4 February 2026

The Treasury
by email: deferredsalesmodelexemptions@treasury.gov.au

Information Request Deferred Sales Model Class Exemptions

Thank you for the opportunity to comment on the Deferred Sales Model (**DSM**) Class Exemptions.

The Financial Rights Legal Centre (**Financial Rights**) and Consumer Action Law Centre (**Consumer Action**) long held position has been that there should be few if any exemptions at all to the DSM.

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: see Jenny's story below regarding exorbitant, unneeded add-on comprehensive car insurance that was ultimately unsustainable and worthless.

Treasury need to keep in mind three key points about exemptions:

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.
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. It is our view that the insurance products currently listed exist in strong competitive marketplaces and do not meet this bar.

Beyond this position we wish to confine our further comments to one aspect of the DSM set, i.e. its ambiguous application to extended warranties.

Extended warranties

Extended warranties are not a class of add-on insurance product that has been specifically exempted from the deferred sales model through regulations, via section 12DX of the *ASIC Act* – the subject of this information request. They fall within a grey area under the deferred sales regime, whose ambiguity is leading to consumer harm.

The deferred sales regime was designed in such a way as to apply to add-on insurance products that are:

- a 'contract of insurance': s12DO(2)
- provide for the customer to benefit from a contract of insurance to which the provider of the add-on insurance product is a party: s12DO(1)(d)(ii)

A 'contract of insurance' includes both:

- a contract that would ordinarily be regarded as a contract of insurance, even if some of its provisions are not by way of insurance; and
- a contract that includes provisions of insurance, even if the contract would not ordinarily be regarded as a contract of insurance (the deferred sales model will only apply to the provisions of insurance).

ASIC RG 275.39 states by way of example that:

> *a mobile phone protection plan which includes insurance components, as well as extended warranty components which are not insurance, will be a contract of insurance for the purposes of s12DO.*
>
> *Note: For guidance on when a 'warranty' is more likely to include insurance elements, see Information Sheet 198 Extended warranties (INFO 198).*

ASIC INFO 198 explains the following

Depending on the circumstances, an extended warranty may amount to a contract of insurance: section 764A(1)(d) of the Corporations Act and section 12BAA(7)(d) of the ASIC Act. For example, the warranty is more likely to be insurance if:

- *it is provided by a third party to the sale of the goods, rather than a person who has an existing responsibility for the quality of the goods (such as the manufacturer, retailer or other distributor of the goods)*

- *the customer is entitled to the benefits described in the warranty if they have a valid claim, rather than only a right to have their claim considered*

- *it covers additional costs or losses that do not result from defects in, or failure of, the goods and that are beyond the control, or not the responsibility, of the retailer or manufacturer (such as accidental damage or theft)*

- *it covers normal wear and tear*

However, neither provide specific guidance on the example of extended warranties in the used car market, an area of significant consumer harm.

From our case work we are seeing used car firms selling a variety of extended warranty products on the basis that they are either

- not contracts of insurance and/or
- are not financial products under the *Corporations Act* because they fall within the "incidental product exemption" under *section 763E of the Corporations Act.*

This approach has significant consequences for the consumer in terms of seeking redress for any misconduct at the point of sale. Further, and more apropos to the current review, if extended warranties of this nature are not regarded as contracts of insurance, these businesses essentially avoid the deferred sales regime and gain an unfair competitive advantage over other firm and warranty providers that are required to meet the deferred sales model. This avoidance model is leading to significant consumer harm.

Consumer harms arising from extended warranties in the used car market

Consumer Action has for some time now housed the Demand A Refund: Used Car Extended Warranty tool on the Consumer Action website. Since it was introduced in 2021, there has been 2,103 interactions, with 278 documents produced to seek a refund.

Examining the data Consumer Action found that:

- the majority of users purchased the warranty on the same day they purchased the car
- where the warranty purchase was not made on the same day (a small portion of users) it was made within 90 days of the car purchase, and
- the average cost of the warranty has consistently increased over time

With respect to the level of understanding the consumer had of the warranty product that was offered Consumer Action found that:

- the majority of consumers *were aware* of the warranty being included in their purchase,
- between 2021-2023, the majority of consumers didn't feel forced to purchase however since 2023 this has shifted and the majority of consumers since have *felt forced to purchase*,
- consistently consumers have felt that *they were not given* the opportunity to review the warranty documents before signing them,
- almost all consumers state they *were not given* an explanation about the exclusions or limitations
- this was also true for cooling off periods, with almost all consumer stating *they were not explained* their rights, and
- it was *even between* consumers either being made aware of the warranty costs versus not

The tool was also able to provide insights into the sales tactics being used. Consumer Action found that:

- almost all consumers stated they *were not told* about sales commissions or they didn't know,
- a majority of consumers *felt pressured i*nto purchasing these warranties, however there has been a shift from mid-2022 where a majority of consumers *did not feel* unfair sales tactics were used,
- a majority felt that they were *led to believe* that they would have no protections if they did not purchase these warranties, with *most believing* the use of the word warranty would act like a manufacturers' warranty for them,
- lastly most felt that the salesperson *used misleading information* in relation to these warranties.

Case study –Alan's story

In mid-2019, Alan purchased a used car from a Car Dealer. At around the same time, that Car Dealer arranged for Alan to purchase a motor vehicle extended warranty agreement administered by a Low-value Extended Warranty Provider. The cost of the vehicle and the extended warranty agreement were financed under a loan.

Alan was unaware that, the Car Dealer submitted *two* separate extended warranty agreement applications with the Low-value Extended Warranty Provider.

Alan was given the impression by the Car Dealer that the warranty was included with the vehicle at no extra cost. Alan was only given a copy of the one of the warranties, which Consumer Action ultimately obtained from the loan financer. Alan was unaware that: there were two warranties; that the cost of the second warranty had been added on to the loan; and that he did not have to purchase the second Warranty if he did not wish to do so.

The Car Dealer also failed to explain other pertinent details about the warranties, including the significant exclusions and limitations in both warranties.

Consumer Action Law Centre

Case study - Jenny's story

When Jenny was 22 years old, she attended a dealership alone in 2023 seeking to buy a motor vehicle on finance. She purchased a vehicle from a second hand car-dealer. In doing so, Jenny entered into a credit contract which included a $1,200 broker fee, a payment of $2,000 for a warranty and roadside assistance and over $3,000 in fees to the credit provider. At the same time she was set up with a comprehensive car insurance policy at $170 per month distributed via the broker with a 30% commission payable on inception.

The $2000 warranty was paid directly to the warranty provider who states they

"subsequently remitted to the selling dealership less the administration fee payable to us for administering the dealership-issued warranty".

They will not disclose the fee. The warranty includes benefits in addition to the benefits under the ACL such as accommodation and car hire. The warranty reads like insurance, with words such as inclusions and exclusions and sub-limits.

For an ordinary consumer, they would struggle to differentiate the warranty from an insurance contract. For a vulnerable consumer, such as Jenny who was also experiencing several mental and physical health conditions this was another junk, useless add on that increased her indebtedness at the point of sale.

The comprehensive insurance lapsed not long after she obtained the policy as she could not afford the monthly costs.

Financial Rights Legal Centre

Much of the above has been supported by the Australian Competition and Consumer Commission's (**ACCC**) recent investigation into the sales of second-hand cars.[1] The ACCC found[2] that:

- *Extended warranties may in some cases be unnecessary, poor value for money, and may hinder rather than assist consumers to obtain suitable remedies for defective cars*
- *Concerns about sales tactics for extended warranties include these warranties being bundled with the car sale in a way which obscures the cost of the warranty or even that the warranty is being purchased at all*
- *The terms of the extended warranties, and related consumer rights such as cooling off periods, are also reportedly often not explained to consumers. In many cases, the extended warranties provide very limited protections, and in some cases, the extended warranty might not be able to be claimed at all when sold with particular cars.*
- *Even where extended warranties can be claimed, the ability and extent to which the warranties can be drawn upon are often more limited than what consumers are entitled to under state and territory statutory warranties or the Australian Consumer Law.*

Concluding Remarks

We acknowledge that the issue raised in this submission falls outside of the strict confines of the information request from Treasury. However, our organisations are keen to raise this serious systemic issue arising from a crucial flaw in the deferred sales regime with Treasury to investigate the issue further.

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[1] ACCC, Consumer issues in the sale of second-hand cars, December 2025

[2] At page 30, ACCC, 2025

The ambiguous design of the deferred sales regime has allowed significant avoidance to flourish, is warping the market for insurance like financial products and causing serious consumer harm.

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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