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Dear Manager

Deferred sales model for add-on insurance - exemptions by class

We refer to Treasury's consultation seeking information relevant to the use of the power under section 12DX of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) to exempt classes of add-on insurance products from the operation of the deferred sales model (**DSM**). This submission is made by Consumer Action Law Centre, Financial Rights Legal Centre and WEstjustice.

We oppose any exemptions for classes of add-on insurance products from the DSM without extremely strong evidentiary justification. Implementing an industry wide DSM for add-on insurance was one of the key recommendations Commissioner Hayne made for the insurance industry. Known behavioural biases inherent in the add-on sales process have been long exploited by the insurance industry and their retailing partners, which have prioritised making a quick buck over selling suitable insurance products that people want and need. The sale of these products continues to cause significant consumer harm, particularly in situations where excessive commissions are being paid to retailers for pushing poor value – and sometimes worthless – insurance products.

The Financial Services Royal Commission's (**FSRC**) Final Report recognised that commission-fuelled pressure-selling opportunities were being widely used by insurers and retail partners for all types of add-on insurance.¹ The starting point for this consultation must therefore be that no class exemptions should apply unless there is strong evidence that the DSM will cause significant consumer detriment, and that the detriment would outweigh the potential harm caused by allowing a potential pressure selling situation to exist. The DSM will fail to be the "industry-wide" reform that Commissioner Hayne recommended if entire classes of products are exempted.

In addition to this submission, our previous submissions made to consultations on Treasury's 9 September 2019 Proposals Paper on add-on insurance, and the exposure draft legislation in 2020 that proposed the DSM, also contain information relevant to this issue.

No exemptions without strong evidentiary support

There are three important points that should contextualise any discussion about exemptions from the DSM:

1. The DSM does not actually stop anyone from selling an insurance product altogether – it simply inserts a 4 day pause in the sales process, designed to stop exploitative pressure selling situations.

¹ Page 290.

2. The DSM does not stop a consumer from purchasing a type of insurance product altogether at any time – they can go and buy insurance immediately after making the principal purchase from any other source.
3. If an insurance product is subject to the DSM, it becomes exempt from the stricter anti-hawking of financial products prohibition contained at section 992A of the *Corporations Act 2001*, and so retailers can still sell them in more situations than if the insurance product were unrelated to a principal product.

The DSM is already an exception to a harder rule also designed to stop harmful sales tactics. Considering it only temporarily defers the ability of one entity to sell an insurance product by four days, any exemptions should only be granted if it is established that significant consumer detriment **will** occur to consumers if the exemption is not granted. There are likely to be very few insurance products where any sort of competitive marketplace exists that will meet this bar.

The FSRC also broadly recommended that the law should be simplified and that exemptions and loopholes must be minimised (Recommendation 7.3). This should also be a guiding principle when considering exemptions.

All requested information should be provided

We broadly support the scope of Treasury's request for information as part of this consultation,² noting that the specific information requested mirrors criteria ASIC is required to consider when using its power to exempt individual add-on insurance products under section 12DY of the ASIC Act. Class exemptions should at the very least stack up in regard to these same criteria, which means they should make sense in both a quantitative and qualitative sense.

For any insurance products that have a standalone retail market, the quantitative evidence of both the harm that would be caused by imposing the DSM, and of the value the product provides to consumers, needs to be conclusive and compelling. Exemptions should never be granted to product classes where there is not both quantitative evidentiary support and a logical case for the exemption. Any class of insurance that is to be excluded from the DSM also needs to be well established and understood. There should be no excuse for being unable to respond to all of the evidence requested by Treasury on the consultation website.

RECOMMENDATION 1. No class exemptions should be approved without conclusive evidence of the consumer harm that applying the DSM to the class would cause, and the value the add-on insurance product provides consumers.

Particular quantitative measures should be treated as knockout factors

The reality is that the implementation of the DSM was made necessary primarily due to add-on insurance products being sold:

- under arrangements where huge commissions were paid to the retailers; and/or
- that were junk policies offering very little real value to consumers.

Even where other factors may lend support to an exemption, proving that a class of add-on insurance product does not fall into one of these categories should be essential.

If the average commission historically paid on a class of add-on insurance products is 20% or more, this should conclusively exclude the class from consideration of an exclusion. Arrangements where commissions are driving the pushing of insurance products by retailers are precisely the situations the DSM is intended to stop, and where it is most important to apply. We suggest assessing the historical rates of commission by looking at the rates over the last 10 years, to get a true sense of how the class of product has approached commission. If there are recent

² <https://treasury.gov.au/consultation/c2021-142813>.

decreases, they should be demonstrated across a sufficient amount of time to trust they are permanent – not just a short-term response to the FSRC, and the knowledge of this impending reform.

RECOMMENDATION 2. Any add-on product class that has seen retailers paid commissions of 20% or higher should not be granted an exemption.

To ensure no junk add-on insurance product classes are exempted, it should also be an essential requirement that any exempt class of product also has high claim pay-out to premium ratios. In supporting an exemption for comprehensive car insurance, Commissioner Hayne cited ³ the Productivity Commission's view that comprehensive car insurance rates among the highest value to consumers as measured by the share premiums returned in claims and claims acceptance rates.⁴

We recommend a claims ratio of 90 per cent as a baseline for exemption. This is based on the comprehensive car insurance claims ratio of 89 per cent,⁵ and therefore consistent with the recommendations of Commissioner Hayne and the Productivity Commission. This requirement should be met by products that are specifically sold as an add-on – not the class in general.

RECOMMENDATION 3. To be considered for an exemption, any add-on insurance product class should have a claims to premium pay-out ratio of 90% or higher.

Add-on insurance products need to be similar or better than standalone products

The evidence provided in response to point 5 in Treasury's consultation, seeking details of differences between add-on and standalone insurance products, is vital. Where add-on products perform worse in terms of metrics or provide materially different forms of coverage, this is likely a strong indicator that the add-on product is not one that should be exempted. The comparison between standalone and add-on products needs to be comprehensive and it should be expected that to qualify for an exemption, the products should be conclusively similar.

RECOMMENDATION 4. To be considered for an exemption, any add-on insurance product class should clearly offer the same or better value to consumers as their standalone equivalents.

No exemptions to help struggling industry

Just because an industry is struggling in the wake of the COVID-19 pandemic doesn't mean it should get an exemption – if their products cannot demonstrably show value, then it shouldn't be exempted. Any bail out of such industries will be directly at the expense of consumers. If anything, desperate industry players facing financial pressure are more likely to seek to obtain more profit from consumers, making for an increased, not decreased, risk of hard-sell tactics. The consumers being sold these products will also be feeling the financial impact of the pandemic – any extra cost for insurance will be felt more significantly by those doing it tough in future.

Link to add-on sales and risk of under and non-insurance should be clear and logical

The fact alone that an insurance product class does provide value to consumers should not justify an exemption. There needs to be a good reason why a standalone insurance market cannot fill any need for insurance, or why a four day pause in the sales process would be a major problem.

Evidence will need to be collected regarding the ease in which consumers can obtain a class of insurance by means other than add-on and the extent to which the market has structurally shifted away from direct sales. Any assertion that the direct insurance market for a particular class will not step in to cover the risks consumers wish to cover

³ FSRC, *Final Report*, Volume 1, p 290.

⁴ 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>.

⁵ 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.

simply because the direct market has shrunk due to insurers shifting to an add-on model should not be taken at face value. Commission based add-on insurance arrangements have been used to take control of major shares of the market. If there is a genuine need for an insurance product, the DSM can allow for the re-establishment of a more competitive market at retail level. If a product is truly valuable, the demand will remain and the market will likely see it be met beyond the add-on sales point.

Convenience claims should be disregarded

Mere convenience should also not be considered as a reason to exempt a product class. 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.

Likewise, any claims by industry that the DSM may impact the ability of consumers to sign up and save through 'bundle' deals offered should be treated with great scepticism. Insurers use these bundle arrangements to retain customer bases, but it can also help foster a situation where people no longer assess what value they are getting over time. Even where the product may be of 'good value' when first sold, often as a loss leader, this is the kind of situation where loyalty taxes may apply where premiums on car or home and contents insurance jump up dramatically at renewal time.⁶ Further, these discounts can still be offered by the retailer of the principal product at the end of the deferral period. The ample evidence of the need for the DSM should have closed any discussion about whether any benefit of convenient bundling at the point of sale outweighs the harm caused by pressure selling.

Significant risk alone does not warrant exemption

Further, exemptions certainly should not be provided just because an insurance product may protect consumers from a major risk that they take on the moment they acquire a product. Protection from a major risk is the point of insurance! Just because there is a significant risk involved in a principal product doesn't at all justify allowing insurance to be sold in a pressure situation. It is unlikely in these situations that consumers are only going to be informed of the possible need for insurance solely because of the retailer offering them an add-on insurance product.

Further, to ensure demand is retained, it is in the interests of retailers who are selling high risk products to inform purchasers of the risk involved in using the product. For example, if every jetski accident resulted in someone being personally liable for significant sums of money, they would likely become widely known as a product that either was not worth the risk (and demand would reduce), or for which you should obtain insurance. It is ridiculous to suggest that just because a principal product retailer cannot sell someone insurance that all consumers would suddenly neglect to purchase it for high risk products, where it is genuinely needed.

In addition, another benefit of the DSM is that for the deferral period to start, the retailer will need to provide the consumer with an information statement, in a form prescribed by ASIC, which addresses the concept of insurance and explains the DSM. If selling add-on insurance is a worthwhile venture now, there is no reason that the principal product retailer would not hand out this information statement so that they have this opportunity in four days. This is intended to act as the prompt for consumers to consider insurance, its potential value to them, and their options.

⁶ For more information on the 'loyalty tax' in insurance, see Consumer Action, Submission to the NSW Emergency Services Levy Insurance Monitor, Discussion Paper: Pricing Differences: New vs Existing Customers, 20 December 2018: <https://consumeraction.org.au/insurance-pricing-differences-new-vs-existing-customers/>.

If exempting, precise definitions are necessary

Noting our view above that opposes exemptions in general, where the Government does introduce class exemptions, it needs to use precise and exclusive definitions that ensure only the specifically intended products may be sold outside the DSM.

Definitions should impose key characteristics

The difference between insurance that offers value and a junk policy can be based on particular exemptions – or unnecessary inclusions. As a starting point, any definitions of classes of products exempted need to include the key features of the product that make it valuable. There at least needs to be a baseline product that can be defined. While there may be differences in policy wordings across a class, the actual real risks they cover should be well understood by consumers and consistent across the class. If they aren't, or are not possible to clearly describe, they shouldn't be exempted.

WEstjustice Case Study - Alice

Alice came through our service for both legal advice and counselling assistance. Although she had worked for a number of years in a well-paid job, a severe mental health condition had caused her employment to be terminated due to reasons of capacity. Alice had entered into a novated lease during her employment, which included an add-on gap insurance product she paid for simultaneously to the lease. When she attempted to invoke the insurance policy after ceasing work and struggling to make payments on the car loan, she discovered a clear and unambiguous exclusion in the policy for circumstances in which a lessee lost her job due to mental health issues. Effectively, this meant the policy was of negligible value to her.

Although many of our clients obtain gap insurance in circumstances where we have associated issues involving traders and brokers that may be regarded as highly 'marginal' (ACL claims against second-hand vehicle traders, National Credit Code claims against lenders and brokers), Alice's case is a reminder that people can purchase simultaneous add-on insurance products while financially stable and highly-educated, only to be seriously disadvantaged down the track.

Further, definitions also need to be limited to those services that provide value, and should not be able to be unnecessarily expanded by including lower value forms of coverage at extra cost. There are so many junk insurance products available across the industry that the definitions need to be live to the risk of upselling consumers in a pressure situation.

The auto industry provides a clear example of this – while CTP insurance and comprehensive car insurance may be appropriate exclusions from the DSM, the industry is rife with unnecessary and poor value insurance products. If the definition of an excluded insurance product class allows additional extras to be added onto the sale, the pressure selling is just going to move from selling the product outright, to offering upgrades on the product.

If Treasury is having difficulty defining the boundaries of the features of an insurance product, this may speak to the complexity of the product and whether or not consumers truly understand what they are getting. Where this cannot be rectified, class exemptions should not be approved until consistency and reliability across the class of products is achieved.

RECOMMENDATION 5. All exempted add-on product classes need to be restrictively defined and specifically reference the key aspects of coverage that provide consumers value.

Standard cover as a mechanism for defining products

While there may be a way to go yet, there is broad consensus amongst Government, industry, consumer groups and other interested parties that the insurance sector would benefit from standardising cover across key insurance

products. While we appreciate that the existing standard cover regime in the *Insurance Contracts Regulations 2017* is currently sparingly used and may not be appropriate to adopt immediately, linking DSM exemptions to standard cover definitions in the near future could be a useful way of fast-tracking the adoption of standard cover products.

We recommend making all exemptions temporary (at most 12 months), with a view to the establishment of widely used standard coverage for key products, that could be used to better describe and limit DSM exemptions in future.

Conditions appropriate to restrict exemptions

Where exemptions are approved, it is vital that conditions are proactively used to ensure that the exemption is restricted to situations where it delivers consumer value, and is appropriately monitored.

Specify the principal product

While it may be obvious, we strongly recommend that when exempting a class of add-on insurance products from the operation of the DSM, the related principal product should be specified. For example, while we are opposed to the proposed travel insurance exemption, we strongly recommend that travel insurance is only exempted when the principal product is the purchase of transport – such as flights or a cruise. Exempting an insurance product class without specifying the principal product risks it being pushed upon consumers repeatedly, and in situations where the products do not actually provide real value.

RECOMMENDATION 6. Restrict add-on insurance product class exemptions to where a specific principal product is sold.

All exemptions should impose a limit on commissions

Excessive commission structures have been a primary cause of consumer detriment from add-on insurance sales, and a key reason a DSM is required. It should be standard process that all exemptions from the DSM impose a condition that restricts paying commissions by insurers for add-on insurance sales arrangements. We consider an outright ban on commissions altogether would be the most appropriate policy response, as is the case with other financial products sold to retail consumers.

The problem with commissions at all is they can be used by insurers to incentivise the selling of the worst value policies available, with lower claims ratios. Arrangements between car dealers and insurers in the past saw insurers pay dealers four times more in commissions than they paid to consumers in benefits.⁷

A 20% cap on commissions in relation to consumer credit insurance (CCI) has existed under section 145 of the National Credit Code for more than 20 years. Since that time, evidence of serious consumer detriment and mis-selling of CCI has been uncovered, including during the FSRC. If any exemptions from the DSM are going to allow for any amount of commission to be paid, there needs to be robust evidence that this is in the consumer interest.

RECOMMENDATION 7. All add-on product class exemptions should impose a condition banning the payment of commissions related to their sale.

Restrict use of the exemption to products with high claims ratios

To ensure that any exemption from the DSM does not result in consumer detriment, use of the condition should be conditional on the insurance product retaining a high claim pay-out to premium ratio. As above, we recommend using a 90% benchmark if a product is to benefit from the exemption.

RECOMMENDATION 8. All add-on product class exemptions should be conditional on products retaining a high claim pay-out to premium ratio.

⁷ ASIC, *A market that is failing consumers: The sale of add-on insurance through car dealers*, Report No 492 (2016), 7 [20].

Use of exemptions should require reporting, be subject to review

Exemptions should not just be a 'set and forget' process. Exemptions should not be permanent, and be assessed on an ongoing basis. Any insurer selling add-on products via an exemption should be required to report to ASIC on their use of the exemption, including the number of add-on products sold, ongoing claim pay-out ratios, any commissions paid, policy cancellation rates and other relevant information. These are likely metrics that insurers are already collecting to assess the value of their arrangements with retail partners and the profitability of their products, and so could be easily reported.

Our recommendation is that exemptions should, at least initially, only be approved for 12 months at a time unless very good reasons exist to make them longer. If there are metrics which indicate that the class is causing consumer detriment or no longer represents good value, the exemption should not be renewed. The ever-changing COVID-19 situation means that the risks people need to be insuring themselves against are subject to greater variability than ever. What may be a worthwhile product or feature now could be vastly different in a year or two. This most obviously applies to travel insurance (discussed specifically below) right now, but the varied changes in lifestyle that COVID related restrictions can bring may put another product in the same situation in the near future.

Compulsory reporting will also make it easier to identify and enforce breaches of exemptions or other conditions of exemptions. Misuse of an exemption or failure to meet a condition should be subject to the same penalties as any other breach of the DSM.

RECOMMENDATION 9. All add-on product class exemptions should be initially made for a maximum of 12 months, and insurers should be required to report to ASIC on their use, to allow for periodic review.

Conditions should limit exemptions to where they provide value

If the need for an add-on insurance product to be available at the point of sale of the principal product only exists in particular situations, conditions should be used to restrict the selling of it to that particular situation. If the risk of consumer detriment only exists in novel circumstances (be that circumstances relating to the consumer, the product or the retailer), then the class exemption should only address those circumstances specifically.

For example, in relation to the Government's planned exemption for CTP insurance for motor vehicles, in states where there is a competitive market for this product (eg NSW), this exemption should only apply where the purchaser will actually be able to drive the vehicle within the add-on insurance deferral period. As the trigger for the DSM is when the consumer enters into a commitment to acquire the vehicle, there will be some circumstances where they will not necessarily have possession of the vehicle during the deferral period (such as if they only paid a deposit). In this situation, there is no reason why the DSM should not apply – the retailer can still be required to provide the information prescribed by ASIC and the consumer could make their own inquiries about their insurance options before actually obtaining the car and actually needing the insurance at all.

Comments on specific product classes

Travel insurance exemption should be conditional, reviewed annually

We are very disappointed the Government has announced its intention to exempt add-on travel insurance from the DSM without any real or transparent consultation, as we consider it a prime example of a poor value add-on product class that causes consumer detriment. Applying the DSM to travel insurance could help improve consumer outcomes.

Documented problems with add-on travel insurance products in the recent past have included both poorer quality products being sold via add-on arrangements, and exorbitant commissions being paid, resulting in consumers paying far higher premiums than they would for an equivalent standalone product. CHOICE's 2017 investigation

found that travel insurance bought through travel agents generally offers worse coverage than those obtained directly, and could not recommend any add-on products.⁸

The variation in coverage across the travel insurance market also means there is not always a high level of consumer understanding of what their product covers them for, which increases the risk of underinsurance. Research by the Department of Foreign Affairs and Trade and Insurance Council of Australia shows that the greatest risk of underinsurance is from getting the wrong insurance.⁹ This report found that:

- 87% of travellers were not clear that insurance policies do not cover all destinations as standard;
- 84% were not clear that travel insurance won't cover them in countries where the government recommends against travel;
- 70% were not clear that travel insurance won't cover claims made for incidents when the person involved was intoxicated as a result of alcohol; and
- 87% were not clear whether they're covered for riding a motorcycle overseas.¹⁰

We consider the decision to bail out the travel insurance industry as regrettable, and one that will result in consumer detriment. We strongly recommend either defining travel insurance in such a way, or imposing conditions, to reduce the harm that this exemption will cause, including:

- Restricting the exemption only to where the insured is undertaking international travel. The risk involved with travel in Australia is dramatically lower than overseas trips.
- Restricting the corresponding principal product only to the purchase of transport, such as flights or a boat trip. International travel will always involve one of these, and there is no need to allow every minor purchase related to travel to be another opportunity to pressure sell insurance.
- Ban, or at least place a 10% cap, on commissions payable. This industry has been one of the worst offenders in terms of harmful commissions. If the travel industry requires higher commissions to survive, this is an unreasonable burden for consumers to bear.
- Limit the exemption to products with high claims pay-out ratios, relative to the whole market. At the very least, the exemption should only apply to products where the claims ratio is above the average for the industry.
- Consider using a definition of travel insurance that requires specific qualities of good value products to be delivered upon, such as unlimited medical coverage.
- Exclude particular add-on extras that, if assessed alone, are known to have poor claims ratios relative to their additional cost.

While there may be some doubts about what travel and travel insurance will look like in future, industry cannot be given a blank slate to decide what products they want to offer outside the DSM. This will result in poorer consumer understanding of what coverage they have, and risks junk insurance policies being allowed to be flogged off without effective remedy later on. The exemption should, at a minimum, apply to travel insurance as it is currently broadly understood by consumers.

RECOMMENDATION 10. If exempted from the DSM, add-on travel insurance should be restrictively defined, closely monitored and numerous conditions should be imposed to reduce the risk of consumer harm.

⁸ CHOICE, *Double (the cost) agents*, January 2018.

⁹ Quantum Market Research, *Survey of Australians' Travel Insurance Behaviour*, Prepared for the Insurance Council of Australia and the Department of Foreign Affairs and Trade, 2017.

¹⁰ *Ibid*, p 15.

If not based in evidence, automotive industry requests should be disregarded

Junk insurance sold in car yards has long been one of the most harmful add-on insurance products available. The concern over this industry was highlighted in the FSRC Final Report, largely referring to ASIC's consultation paper 294, which documented longstanding harmful conduct.¹¹ The extent of this harm is demonstrated by the fact that between 2016 and June 2020, Consumer Action's DemandaRefund.com website assisted people to generate letters of demand for refunds for junk insurance and warranty products totalling **\$28 million**. People are still using DemandaRefund to seek refunds on junk products they were sold extremely recently.

We therefore recommend that any exemptions relating to insurance products for motor vehicles be critically examined, and steps be taken to ensure it doesn't open up the floodgates to junk insurance.

WEstjustice Case Study - Stuart

Stuart is an asylum seeker living in Melbourne on a protection visa. When he approached our community legal centre for assistance in 2020, he was homeless and surviving off the Status Resolution Support Services (SRSS) Payment. However, he had purchased a second-hand car under a collateral credit contract some years earlier when he had a period of casual employment. In investigating the various transactions involved, we established that he had paid the sum of \$1495.00, without his knowledge or consent, as part of the car loan toward 'GAP insurance'. The sum for insurance was paid to a separate company to the credit provider, but both appeared to be organised through the same broker. As the insurance premium was included in the overall cost of the credit contract, he had paid interest on the premium of 28% as part of the overall loan principal. Stuart had no idea that he even held this policy until we brought it to his attention when explaining the documentation.

Beyond our concerns about an unsolicited sale and the seller's misleading and deceptive conduct, Stuart's lack of comprehensive car insurance meant that the insurance product would have almost certainly been of no use to him in the event of a claim. Despite our belief that Stuart had a legal entitlement to a refund, we accepted a refund on 'compassionate grounds' that could be justified by Stuart's dire situation. These instances of gap insurance are sadly frequent among car sales involving brokered finance in Melbourne's West (and are added-on most commonly by the broker itself). However, due to the lack of transparency, often clients are none the wiser as to *who* sold them the insurance – the car dealer, the credit provider, or their intermediary.

We still consider the worst offending junk insurance products – including CCI sold with vehicle loans, guaranteed asset protection (**GAP**) insurance and warranties, to be of such high risk that they should all be subject to the additional protections that ASIC has long been proposing to introduce by use of its product intervention power (**PIP**). This consultation process though has delayed repeatedly for years (involving numerous consultation processes), and no intervention has been made. This inaction has likely allowed many more junk insurance and warranty products to be sold during this period. The PIP was intended to be a tool to allow for a fast response to issues in the market causing consumer detriment. ASIC's ongoing inaction in this area leaves much to be desired.

We have also recently been informed by ASIC that it now intends only to use the PIP to address extended warranties, and to leave the regulation of CCI and GAP to the industry wide DSM. ASIC also intends on consulting further before making the PIP, due to this change. This is a disappointing development, and will likely result in the long-term sellers of junk insurance and the car dealers selling these products looking closely at the DSM to identify any ways of avoiding the model.

In this regard, if the Government does intend on exempting other kinds of motor vehicle insurance, such as CTP and other third party insurance products, it is vital that these definitions be exclusive and precise. Treasury should consider specifying (through either definitions or conditions) that there must not be CCI or GAP insurance extras

¹¹ FSRC, *Final Report*, pages 288-289.

added onto these products. By not using the PIP to better regulate this high risk area, ASIC will also likely need to spend added resources monitoring any motor vehicle related exemptions in the market.

Home building and contents insurance

We strongly oppose any exemption being provided for home building or contents insurance from the DSM. However strong the desire for large firms to profitably cross-sell insurance to their lending clients, this alone is not a sufficient justification for an exemption from the DSM. Home and contents insurance is also likely to be better priced when sold directly, rather than as an add-on, as there is less likely to be a commission included in the price.

Home insurance is a widely known and understood product – there is no need at all for it to be offered along with a home loan or any other product. Further, having insurance is often a requirement of a home loan, so in those circumstances there is no meaningful risk of non-insurance. There is also almost always a long lead time on buying a home – even a 30-day settlement is longer than the 4-day deferral period. Buyers can still buy the bank's own insurance after the end of the deferral period if they want to after shopping around. Banks can still offer/apply a discount to bundle a policy taken out after the deferral as well - they just can't sell it in that immediate problem pressure situation.

The convenience of being able to get insurance through the lender must not be treated as justification for an exemption. The situation that breeds 'convenience' is precisely the one that has been exploited and has led to the need for the DSM.

We also note that in our view, bundled home and contents products should be subject to the anti-hawking regime, rather than the DSM. For this product, there is no single principal product that renders the DSM relevant. However, we would equally oppose any exemption for home and contents bundles for the same reason if the DSM were to apply.

Landlord insurance

For similar reasons, we also oppose landlord insurance or similar products often sold by real estate agents being exempted from the DSM. It is highly unlikely that there would be an immediate pressing need for a landlord to obtain insurance, and if there is, a real estate agent should be informing them of that, and the consumer can test the market.

Less conventionally sold insurance must still demonstrate exemption will not allow harm

We recognise there may be some forms of insurance captured by the DSM which do not operate under traditional market conditions, and that imposing the DSM could cause logistical problems. In considering exemptions for these classes of products, the same principles can still be applied. It should still be possible for these industries to demonstrate that:

- the DSM would cause consumer detriment;
- the relevant insurance product meets a legitimate need;
- the add-on market provides the same value to consumers as the standalone market (if any); and
- consumers are not otherwise at risk of being ripped off through add-on insurance sales.

Conclusion

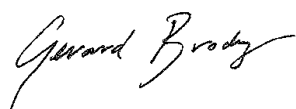
Commissioner Hayne intended the DSM on operating industry-wide, because the problems causing consumer detriment that have plagued add-on insurance sales for literally decades are translatable across all insurance products. For an exemption to be provided, there should be compelling and conclusive evidence to support it.

Definitions and conditions imposed on the exemption should seek to restrict the exemption to operate as narrowly as possible.

We would be happy to provide any further information that can assist Treasury in relation to any specific classes of products that it may be considering exempting.

Please contact Policy Officer **Tom Abourizk** at **Consumer Action Law Centre** on 03 9670 5088 or at tom.a@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Gerard Brody | CEO
CONSUMER ACTION LAW CENTRE



Karen Cox | CEO
FINANCIAL RIGHTS LEGAL CENTRE



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APPENDIX A – SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** No class exemptions should be approved without conclusive evidence of the consumer harm that applying the DSM to the class would cause, and the value the add-on insurance product provides consumers.
- RECOMMENDATION 2.** Any add-on product class that has seen retailers paid commissions of 20% or higher should not be granted an exemption.
- RECOMMENDATION 3.** To be considered for an exemption, any add-on insurance product class should have a claims to premium pay-out ratio of 90% or higher.
- RECOMMENDATION 4.** To be considered for an exemption, any add-on insurance product class should clearly offer the same or better value to consumers as their standalone equivalents.
- RECOMMENDATION 5.** All exempted add-on product classes need to be restrictively defined and specifically reference the key aspects of coverage that provide consumers value.
- RECOMMENDATION 6.** Restrict add-on insurance product class exemptions to where a specific principal product is sold.
- RECOMMENDATION 7.** All add-on product class exemptions should impose a condition banning the payment of commissions related to their sale.
- RECOMMENDATION 8.** All add-on product class exemptions should be conditional on products retaining a high claim pay-out to premium ratio.
- RECOMMENDATION 9.** All add-on product class exemptions should be initially made for a maximum of 12 months, and insurers should be required to report to ASIC on their use, to allow for periodic review.
- RECOMMENDATION 10.** If exempted from the DSM, add-on travel insurance should be restrictively defined, closely monitored and numerous conditions should be imposed to reduce the risk of consumer harm.

APPENDIX B – ABOUT THE CONTRIBUTORS

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.

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.

WEstjustice

WEstjustice provides free legal advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine, and outreach across the West. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, law reform, and advocacy.