**B1 As the deferred sales model is prescriptive, and there are significant consequences of breaching the requirements, we propose to publish a detailed regulatory guide.**

**B1Q1 Do you agree with our approach of providing detailed guidance on the deferred sales model? Please explain your view.**

LAQ supports this approach.

We agree that as the deferred sales model is prescriptive it is important that providers are aware of their obligations. We also agree that detailed guidance does not mean that the individual providers can absolve themselves from their compliance responsibilities merely because they have complied with the guidance provided by ASIC. This is very important because it takes into account that individual circumstances may require a different approach by providers to comply with the law.

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<sup>1</sup> AFCA Rules at B.2.1 (a) at page 25

**B1Q2 Do you consider that ASIC could provide less guidance? If so, what parts of our proposed guidance should be deleted?**

LAQ has no comment

**B2 We propose to publish a regulatory guide on the deferred sales model, which covers:**

- (a) a description of the scope of the deferred sales model;**
- (b) what we expect providers will need to do to comply with the deferred sales model; and**
- (c) how we will approach applications for exemption (see Section C of this paper) from the deferred sales model.**

**B2Q1 Do you agree with the proposed guidance in draft RG 000? Please explain your view.**

**B2Q2 Do you agree with the proposed examples in draft RG 000? Are there additional examples that would be useful?**

LAQ has no further examples.

**B2Q3 What guidance should we include about the provision of the prescribed customer information (see our proposal for the Customer Information in Section D of this paper)?**

LAQ has no comment

**B2Q4 Are there other matters we should consider providing guidance on?**

LAQ does not consider there are other matters to be considered.

**C1 We propose to provide guidance on:**

- (a) how to apply for an exemption;**
- (b) how we will apply each of the factors that we must have regard to when considering whether to grant an exemption; and**
- (c) the types of product data and other information that will assist us in determining an exemption application.**

Only in extraordinary circumstances should an exemption be provided given the history of the sale of this type of insurance. It would also be very difficult to determine whether an exemption should issue based on the type of product or who the provider of the product is. This is because the manner in which these products are sold are often a significant factor in the poor outcomes experienced by consumers, if a product is exempted some providers may behave poorly and if only specific providers are exempted this may also be seen as being anti-competitive.

**D1** We propose to prescribe the content of the Customer Information, as shown in the appendix to this paper. The proposed content includes:

- (a) for hardcopy format only—the Australian Government logo;
- (b) a prominent message that the customer can say ‘no’ and that the add-on insurance ‘is not compulsory’;
- (c) a statement about the four-day deferral period;
- (d) information on opting out of being contacted about add-on insurance and a mechanism for customers to do so;
- (e) two questions for customers to ask themselves as prompts with accompanying text;
- (f) a link to ASIC’s Moneysmart website; and
- (g) a statement explaining why the customer has been given the Customer Information.

**D1Q1** Do you support the proposed content of the Customer Information? Please provide evidence to support your view.

There may be confusion with the statements “*Do I need and understand this insurance*” and “*Could I get a better deal elsewhere*” if there is no information about the insurance that the provider is seeking to sell in the customer information sheet.

It would be preferable to preface that information with the following statement:

*If you don’t say no to being contacted, the salesperson will contact you about buying extra insurance. If they contact you, and before agreeing to buy extra insurance, ask yourself:*

- *Do I need and understand the insurance the salesperson is selling?*
- *Could I get a better deal elsewhere?*

**D1Q2** Should ASIC prescribe any product-specific content? If so, what content? Please provide evidence to support your view.

Not for the customer information though it might be appropriate when a consumer is contacted to buy extra insurance. As technology becomes more sophisticated information should be tailored individually.

**D1Q3** Does ASIC need to tailor the content of the Customer Information to suit particular forms of electronic delivery? Please provide evidence to support your view.

LAQ has no comment.

**D2 For the electronic format—we propose not to prescribe a specific form for the Customer Information, due to the wide range of digital mediums through which it may be given. However, we propose to prescribe that:**

- (a) the content must be set out in a specific sequence (as shown in the appendix to this paper);
- (b) the font known as Arial must be used and the content must be displayed in a size that is not smaller than it would appear if using Arial font and 10 points in size;
- (c) the content must appear in the body of the communication and not be placed in a link or attachment; and
- (d) if sent via a digital medium that has a subject line (e.g. email)—the subject line must be ‘You can say no to being sold insurance’.

**D2Q1 Do you support our proposals for the form of the Customer Information when it is provided electronically? Please provide evidence for your view.**

LAQ supports the proposals for the format of electronic communication.

In particular, where it is different from the requirements of the hardcopy format we support the proposals that messages that have a subject line for example:

*“You can say no to being sold insurance”*

and that the message provides a link that consumers can use to convey that they have opted out.

We query however why there is no requirement to add the Australian government logo to the email as that would also give credence to the email sent to consumers that this is information that is not spam.

**D2Q2 Do you foresee any issues in complying with the proposed form requirements for the electronic format? If so, please explain and provide relevant information to inform our consideration.**

LAQ has no comment

**D3 The hardcopy format—we propose to prescribe the specific design and layout of the Customer Information. The Customer Information will be made available as a download from the ASIC website that providers can print and provide in hardcopy format.**

**D3Q1 Do you support our proposals for the form of the Customer Information when it is provided in hardcopy format? Please provide evidence for your view.**

LAQ supports the simplicity of the proposals and the order in which the information is laid out.

**D3Q2 Do you foresee any issues in complying with the proposed form requirements for the hardcopy format? If so, please explain and provide relevant information to inform our consideration.**

LAQ has no comment

**D4 We propose to prescribe that:**

- (a) the default method of providing the Customer Information is electronic, but we will not prescribe exhaustively the available methods for electronic provision;**
- (b) if the customer does not confirm that they can access the Customer Information electronically, the provider must give the Customer Information in hardcopy format, otherwise the Customer Information will not have been given for the purpose of s12DP(1);**
- (c) if the Customer Information is sent via postal mail, a return paid and addressed envelope must be included so the customer may return the page with the opt-out tick box checked, and the provider must account for postage time when recording when the Customer Information was given; and**
- (d) where the customer makes the commitment to acquire the principal product or service in person, the provider must provide the Customer Information electronically and must also give the customer the option of receiving the Customer Information in hardcopy format.**

**D4Q1 Do you agree that the Customer Information should be provided electronically by default, and that a hardcopy format must be provided if the customer cannot receive it electronically, or requests the hardcopy format in person? If not, why not?**

LAQ supports the proposal that the default position is that customer information is provided electronically.

**D4Q2 Are there any risks or disadvantages of requiring electronic provision as the default? If so, please detail the risks or disadvantages, and the customers affected.**

LAQ supports the proposal that the customer information be provided electronically by default.

**D4Q3 Do particular methods of electronic provision pose additional risks or disadvantages that ASIC should consider when prescribing the form and manner of provision of the Customer Information? If so, please detail the risks or disadvantages, and the customers affected.**

The heading “You can say no to being sold insurance” may prompt consumers to consider opening and reading. However, given the amount of emails received by consumers, it is likely that many consumers may not open the email. Also, depending on the manner in which the email is sent, the email may automatically be filed as spam or marketing. It’s important that when providers are sending emails, emails are individually addressed and not sent as a group email to minimise the email being categorised as marketing by the customers email server.

It is possible for providers to know whether a person has opened an email or not. For some other electronic provision this may not be possible. In our view the electronic method that can provide information as to whether the person opened and received the communication is preferable to a method where the collection of that data is not available. If an email is not opened, then salespeople when contacting the person after 4 days should refer the person to the unopened email prior to engaging with the consumer.



**D4Q4 Should ASIC prescribe permissible and/or impermissible methods of electronic provision? Please provide reasons for your view.**

**D4Q5 Is there anything we should consider regarding provision of the hardcopy format for customers who cannot access the Customer Information in electronic format?**

It's important that consumers are specifically directed to the hardcopy document. Too often in our experiences, warnings such as this can be hidden in multiple other documents provided to the consumer.

**D4Q6 Is there anything else that should be done to ensure that the Customer Information is accessible to and engaged with by customers?**

In relation to hardcopy provision, signing the document to acknowledge receipt may assist

**D4Q7 Do you foresee any issues in complying with the proposed manner of provision requirements? If so, please explain and provide relevant information to inform our consideration.**

LAQ has no further comment on this issue

**D5 We propose to prescribe that:**

(a) the Customer Information must be given to the customer only after, not before, they have made a commitment to acquire the principal product or service; and

(b) if a customer makes repeat purchases of the principal product or service, the Customer Information must be given each time the customer has entered into a commitment to acquire the principal product or service.

**D5Q1 Do you agree with the proposed requirements for when the Customer Information must be given? Please explain your view.**

LAQ supports the proposal. If the information is given before, consumers may feel that if they opt out it could affect their ability to acquire the product or loan.

**D5Q2 Do you foresee any issues in complying with the proposed manner of provision requirements? If so, please explain and provide relevant information to inform our consideration.**

LAQ has no further comment