

Treasury consultation on reforms to the sale of add-on insurance products

Submission by Legal Aid Queensland

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Treasury consultation on Reforms to the Sale of Add-On Insurance Products.

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

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

LAQ’s Consumer Protection Unit lawyers provide advice and representation in consumer law matters, including mortgage stress, banking, house repossession, debt, contracts, loans, insurance claims, the sale of cars and its associated add-on insurance, telecommunications and unsolicited consumer agreements.

Request for feedback

Please provide evidence as to why a particular type of add-on insurance product should reside in a particular tier. This could include details of the sales process, claims ratios and distribution channels for different add-on insurance product lines. As per Commissioner Hayne’s final report, exemptions should only arise where there is overwhelming quantitative evidence of product value and consumer understanding.

LAQ supports the three tiered add-on insurance deferred sales model that is proposed by the consultation paper. In our previous submissions to ASIC Consultation Papers 313 and 317, we have supported ASIC’s Product Intervention Powers. LAQ welcomes the recognition that ASIC’s Product Intervention Power will play an important role in protecting consumers from add-on insurance products that are harmful to consumers and cause significant consumer detriment.

In LAQ’s casework experience there is evidence of the poor value and significant consumer detriment caused by:

- consumer credit insurance;
- gap insurance;
- tyre and rim Insurance; and
- loan termination insurance.

These products routinely are provided to consumers in circumstances where:

- pressure sales tactics are used;
- no or inadequate advice about the suitability of the product to the consumer’s circumstances is provided; and
- the consumer could have never have made a successful claim under the policy.

As a consequence, these products should be viewed as Tier 1 Insurance products with respect to which and ASIC should consider using its Product Intervention Powers.

Regarding all other types of add-on insurance products, after reviewing the Proposal Paper it is LAQ submits that to avoid misunderstandings (particularly on the part of consumers), by default all add on insurance products should start at Tier 2 in the model and only move to Tier 1 and Tier 3 after further consideration by ASIC.

LAQ supports Tier 3 exemptions being given to policies for comprehensive Motor Insurance and Home and Contents Insurance. We support 3 of the 4 criteria listed on page 8 and 9 of the Consultation Paper. In relation to criteria 4, LAQ has not encountered any type of insurance product that is well or easily understood by consumers. In our experience following natural disasters, many consumers do not understand the insurance coverage that they have under even home and contents insurance and comprehensive motor insurance policies. We submit that criteria 4 should be removed.

The proposed reforms' design and outcomes are that are likely to be achieved have been well considered in the drafting of the proposed insurance deferred sales model. However, we acknowledge that when the proposed arrangements are in operation, issues may be identified and some refinement may be required. This may include applying the more restrictive tier 1 rules where tier 2 default rules have not given the consumer outcomes sought and identifying instances where stakeholders may be attempting to circumvent the rules so that coverage is improved.

To ensure this refinement occurs and that stakeholders have an opportunity to contribute, LAQ supports a mandatory review being conducted as a part of these proposed changes. Two years would be a reasonable period of time for any issues with the implementation of the deferred sales model to become apparent.

Please provide feedback on how this trigger would correspond to your current business practices in selling add-on insurance products. This could include information on the number and frequency of customer touch points in the sales process and/or at what point in the process financial commitments are typically made by consumers.

LAQ submits that any impact on current business practices is outweighed by the benefits of this proposal in protecting consumers who over the years have been adversely affected by the sale of add-on insurance products carrying little, if any, value to consumers.

There is the potential for businesses to seek to circumvent these new arrangements, such as by designing products to avoid regulation under the *Insurance Contracts Act 1984*. The sale of car warranties potentially is potentially such a product.

Car warranties are typically sold at the same time as add-on insurances and finance products. These warranties offer to repair certain specified parts of a vehicle if those component parts breakdown. If those component parts fail in accordance with the terms of the warranty, the warranty provider will pay for specified repairs. This insurance product limits coverage in a manner similar to Tyre & Rim Insurance.

LAQ's casework experience has identified the following issues regarding "car warranties":

- the warranties are expensive;
- the pre-conditions for claiming under these policies are onerous (often requiring the buyer to attend a particular mechanic for servicing throughout the life of the warranty adding further cost for the consumer);
- the benefits are trivial compared to the cost; and
- consumers do not generally have access to external independent dispute resolution if they have a complaint.

We submit that:

- if there are to be greater restrictions on the sale of add-on insurance without also taking regulatory action in relation to car warranties, there will be an incentive for those businesses, who currently sell add-on insurances, to restructure their products so they are not defined as insurance products and avoid compliance with the new requirements; and
- car yard operators will likely look for other products to compliment finance and car sales to maintain profit and car warranties will receive more promotion.

Whilst it is positive that there is a proposed deferred sales model to increase protection for consumers buying add-on insurances, attention must also be directed toward efforts to prevent the new protections being circumvented by businesses and avoid the detriment to consumers that would likely follow.