

23 April 2021

By email: deferred.sales.model@asic.gov.au

Insurance Team
Australian Securities & Investments Commission

Dear Manager

CP 339 Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance

Thank you for the opportunity to provide feedback on ASIC Consultation Paper 339 - Implementing the Royal Commission recommendations: The deferred sales model (DSM) for add-on insurance (CP 339), and the draft regulatory guide for the industry-wide DSM (RG 000).

Consumer Action Law Centre (Consumer Action) and Financial Rights Legal Centre (Financial Rights) broadly support the content of RG 000 and the details provided in CP 339, and the way ASIC intends on interpreting the DSM, considering exemption applications and its proposed approach toward the Customer Information. The implementation of the DSM will help reduce the pressure selling of junk insurance products that has cost consumers billions of dollars over the years. We hope to see ASIC enforce the DSM proactively, in a way that delivers on the intent behind Commissioner Hayne's recommendation 4.3 in the Final Report of the Financial Services Royal Commission.

However, we do encourage ASIC to provide additional guidance on the interaction between the DSM and other regulatory obligations, in order to set clear expectations for retailers and insurers that are aimed at ensuring they act in accordance with the spirit of all the Royal Commission reforms that will come into effect on 5 October 2021.

While the implementation of the DSM will help reduce pressure selling of junk insurance products, we consider that further action is needed to fully address ongoing mis-selling in car yards. Consumer Action's online tool DemandARefund.com (DAR) has been used by people to demand over \$11.5 million in refunds for junk insurance and warranties sold in car yards, making car yards clearly the most prominently represented sellers of junk insurance. Even after years of the scrutiny over these junk products, people continued to use DAR to make claims for junk insurance sold to them in 2020. To that end, we strongly encourage ASIC to reconsider its decision not to use its product intervention power (PIP), which would have introduced a more rigorous and tailored DSM for the sale of CCI, GAP insurance and warranties in car yards. The industry-wide DSM will not apply to extended warranties, which is a significant gap in protections that the PIP would have addressed.

A summary of recommendations is available at [Appendix A](#).



About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Part B: Feedback on Regulatory Guide draft RG 000

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

Generally, yes. The DSM is quite prescriptive and technically complex. The guidance will assist a financial service provider or retailer to comply with the DSM by enhancing understanding of the underlying legislative provisions.

Large parts of RG 000 do simply restate relevant provisions and definitions as they appear in Schedule 3 of the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Cth) (**DSM Legislation**), but having the legislation and guidance in one document means that people reading RG 000 will be able to use it as a single source to understand the operation of the DSM as a whole. There are enough definitions and complexities to the legislative application of the DSM that it is necessary to have access to key definitions and other parts of the legislation set out in RG 000 to make sense of the guide.

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

We found the sections addressing aspects of the definition of 'add-on insurance product' from RG 000.19-26 to be quite difficult to understand and possibly unnecessary. We recommend these sections be reduced or significantly amended for clarity.

The section explaining the meaning of 'in connection with' a principal product or service in particular provides a complex explanation of a term that would be better interpreted on its ordinary meaning. The part of the definition described at RG 000.19(a) (requiring the transaction be 'around the same time') is unclear and confusing, particularly given that under the reforms an add-on insurance product cannot be sold at the same time as the principal product. The part of the definition relating to third-party providers then contemplates a much longer period of time between the principal sale and add-on sale, which adds to the complexity of this section. The guidance essentially adds a fourth time frame into the mix, in addition to the three existing deferred sales periods under the DSM (pre-deferral, deferral and post-deferral).

On our read of the DSM Legislation, the most important part of the definition of 'add-on insurance product' at section 12DO(1) is the need for the insurance product to manage the financial risk of the principal product,¹ and the relationship between the sellers.² The relationship between the sale of the principal product and when the add-on insurance product may be offered or sold is also impacted by the timing of when the pre-deferral and deferral periods commence, adding further complexity to this issue. We therefore recommend deleting this section or reducing it to one paragraph stating that 'in connection with' takes its ordinary meaning and noting that if a third party's opportunity to sell add-on insurance arises because of the purchase of the principal product, that this may meet the requirement.

The definition of 'acquiring or entering a commitment to acquire' covered from RG 000.23-26 is also addressed at RG 000.68-71, in regard to the deferral period. While Table 1 is a useful resource, we recommend moving this part down to RG 000.68-71, and just cross-referencing that section in this earlier definition.

RECOMMENDATION 1. Amend or delete paragraphs RG 000.19-26, and move Table 1 down to the deferral period section.

¹ Section 12DO(1)(c).

² Section 12DO(1)(b).

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

We largely agree with the proposed guidance in RG 000. Our comments below address areas where we either strongly agree with points made in RG 000, or have concerns with the position taken. As much of the content simply restates the law, we do not provide additional comments on these parts of the guidance.

This part of our response addresses only Parts A-C of RG 000, as later questions in CP 339 relate more directly to exemptions and the Customer Information.

Treatment of 'complimentary' insurance products

We support ASIC taking a broad interpretation of the terms 'offer', 'sale' and 'sold', as set out at RG 000.15, and adopting a narrow interpretation of the concept of a 'complimentary' insurance product, as referred to at paragraph 3.29 of the Explanatory Memorandum (EM) to the Amending Act.

The Government's decision to specify that in the EM the DSM does not cover the inclusion of so-called 'complimentary' insurance products is regrettable. While products offered in this manner may be marketed as free, the reality is that the consumer *always* pays for the product, one way or another. It is essential that exclusion is not permitted to be used as a loophole by insurers to keep selling junk products. To ensure this is the case, we strongly encourage ASIC to proactively monitor the circumstances in which 'complimentary' insurance products are being provided to consumers with principal products. If there is any variation in the purchase price of the principal product at all due to the addition of 'complimentary' insurance products, these products must be captured by the DSM.

Managing financial risk in relation to the principal product or service

As mentioned above, an essential part of the DSM model is the need for the link between the add-on insurance product and the financial risk of the principal product to be clear. The section addressing this from RG 000.27-32 should take a stronger stance on this issue.

Being classified as an add-on insurance product and subject to the DSM excludes the sale of the product from the anti-hawking regime to some extent under section 992A of the *Corporations Act 2001* (Cth). While the ban altogether on selling the product during the pre-deferral and deferral periods is a stronger protection in some ways, the pre-deferral period gives the retailer of the principal product a window where they can make unsolicited offers and bring up add-on insurance products without any inquiry from the consumer. To ensure this does not become a loophole used to bring up a variety of tenuously related insurance products the consumer is highly unlikely to enquire about themselves, ASIC should use stronger wording in this section..

For example, we support the example at RG 000.30 that clarifies life insurance would not be an add-on insurance product for a loan. However, it should go as far to clarify that life insurance can never be an add-on insurance product – as 'life' is not something capable of being a principal purchase. Even if the loan is a mortgage and potentially likely to exist for the remainder of the borrower's life, life insurance does not manage the financial risk of the loan.

To be an add-on insurance product, it should directly and obviously relate to the financial risk the consumer takes on by purchasing or using the principal product or service. ASIC must not permit the DSM to be used to avoid the no hawking regime and bring up a raft of unrelated add-on insurance products.

Outline of the DSM

We support having a visual representation of the conduct that is permitted at each stage in the DSM, however it took us a long time to properly understand some of the meaning behind Figure 1. To improve the image, we suggest the following amendments:

- noting in the top left corner that the left column lists the kinds of permitted conduct at each stage of the DSM; and
- adding a column before the pre-deferral period clarifying that prior to the pre-deferral period, the hawking prohibition also applies.

Pre-deferral period

While add-on insurance products cannot be sold during the pre-deferral period, this period also offers a potentially dangerous exemption from the anti-hawking regime for retailers, in that it allows them to make unsolicited offers to consumers for add-on insurance products that they might otherwise have had no interest in purchasing.

Considering the past pressure sales conduct by insurers and retail partners to sell junk insurance, we hold real concerns over the risk that the pre-deferral period will be used as an opportunity to push junk add-on insurance products. While the DSM imposes a pause after this pressure selling situation, it still provides an opportunity for junk add-on products to be discussed. For this reason, it is essential that the trigger for the commencement of the pre-deferral period be interpreted narrowly, so the anti-hawking prohibition continues to apply for as long as possible.

We generally support the guidance at RG 000.56-57. For the pre-deferral period to start, it should be essential that the consumer has identified the specific principal product or service, and made it obvious that they are intending to acquire it. To better reflect this trigger point, we suggest deleting the words 'type of' in the last sentence of RG 000.57 – the more appropriate requirement to start the pre-deferral period should be for the consumer to identify the exact product or service. It is only at this point that the consumer could make any real assessment of the true value an add-on insurance product might offer them.

We also strongly encourage ASIC to include some guidance about the interaction between the DSM and other relevant laws. For example:

- insurers must continue to comply with the design and distributions obligations during this period, and should ensure retail partners offer add-on insurance products to consumers who are members of the intended target market for the products;
- that insurers should avoid entering remuneration arrangements with retail partners and salespersons that might incentivise high pressure and unsuitable sales of add-on insurance products;
- even if a consumer expresses interest in an add-on insurance product during the pre-deferral or deferral periods, they should explicitly be informed that they cannot proceed with the purchase until the post-deferral period and can opt out from offers at any time.

ASIC should be expecting this at the very least from parties subject to the DSM to deliver on the intent behind the Hayne reforms.

The deferral period – time of commencement

In our view, the description of the point at which a customer enters into a commitment to acquire a principal product or service at RG 000.69-71 is effectively describing when that person has committed to purchasing a product or service in a contractual sense. We accordingly recommend that this section could be strengthened by saying as much.

RECOMMENDATION 2. Clarify that the deferral period only begins when a purchaser makes a legal commitment to acquire the principal product or service.

Deferral period – prohibition on offers, requests, invites

We recommend moving RG 000.84 (referring to the impact of consumer opt-out) up to follow RG 000.75. This important point about the impact of the opt-out process relates more directly to this section, than to the responding to customer-initiated contact section.

Customer initiated contact during deferral period

In relation to RG 000.77-83, it is important that unspecified queries from a consumer about an add-on insurance product do not open the flood gates for offers of sale to be made to the consumer (even if not actually sold at the time).

This section would be improved by inserting a clear statement that offers or invitations to buy an add-on insurance product may only be made in direct response to a specific request by consumer to buy the product (noting the sale cannot be finalised until after the deferral period). For example, a question for an insurer about whether a product would cover the consumer in a particular situation should not give the insurer a free pass to offer to sell the consumer it at a specified price after the deferral period ends.

RECOMMENDATION 3. Clarify that a customer must initiate contact specifically about purchasing an add-on insurance product before an insurer or retailer can offer to sell them the product.

Right to refund

In many of the situations where more notorious junk add-on insurance products have been sold, the harm they cause is compounded because their purchase price was paid for using credit, such as a car loan or a bank loan, meaning that the consumer also pays interest on the price paid for the policy.

Any refunds obtained by consumers for breaches of the DSM obligations should also entitle them to be reimbursed for any interest incurred on the amount paid for the add-on insurance product. Consumers should not be left out of pocket for sales in breach of the DSM – particularly if the insurance product relates to the credit (eg CCI). To require anything short of this would leave them out of pocket. We strongly encourage ASIC to add a paragraph to RG 000.98-99 confirming this position.

RECOMMENDATION 4. Clarify that any refunds obtained in accordance with section 12DT of the DSM Legislation must include any interest the consumer has paid on the cost of the insurance product in RG000.98-99.

Record keeping

We strongly support the guidance on record keeping. The need for sellers of add-on insurance products to retain records of providing the Customer Information and how sales complied with the DSM is essential for the DSM to have any effect.

ASIC should also clarify that regulated entities should provide copies of their records to consumers upon request to ensure compliance with the DSM.

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

Yes, we generally agree with the proposed examples in RG 000 and consider them to be very useful, subject to the following comments:

- **RG 000.30** lists three factors that indicate the life insurance product is not an add-on insurance product for a loan. In our view, any one of these three factors (or at least (a) and (c) alone) would appear to conclusively demonstrate that the insurance is not an 'add-on' for a loan. It should be clarified that each of these factors alone could be sufficient to exclude insurance from being an 'add-on'.

- As noted above, we do not consider that asking questions about a *type* of product or service would necessarily be sufficient to indicate intention to acquire a product or service – rather, the intention should indicate a specific product (and start the pre-deferral period). Accordingly, we recommend that the examples at **RG 000.56-57** be amended to refer to a 'specific product or service' rather than a specific type of product or service.

Suggested additional examples

The 'interaction with the hawking prohibition' section could be strengthened by including an example. We suggest inserting an example following **RG 000.49** clarifying the restriction on discussing products such as CCI or GAP insurance in a car yard before a consumer has specifically indicated that they intend on applying for a specific car finance product.

An additional example following **RG 000.71** may be helpful to demonstrate when a consumer enters into a commitment to acquire a principal product or service without making a deposit or other financial commitment.

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)?

The default method of provision of the Customer Information should be specified in RG 000, as well as the need to first confirm that the consumer can access the Customer Information in the electronic form that it will be provided (discussed further at Part D).

ASIC should also make clear that:

- the DSM should be briefly explained to consumers at the time the Customer Information is provided;
- telling consumers to disregard or not to worry about the Customer Information is prohibited; and
- telling consumers anything contrary to the Customer Information at any time in the sales process may constitute misleading and deceptive conduct, and that ASIC will be undertaking shadow shopping and other monitoring activities to identify whether this is occurring.

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

RG 000 explains a complex area of law, but offers little in the way of describing what ASIC expects in terms of responsible selling and good practice. The DSM is being introduced in response to decades of pressure selling of junk insurance. We strongly encourage ASIC to use this regulatory guidance to go beyond explaining the DSM, and set some expectations for insurers and their retail partners aimed at improving consumer outcomes and reducing the risk of harm, for example, in compliance with general licence obligations to act honestly, efficiently and fairly. Some of our comments above already address this issue, but we note additional areas where we think this would be particularly beneficial below.

Put avoidant sales models on notice

We are concerned that some players in the add on insurance market will engage in avoidance practices to skirt around the DSM obligations. ASIC should be proactive in addressing this risk by making clear that it expects entities to not only comply with the strict legal requirements of the DSM, but also to operate in a way that will deliver on the intention behind the reform.

For example, we are concerned that car yards may adopt a model where an unnecessary pause will be inserted in the sales process and consumers will commit to purchasing the car, then be told to come and pick it up the day after the deferral period ends, when they may be able to try to pressure them into purchasing additional junk insurance. Similarly, approval for finance in car yards may be altered to allow for a variable final approval amount

that can be increased to allow for the premium for CCI or GAP insurance to be included, four days after the loan is otherwise approved.

The best solution for car yard mis-selling is for ASIC to follow through on its prior plans to use the PIP to set up a more comprehensive deferred sales model. We reiterate our disappointment in ASIC's decision not to proceed with this intervention in car yards, despite being provided with significant evidence and data on the consumer detriment these sales have caused. We wholly reject the idea that the industry should be given another chance under the new Hayne reforms. The proposed PIP would have addressed gaps in consumer protection in the DSM Legislation, in particular the PIP would have captured non-insurance warranties. We sadly have little doubt that ongoing significant consumer detriment will continue to occur after 5 October 2021, and ASIC will be reconsidering the use of the PIP for junk insurance and warranties in car yards in the near future.

We strongly encourage ASIC to undertake proactive surveillance on (and note in RG 000 that it will be doing so) sales models being used to avoid the DSM obligations. Seeking to avoid the operation of the DSM may risk causing consumers significant detriment, and would likely necessitate ASIC to use the PIP in this regard.

Permitted contact should be reasonable

We strongly recommend that ASIC set expectations about the way insurers and other parties subject to the DSM engage in conduct that is permitted under the model. For example, while written communications may generally be permitted at any time, consumers should not be bombarded with repeated offers and attempts to initiate contact.

ASIC should also confirm in RG 000 to retailers and insurers that any information provided during the pre-deferral period must:

- not be misleading; and
- act in accordance with the information set out in the Customer Information – particularly noting that the insurance is not compulsory.

Monitoring and information requests

We also encourage ASIC to proactively monitor compliance of DSM and related sales processes. The DSM is a useful tool to stop pressure selling, but one that can be gamed or avoided, particularly as consumers will generally be unaware of the law's existence. Many junk insurance sales in the past went unreported for years, as consumers only realised later that they had been sold unnecessary products or were told they were mandatory. There needs to be close monitoring of compliance and of market changes from 5 October 2021, so we can understand whether the reform has had the desired impact, or whether further changes are required.

In 2018, the Financial Conduct Authority UK (**FCA UK**) published an evaluation it undertook of its 'deferred opt-in' model intervention into the sale of GAP insurance in car yards.³ FCA UK monitored sales volumes, undertook consumer surveys, engaged directly with industry and used other publicly available data to assess whether the new model was being complied with, and whether it was having an impact. FCA UK found that the model was largely being complied with, and had reduced the volume of sales of this poor value insurance product. However, they also found that where the products were being sold, the prices were still similar.

We strongly encourage ASIC to collect similar data after the DSM comes into effect, and also consider other steps such as:

³ FCA UK, *Evaluation Paper: An evaluation of our guaranteed asset protection insurance intervention*, July 2018, <https://www.fca.org.uk/publication/corporate/gap-insurance-intervention-evaluation-paper.pdf>.

- requesting any documentation from insurers being used to train their staff and partner retailers in how the DSM works; and
- undertaking shadow shopping exercises to assess whether the model is being complied with properly.

RECOMMENDATION 5. Set out ASIC’s expectations about the conduct necessary for retailers and insurers to comply with the DSM in accordance with the intention behind the reform, and conduct monitoring and surveillance on compliance and consumer impact.

Part C: Exemptions under section 12DY of the ASIC Act

C1Q1: 1 Is there further guidance we should provide on our interpretation of the exemption factors in s12DY(2)?

(2)(a) Historically good value for money

We strongly support the range of factors ASIC has indicated in RG 000 that it will consider in determining whether an add-on insurance product (or class of products) has historically provided good value for money to consumers, and the expectation that applicants will be able to provide this information.

Proof of delivering good value for money should be a non-negotiable requirement for any product to be approved for an exemption, particularly via factors such as high claims to premium ratios. To reduce the amount of time ASIC and industry waste on applications that are doomed to fail, we suggest ASIC introduce a bright line claims ratio that policies must meet to be exempted from the DSM. Our recommendation is that this is set at 89%. Comprehensive car insurance is one product that Commissioner Hayne⁴ and the Productivity Commission⁵ assert is good value to consumers, and its average claims ratio is around 89%.⁶ There is no reason that any product likely to only return less than 89 cents in each dollar spent should be exempt from the DSM.

We understand that industry has recently indicated it is unable to provide claims ratios for particular products or for particular classes of products. We find this hard to believe. A claim ratio for a product literally indicates how much profit an item makes an insurer. Insurers absolutely should be able to provide this information. Insurers are required to regularly report to APRA on similar metrics, so they should be able to deliver this information for this purpose. ASIC should continue to request this information from insurers.

We also recommend amending paragraph RG 000.153 to make clear that the information set out at RG 000.152 needs to be provided both for the deferral period, as well as across the entire coverage period of the product.

RECOMMENDATION 6. Impose a bright line test for exemptions, clarifying that no add-on insurance product or product class with a claims ratio under 89% will be approved for an exemption.

(2)(b) High risk of under- or non-insurance

The guidance in RG 000 regarding this factor is comprehensive and logical. Central to this exemption factor is the need for the applicant to firstly show that the insurance product addresses a risk that actually needs insuring, and not a remote risk such as those covered by junk products, like GAP insurance. This requirement is succinctly addressed in RG 000 under the ‘High risk’ heading.

We also strongly agree that for an exemption to be granted, the applicant needs to show why insurance is needed within the 4-day deferral period specifically, and why the standalone or broker-issued market cannot meet this need. The absence of a standalone market at present also should not be immediately accepted as a major issue –

⁴ Financial Services Royal Commission, *Final Report*, Volume 1, p 290.

⁵ Productivity Commission, *Final Report: Competition in the Australian Financial System*, 29 June 2018, p 430: <https://www.pc.gov.au/inquiries/completed/financial-system#report>.

⁶ ASIC, Consultation Paper 324, *Product Intervention Power: The sale of add-on financial products through caryard intermediaries*, October 2019, para 23; see also the Productivity Commission’s analysis of claims ratios between 2012 and 2018, which ranged between 83-98%: *Final Report: Competition in the Australian Financial System*, 29 June 2018, Figure 14.6, p 415.

add-on sales practices may have made a standalone market unviable, but if genuine demand exists for a product, a competitive standalone market will likely re-establish itself quickly once the DSM comes into effect.

(2)(c) Is the product well understood by consumers?

We strongly support the guidance on how ASIC will interpret this factor when assessing exemptions. Our only suggestion is to clarify that other factors can indicate how well consumers understand a product, such as:

- claims acceptance rates (higher indicating a higher level of understanding);
- denials and withdrawals rates (lower rates indicating a higher level of understanding); and
- the variation in coverage across the product market. If significant variation exists across the market—particularly with respect to definitions, exclusions and inclusions—this makes it far more difficult for consumers to understand the product.

(2)(d) Differences between the add-on insurance product and similar products

We encourage ASIC to clarify in this section that if there are similar better value insurance products available on the market, it is likely that the application will be refused.

(2)(e) Other matters

The matters ASIC has indicated it intends on considering under s 12DY(2)(e) are described clearly and logically in RG 000. We note that Professor Lauren Willis' research on performance-based consumer law has been instructive in developing our position on these issues, and provide useful insights into measuring good consumer outcomes.⁷

C1Q2: Are there any other matters that we should consider under s12DY(2)(e)?

IDR and EDR complaints and outcomes

The data template at Attachment 2 to CP 339 requires applicants to provide a range of details about complaints received regarding the product an exemption is being sought for. We strongly support ASIC considering this information when assessing an application – both in terms of internal and external dispute resolution. We recommend ASIC specify in RG 000 that it will consider the rates of disputes, the issues raised in them, and their outcomes in assessing an application. A high complaint rate likely indicates poorer consumer outcomes, or that the insurer may not interpret their policy favourably or reasonably. Such factors should weigh against granting an exemption.

RECOMMENDATION 7. Confirm in RG 000 that insurance products with high rates of complaints and disputes are unlikely to be approved for an exemption.

Time taken to assess a claim

We also suggest ASIC considers the average time an insurer takes to assess and resolve a claim, as well as the variation in this figure. Products that involve a long, protracted claims process without extremely good reason should not enjoy the benefit of an exemption, as this greatly reduces the value they provide consumers.

C1Q3: Are there any additional data and indicators that would be useful to include in Appendices 2 and 3 of draft RG 000?

To make consideration of the time taken to assess a claim possible, we recommend also requiring applicants to provide details about the time it takes to resolve claims under the insurance products for which an exclusion is sought, via Appendix 3 to RG 000. In particular, we suggest seeking the average time taken for a claim to resolve, and details about the variation in time it takes to resolve claims.

⁷ See for example, Willis, L.E., 2015, Performance-Based Consumer Law, *The University of Chicago Law Review*, Vol 82, p 1309.

RECOMMENDATION 8. Seek details from applicants for exemptions about the time it takes for claims to be assessed, resolved and paid out for relevant products. Products with unjustified long claims processes should be refused exemptions.

C1Q4: Are there additional matters relevant to exemptions on which we should consider providing guidance?

Throughout the development of this legislation, insurers have pointed to the mere convenience of buying an add-on insurance product with the principal product as a reason to oppose the DSM. We suggest ASIC consider whether it is necessary to clarify in RG 000 that convenience will not justify exempting a product. Given the opportunity to operate as a free market, the harm caused by allowing the pressure selling of complex add-on insurance products has far outweighed any benefit consumers receive from the convenience of purchasing insurance at the principal product point of sale. 'Convenience' has harmed consumers, and this argument by insurers should be disregarded.

Part D: Content of the Customer Information

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

Generally, yes. We support the use of plain language and keeping the layout of the Customer Information relatively simple, and agree with the information that is being prioritised in the document. The biggest problem with the pressure selling conduct that led to the DSM related to misinformation – and, in particular, people being told insurance was compulsory, so we strongly support this point being clarified upfront in bold. The important function of allowing consumers to opt-out of future contact is also prominent and simple to understand. The explanation of why the Customer Information is being prescribed also provides valuable context to the reader, that will help put them on notice about the issue.

We also support the use of the Australian Government logo to help draw attention to the Customer Information and increase the extent to which the document will be taken seriously and treated credibly. We oppose excluding the logo from the electronic copy (discussed further below).

One factor we strongly encourage ASIC to consider in the rollout of the Customer Information is accessibility, particularly for more cohorts of people experiencing vulnerability. The information sheet should be made available in numerous other languages, to help reduce the risk of people who cannot read English missing out on this information. While we understand the research undertaken by BETA may not have supported their use, we suggest ASIC does consider using some basic graphics, like a stop sign, that might make someone with lower literacy levels seek out assistance to understand the importance of the document.

There may also be value in a sentence at the end flagging that people can complain to ASIC about the sales process or any tactics used in relation to add-on insurance, or make a complaint to AFCA. If people realise they have been misled by the salesperson after reading the Customer Information, this could be a valuable opportunity for ASIC to obtain consumer insights into problematic sales conduct.

RECOMMENDATION 9. Include a sentence in the Customer Information informing people they can complain to ASIC or AFCA if they believe they have been subject to misleading sales tactics.

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

We were somewhat surprised that BETA's testing indicated the use of claims ratios was problematic and negatively impacted the overall level of comprehension of the Customer Information. We do question some of the points made in BETA's analysis – such as distinguishing between rates of purchase for people who liked the claims

ratio information and people who didn't.⁸ The amount people liked the information doesn't seem to be a hugely relevant factor to anything in our opinion. Distinguishing between the rates of purchase for two poor claims ratios (20/100 and 40/100) also may not be an ideal way of assessing its impact.⁹ While one is obviously better, they both represent poor value.

We also think that the research of BETA may have disregarded a particularly positive impact of the inclusion of a claims ratio – being that insurers may be less likely to sell poor value products if they have to specifically indicate on a document that it is poor value. Clearly, requiring insurers to display this information saliently will create incentives for the business, independently of its effect on consumer comprehension. Among other things, such information might result in negative media for junk products, and in turn bring negative consequences for selling junk products.¹⁰ While disclosure generally doesn't work for consumers, it can create a range of incentives for businesses that may have a significant positive impact on consumer outcomes. In particular, we expect that insurers will seek to compete to have a higher claims ratio than competitors if this information is required to be displayed saliently at the point of sale.

As another alternative, where a product does have a particularly poor claims ratio (eg 50% or less), ASIC could prescribe that an additional sentence at the end of the document stating that people who buy the product, on average, claim less than half the total amount they pay in premiums – or simply stating that it is a poor value product.

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.

No. See our response to D2Q1 below.

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

ASIC should prescribe the same fixed template for the electronic communication of the Customer Information – including the Government logo. The inclusion of the Government logo may increase the credibility of the Customer Information and likelihood consumers will engage with it. However, we are alert to the risk that the existence of the crest may be used by salespeople to build confidence in the product or salesperson, and we suggest this be monitored in its implementation.

While we do not, as a rule, oppose the use of alternative methods of providing the Customer Information electronically, it should not be hard to incorporate a set PDF document, or a link, into any system. Surely, any sales app or anything else insurers or their partners intend on using to comply with the DSM will be capable of providing access to a single page PDF document to consumers, in a way that is easy to access and readable.

There should be a prescribed template for the default method for providing the Customer Information.

RECOMMENDATION 10. Prescribe a fixed template for the electronic communication of the Customer Information, with the Australian Government logo.

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.

No.

⁸ BETA, *Slowing down to add it up: using behavioural insights to support decisions about add-on insurance*, March 2021, page 18.

⁹ Ibid, page 17.

¹⁰ For example, see <https://www.news.com.au/finance/money/costs/toyota-letter-admits-its-product-is-junk/news-story/e8fae21fc306cddoc4599e40f9545818>

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.

Yes.

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.

No.

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?

Yes, we support the default method of communication being electronic, as it will help ensure there is a record of the consumer actually receiving the Customer Information, and it makes records of people opting out far easier to identify. We also support the requirement that consumers positively confirm that they will be able to access the Customer Information electronically first before being provided it in the particular form, as this makes it more likely that their attention will need to be drawn to the document. This confirmation should also specifically be used to ensure that they understand how they are receiving the Customer Information.

We also agree with the proposals in regard to the hardcopy format as an alternative.

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.

There is a risk that people will be provided these documents and not realise they have been provided it, or will not engage with it at all.

We support ASIC specifically requiring the salesperson to confirm that the consumer can use the particular form of electronic communication they propose to send the Customer Information on. If people who have limited technological expertise are sent the Customer Information on a platform a format they don't know how to use, this would likely be a clear sign that they were not properly asked the question at the time.

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.

We have concerns that the Customer Information will end up just being the final attachment at the end of an email with numerous files, or that a person may receive a link to it by SMS but in a format that doesn't draw attention to the link. We would support ASIC commissioning research on the best form to provide the Customer Information, and we support ASIC's planned requirement that the provider confirm with the consumer that they are happy to receive the document on the specific platform before it is provided.

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

No, but ASIC should set out in RG 000 that the method of electronic provision should allow consumers to easily access the Customer Information throughout the whole deferral period and in the remainder of the 6 weeks after, when the anti-hawking provision doesn't apply. ASIC should monitor the ways the Customer Information is being provided to ensure it is not being hidden away in (for example) a difficult to access spot in a poorly developed app.

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

No.

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

No.

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

No.

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

Yes, we agree that the Customer Information should be provided after the commitment to acquire the principal product or service has been made, as this ensures that the 4-day deferral period will start and run from the time when pressure selling is most likely to occur, at the point of sale. We also agree that this will reduce the risk of the Customer Information being confused as relating to the principal product or service.

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.

No.

Please contact Policy Officer [redacted] at Consumer Action Law Centre on [redacted] or at [redacted] if you have any questions about this submission.

Yours Sincerely,

| CEO
CONSUMER ACTION LAW CENTRE

| CEO
FINANCIAL RIGHTS LEGAL CENTRE

APPENDIX A - SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** Amend or delete paragraphs RG 000.19-26, and move Table 1 down to the deferral period section.
- RECOMMENDATION 2.** Clarify that the deferral period only begins when a purchaser makes a legal commitment to acquire the principal product or service.
- RECOMMENDATION 3.** Clarify that a customer must initiate contact specifically about purchasing an add-on insurance product before an insurer or retailer can offer to sell them the product.
- RECOMMENDATION 4.** Clarify that any refunds obtained in accordance with section 12DT of the DSM Legislation must include any interest the consumer has paid on the cost of the insurance product in RG000.98-99.
- RECOMMENDATION 5.** Set out ASIC's expectations about the conduct necessary for retailers and insurers to comply with the DSM in accordance with the intention behind the reform, and conduct monitoring and surveillance on compliance and consumer impact.
- RECOMMENDATION 6.** Impose a bright line test for exemptions, clarifying that no add-on insurance product or product class with a claims ratio under 89% will be approved for an exemption.
- RECOMMENDATION 7.** Confirm in RG 000 that insurance products with high rates of complaints and disputes are unlikely to be approved for an exemption.
- RECOMMENDATION 8.** Seek details from applicants for exemptions about the time it takes for claims to be assessed, resolved and paid out for relevant products. Products with unjustified long claims processes should be refused exemptions.
- RECOMMENDATION 9.** Include a sentence in the Customer Information informing people they can complain to ASIC or AFCA if they believe they have been subject to misleading sales tactics.
- RECOMMENDATION 10.** Prescribe a fixed template for the electronic communication of the Customer Information, with the Australian Government logo.