

---

FINANCIAL SECTOR REFORM (HAYNE ROYAL COMMISSION RESPONSE—  
PROTECTING CONSUMERS (2020 MEASURES)) BILL 2020: DEFERRED  
SALES MODEL FOR ADD-ON INSURANCE

CORPORATIONS (FEES) AMENDMENT (HAYNE ROYAL COMMISSION  
RESPONSE—PROTECTING CONSUMERS (2020 MEASURES)) BILL 2020

---

EXPOSURE DRAFT EXPLANATORY MATERIALS



---

***Table of contents***

---

Glossary..... 1

Chapter 1      Deferred sales model for add-on insurance..... 3



---

# ***Glossary***

---

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ASIC	Australian Securities and Investments Commission
ASIC Act 2001	<i>Australian Securities and Investments Commission Act 2001</i>
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry



---

# **Chapter 1**

## ***Deferred sales model for add-on insurance***

---

### **Outline of chapter**

1.1 Schedule [4.3] to this Bill amends the ASIC Act to implement an industry wide deferred sales model for the sale of add-on insurance products. These amendments give effect to recommendation 4.3 of the Financial Services Royal Commission.

1.2 All references in this Chapter are to the ASIC Act unless otherwise stated.

### **Context of amendments**

1.3 Add-on insurance products are insurance products that are sold alongside, or in relation to, the offer or sale of a principal good or service. Examples of add-on insurance products include consumer credit insurance, travel insurance and mobile phone screen protection insurance. The Financial Services Royal Commission found that:

- add-on insurance products represent poor value for consumers;
- insurers can pay more in commissions than in claims;
- consumer claim outcomes are considerably worse than in markets where there is meaningful competition; and
- consumers are at risk of unfair sales and adverse outcomes.

1.4 Previous work by ASIC and the Productivity Commission has also highlighted widespread issues in add-on insurance markets. In 2016, ASIC released three reports covering its review of the sale of add-on insurance through car dealers:

- Report 470 — *Buying add-on insurance in car yards: Why it can be hard to say no;*
- Report 471 — *The sale of life insurance through car dealers: Taking consumers for a ride;* and
- Report 492 — *A market that is failing consumers: The sale of add-on insurance through car dealers.*

1.5 The review found that car-yard add-on insurance is expensive, is of poor value and often provides consumers little or no benefit.

1.6 The Productivity Commission also found weak competition in the broader add-on insurance market in its inquiry report titled *Competition in the Australian Financial System Report*, released in 2018.

1.7 As a result, the Financial Services Royal Commission recommended that:

- a Treasury-led working group should develop an industry-wide deferred sales model for the sale of any add-on insurance products (except policies of comprehensive car insurance); and
- the model be implemented as soon as is reasonably practicable.

1.8 On 4 February 2019, in its response to the Financial Services Royal Commission, the Government agreed to mandate an industry-wide deferred sales model, tasking Treasury to develop an appropriate model.

1.9 On 9 September 2019, Treasury released a proposal paper titled *Reforms to the sale of add-on insurance products*. The paper outlined the Government's proposed approach to implementing a deferred sales model and sought feedback from stakeholders. Treasury received 41 stakeholder submissions. These amendments have been developed taking into account the views expressed in those submissions.

## **Summary of new law**

1.10 Schedule [4.3] to this Bill implements an industry-wide deferred sales model for the sale of add-on insurance products.

1.11 Broadly, an add-on insurance product is an insurance product which is sold to cover risks associated with the offer or sale of a principal product or service either by the provider of the principal product or service or by a related party.

1.12 The deferred sales model separates the sale of an add-on insurance product from that of the principal product or service, and applies across all sales channels – including in-person and online. The deferred sales model prohibits the sale of add-on insurance products for at least four clear days after a consumer has entered into a commitment to acquire the principal product or service.

1.13 The deferred sales model does not apply to:



- products that are the subject of an ASIC product intervention order which imposes a deferred sales period;
- comprehensive car insurance;
- products that the Minister exempts by regulations;
- products and entities that ASIC exempts by notifiable or legislative instrument; and
- products recommended by financial advisers.

1.14 The add-on insurance deferral period is the period of time which:

- begins at the later of:
  - the time the consumer enters into the commitment to acquire the principal product or service to which the add-on insurance product relates; or
  - the time the consumer is given information about the product as prescribed by ASIC (the prescribed information); and
- ends four days later.

1.15 During the add-on insurance deferral period, a series of prohibitions apply in relation to the sale of the add-on insurance product, and communicating with consumers in relation to the add-on insurance product. These prohibitions apply to both the principal provider and related third parties who sell add-on insurance products.

1.16 In the period after the add-on insurance deferral period, but before the date that is six weeks after the beginning of the add-on insurance deferral period, add-on insurance products may be sold to consumers. Communication with the consumer in forms other than writing is restricted.

1.17 Six weeks after the beginning of the add-on insurance deferral period, the deferred sales model ends. After that time, any contact made by the principal provider or a third party with the consumer will be subject to the anti-hawking obligations.

1.18 The ‘add-on insurance pre-deferral period’ is the period that:

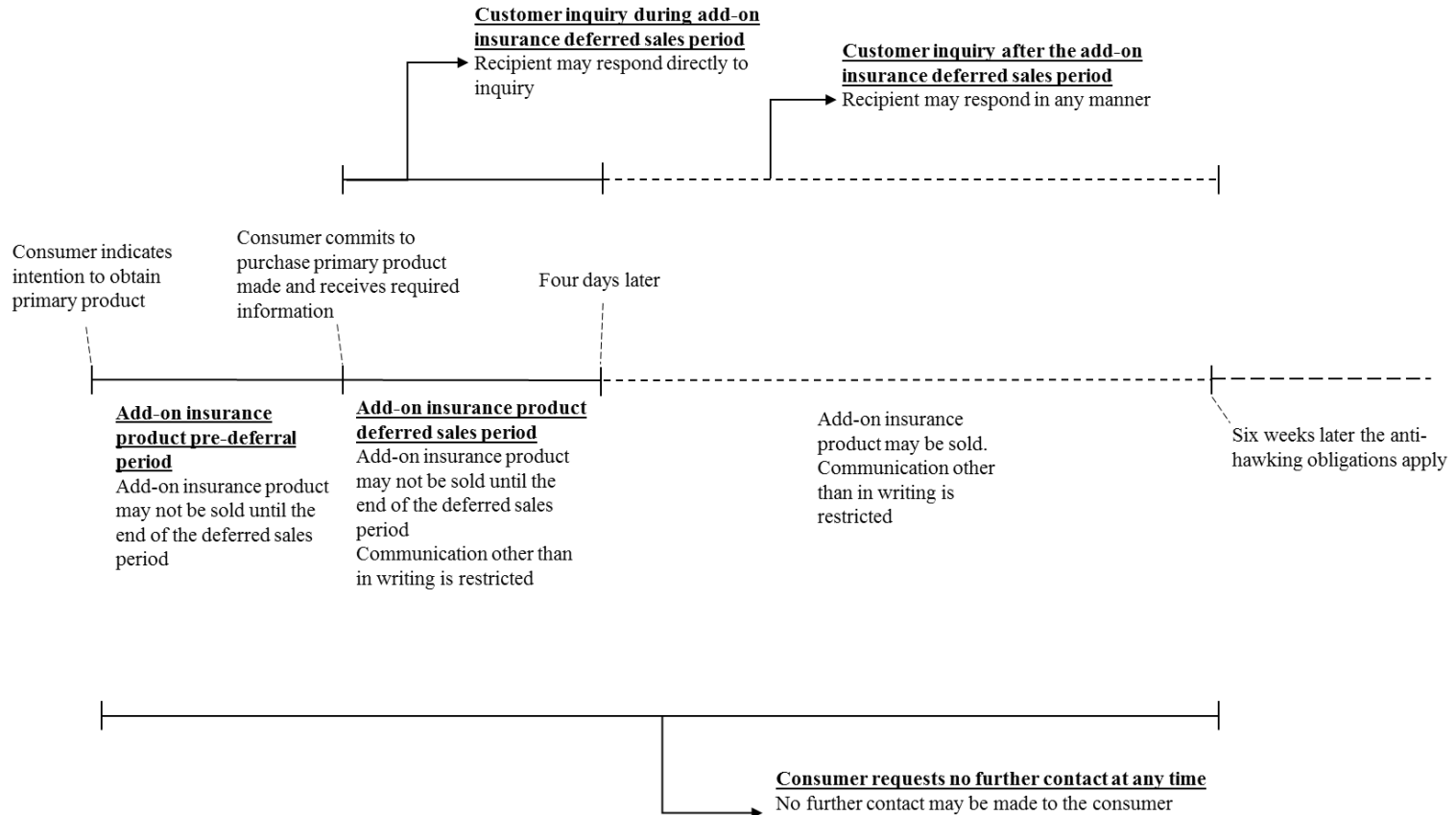
- begins when the consumer indicates an intention to acquire the principal product or service; and
- if there is an add-on insurance deferral period in relation to the add-on insurance product, ends immediately before the start of the deferral period, or otherwise does not end.

1.19 During the add-on insurance pre-deferral period, any party can communicate with a consumer about the add-on insurance product, but is prohibited from selling the add-on insurance product to the consumer.

1.20 At any stage during the deferred sales model periods, both the principal provider and a third party may respond to consumer inquiries. This recognises instances where the consumer has queries about the product or its features after reviewing the prescribed information.

1.21 At any stage during the deferred sales model periods, a consumer can inform either the principal provider or a related third party that they no longer wish to receive offers, requests or invitations to purchase or apply for an add-on insurance product. Once a consumer has made such a request, it is an offence for the principal provider or a third party to offer, request or invite a consumer to purchase or apply for an add-on insurance product.

## Outline of the deferred sales model for add-on insurance





## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
It is an offence to sell an add-on insurance product before the end of the add-on insurance deferral period.	No specific restrictions apply in relation to selling add-on insurance products.
The add-on insurance product may be sold to the consumer after the end of the add-on insurance deferral period.	No specific restrictions apply in relation to selling add-on insurance products.
It is an offence for the principal provider to offer, request or invite the consumer to ask for, apply for, or purchase the add-on insurance product during the the add-on insurance deferral period, other than in writing. It is an offence for a third party provider to offer, request or invite the consumer to ask for, apply for, or purchase the add-on insurance product during the the add-on insurance deferral period, other than in writing.	No specific restrictions apply in relation to offering to sell add-on insurance products.
It is an offence for the principal provider to offer, request or invite the consumer to ask for, apply for, or purchase the add-on insurance product between the end of the add-on insurance deferral period and six weeks after the beginning of the add-on insurance deferral period, other than in writing. It is an offence for a third party provider to offer, request or invite the consumer to ask for, apply for, or purchase the add-on insurance product between the end of the add-on insurance deferral period and six weeks after the beginning of the add-on insurance deferral period, other than in writing.	No specific restrictions apply in relation to offering to sell add-on insurance products.

*Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add-on insurance Corporations (Fees) Amendment (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020*

<i>New law</i>	<i>Current law</i>
<p>If either the principal provider or a third party provider is contacted by the consumer during the add-on insurance deferral period, either party may respond to the consumer’s inquiry using any method of communication, as long as the response relates only to the purpose for which the consumer initiated the contact.</p>	<p>Parties selling add-on insurance products may respond to consumer inquiries at any stage using any method of communication.</p>
<p>If either the principal provider or a third party provider is contacted by the consumer after the end of the add-on insurance deferral period but before six weeks after the beginning of the add-on insurance deferral period, either party may respond to the consumer’s inquiry using any method of communication.</p>	<p>Parties selling add-on insurance products may respond to consumer inquiries at any stage using any method of communication.</p>
<p>The principal provider commits an offence if they offer, request or invite the consumer to purchase or apply for the add-on insurance product after the consumer informs them that they no longer want to receive offers, requests or invitations to apply for or purchase the add-on insurance product.</p> <p>A third party provider commits an offence if they offer, request or invite the consumer to purchase or apply for the add-on insurance product after the consumer informs the principal provider that they do not want to receive offers, requests or invitations to apply for or purchase the add-on insurance product.</p>	<p>Parties selling add-on insurance products may offer to sell add-on insurance products, as long as the offer is not a breach of the anti-hawking obligations.</p>

## Detailed explanation of new law

### What is an add-on insurance product?

1.22 The deferred sales model applies to add-on insurance products. An add-on insurance product is a financial product that:

- is offered or sold to a consumer in connection with the consumer entering into a commitment to acquire a product or service;
- is offered or sold by the person who sold the principal product or service or by a third party with an arrangement with the person who sold the principal product or service which covers the add-on insurance product;
- manages financial risk related to the principal product or service; and
- is either a contract of insurance or a benefit under a contract of insurance.

*[Schedule [4.3], items 1 and 3, the definition of “add-on insurance product” in subsection 12BA(1) and subsection 12DO(1)]*

1.23 Insurance that is offered by a third party as a result of a referral by a principal provider to the third party will be considered add-on insurance, assuming the insurance covers risks associated with the principal product or service.

1.24 Add-on insurance may also be provided to consumers under group arrangements where the consumer stands to benefit from an insurance contract between the add-on product provider and an insurer, assuming the insurance covers risks associated with the principal product or service.

1.25 An insurance product offered on the standalone market is not an add-on insurance product or service.

#### **Example 1.1 – what is an add-on insurance product**

Ben visits a pet shop and purchases a chihuahua. Immediately afterwards, Ben purchases an insurance policy that covers the chihuahua for certain types of veterinary treatments in the future. The insurance policy is provided by a third party provider that has an arrangement with the pet shop owner.

This is an add-on insurance product because it is a contract of insurance which is sold in connection to a consumer obtaining a principal product (the chihuahua), which manages risks associated with that product, and which is sold by the principal provider or third party with an arrangement to sell.

### **Example 1.2 – what is an add-on insurance product**

Wendy arranges a mortgage with a bank. The bank asks Wendy if she would like to purchase mortgage protection insurance, to which Wendy agrees. The bank has an arrangement with a third party insurer and provides them with Wendy’s details. One week later, the insurer calls Wendy to offer mortgage protection insurance.

The insurance offered is add-on insurance because it is offered by a third party provider under an arrangement with the principal provider to sell add-on insurance.

### **Example 1.3 – what is not an add-on insurance product**

Nicki purchases a house at 1 Smith Street. Several months later, she purchases a home contents insurance policy on the standalone market for 1 Smith Street.

This policy is not an add-on insurance product, as it was not sold to Nicki in connection with Nicki entering into a commitment to obtain the principal product (the house).

1.26 A contract of insurance includes:

- 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 in so far as those provisions are concerned, even if the contract would not ordinarily be regarded as a contract of insurance.

*[Schedule [4.3], item 3, subsection 12DO(2)]*

## **Interaction with the anti-hawking obligations**

1.27 Unsolicited offers for the sale of financial products are generally prohibited by the anti-hawking obligations (section 992A of the *Corporations Act 2001*).

1.28 For add-on insurance products, the deferred sales model will replace the anti-hawking obligations. Broadly, this means that providers of insurance will be subject to either the deferred sales model or the anti-hawking obligations, but not both at the same time. In circumstances where there are no requirements under the deferred sales model, or an exemption from the deferred sales model applies, the anti-hawking obligations will apply.

1.29 As outlined in the exposure draft for the anti-hawking provisions, the hawking prohibitions apply to offers, requests or



invitations to apply for add-on insurance products if they are made six weeks after either:

- the day the add-on insurance deferral period begins; or
- if there is no add-on insurance deferral period, the day on which the consumer indicates an intention to purchase a principal product to which an add-on insurance product relates.

1.30 The hawking prohibitions will also apply to offers, requests or invitations to apply for add-on insurance products if the consumer previously stated they did not wish to receive such offers, requests or invitations.

### **The add-on insurance pre-deferral period**

1.31 The ‘add-on insurance pre-deferral period’ is the period that:

- begins when the consumer indicates an intention to acquire the principal product or service; and
- if there is an add-on insurance deferral period in relation to the add-on insurance product, ends immediately before the start of the deferral period, or otherwise does not end.

*[Schedule [4.3], items 1 and 3, the definition of “add-on insurance pre-deferral period” in subsection 12BA(1) and subsection 12DP(3)]*

1.32 The purpose of the add-on insurance pre-deferral period is to enable the unsolicited offer of add-on insurance to consumers without triggering the anti-hawking obligations.

1.33 During the add-on insurance pre-deferral period, the principal provider or a third party provider may not sell add-on insurance products to consumers. *[Schedule [4.3], item 3, section 12DQ]*

1.34 Whether a consumer has indicated an intention to acquire a principal product or service will depend on the circumstances. A consumer will generally indicate an intention to acquire a product or service by making a statement that they are considering purchasing a product or service or asking questions about a product or service of a representative of a business that sells that product or service.

### **The add-on insurance deferral period**

1.35 The add-on insurance deferral period begins at the later of:

- the time when the consumer enters into a commitment to acquire, or acquires, the principal product or service to which the add-on insurance product relates; or

- the time when the consumer is given the information prescribed by ASIC relating to the add-on insurance product.

*[Schedule [4.3], items 1 and 3, the definition of “add-on insurance deferral period” in subsection 12BA(1) and subsection 12DP(2)]*

1.36 The add-on insurance deferral period ends four days after the day it begins. The four day deferral period provides the consumer an opportunity to consider the suitability of the add-on insurance product being offered and alternative products, while reducing the likelihood of the consumer disengaging entirely from the decision about whether to purchase the add-on insurance product. *[Schedule [4.3], item 3, subsection 12DP(2)]*

#### **Example 1.4 – the add-on insurance deferral period**

Caroline purchases a new mobile phone and is given prescribed information relating to screen protection insurance for the mobile phone on Sunday, 1 January. The deferral period for the insurance product offered to Caroline ends on Thursday, 5 January. All prohibitions during the deferral period cease to apply from midnight on Friday, 6 January.

1.37 The add-on insurance deferral period separates the consumer’s decision to acquire add-on insurance from the decision to acquire the principal product or service. This is to enable the consumer to consider the merits of add-on insurance independently of the principal product or service and to reduce the likelihood that their decision to acquire add-on insurance is unduly influenced by pressure from the principal provider or related third party.

1.38 Whether a consumer has entered into a ‘commitment’ to acquire the principal product or service will depend on the circumstances. A commitment is generally a firm decision by the consumer to acquire the principal product or service, such as making a payment or entering into a contractual agreement to pay at a later date. A consumer expressing a preference for a principal product or service does not amount to a commitment.

#### **Example 1.5 – a commitment to acquire the principal product**

Nik is interested in purchasing a season ticket to the theatre. Before the season program is released, Nik pays a 50 per cent deposit for the season ticket online. The deposit would be considered a commitment to acquire the principal product or service.

#### **Example 1.6 – not a commitment to acquire the principal product**

Maddie is in an electronics store looking at mobile phones. She has a discussion with the salesperson and states a clear preference for a

particular handset. Maddie tells the salesperson that she intends to return to the store in a week's time to purchase the phone. Maddie's stated intention to return to purchase the phone does not represent a commitment to acquire the phone.

1.39 The regulations may specify when a consumer is taken to have entered into a commitment to acquire a principal product or service. The regulation making power is required due to the diversity of add-on insurance products available in the market and the need to ensure the regime achieves the intended policy outcome for classes of add-on insurance products. [*Schedule [4.3], item 3, subsection 12DO(3)*]

1.40 ASIC can, by legislative instrument, prescribe that certain information may be given to a consumer in relation to an add-on insurance product, and the manner in which the information is to be given, for the add-on insurance deferral period to begin. [*Schedule [4.3], item 2, subsection 12DP(4)*]

1.41 The add-on insurance deferral period does not begin if this information has not been given to the consumer. [*Schedule [4.3], item 3, subsection 12DP(1)*]

1.42 The information ASIC prescribes must include information that the consumer may inform the principal provider or a third party provider that the consumer does not want to receive any further offers, requests or invitations for add-on insurance products. This gives the consumer the ability to opt-out of further contact relating to the add-on insurance product, if, for example, the consumer has purchased add-on insurance on the standalone market or decided they did not require add-on insurance. [*Schedule [4.3], item 3, subsection 12DP(5)*]

## **Prohibitions on the principal provider**

1.43 The prohibitions under the deferred sales model may apply if a consumer acquires, or enters into a commitment to acquire, a product or service from a person, and that person offers or sells an add-on insurance product to the consumer in certain circumstances.

1.44 In certain circumstances, it is both a criminal and civil offence to sell or offer an add-on insurance product to a consumer before the end of the add-on insurance deferral period.

### ***Prohibitions on selling add-on insurance products***

1.45 The principal provider of the product or service commits an offence if they sell an add-on insurance product to a consumer, except after the end of the add-on insurance deferral period. [*Schedule [4.3], item 3, subsections 12DQ(1) and (3)*]

1.46 The principal provider also commits an offence if:

- there is an arrangement between the principal provider and a third party provider that relates to the provision of add-on insurance products in relation to products or services offered by the principal provider to a consumer; and
- the third party provider sells an add-on insurance product to the consumer, except after the end of the add-on insurance deferral period.

*[Schedule [4.3], item 3, subsections 12DQ(2) and (3)]*

***Prohibitions on offering add-on insurance products***

1.47 The principal provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where the offer, request or invitation is not in writing, except:

- during the add-on insurance pre-deferral period; or
- after the end of the add-on insurance deferral period.

*[Schedule [4.3], item 3, subsections 12DR(1) and (2)]*

1.48 The principal provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where the offer, request or invitation is not in writing, except if the offer or request is:

- during the add-on insurance pre-deferral period; or
- after the end of the period of six weeks beginning on the first day of the add-on insurance deferral period.

*[Schedule [4.3], item 3, subsections 12DS(1) and (2)]*

1.49 However, the offences for principal providers in relation to offering add-on insurance products to consumers do not arise if the offer, request or invitation is made in response to contact initiated by the consumer (see the section below titled ‘Responding to consumer initiated contact’). *[Schedule [4.3], item 3, subsections 12DR(4) and 12DS(4)]*

1.50 The principal provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where, before the offer, request or invitation is made, the consumer informs the principal provider that they do not want to receive such offers, requests or invitations (see the section below titled ‘Consumer requests for no further contact’). *[Schedule [4.3], item 3, subsection 12DT(1)]*

1.51 The principal provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where before the offer, request or invitation is made, the consumer informs any person with whom the principal provider has an arrangement which covers the add-on insurance product that they do not want to receive such offers, requests or invitations and the principle provider is reckless as to that fact. [*Schedule [4.3], items 3 and 10, subsection 12DT(2) and paragraph 12GBCN(3A)(d)*]

1.52 Recklessness is the fault element that applies to the physical element relating to a consumer informing of an opt-out. The fault element of recklessness is appropriate in this situation as the principal provider may not be privy to circumstances in which the consumer opts-out. The fault element of recklessness also needs to be established for this physical element in civil penalty proceedings. [*Schedule [4.3], item 10, paragraph 12GBCN(3A)(d)*]

1.53 A person is reckless to a fact if the person is aware of a substantial risk that the fact exists and, having regard to the circumstances known to the person, it is unjustifiable to take the risk. [*Schedule [4.3], item 10, subsection 12GBCN(3B)*]

### **Prohibitions on third party providers**

1.54 The prohibitions may also apply to a third party provider if there is an arrangement between the principal provider and the third party provider that relates to the provision of add-on insurance products in certain circumstances.

1.55 Broadly, the same restrictions apply to the third party providers as the principal provider, except that certain physical elements have the fault element of recklessness for the civil offence.

1.56 It is appropriate that the fault element of recklessness applies to these physical elements because a third party provider tends to be removed from the selling of the principal product or service. A third party provider may not be privy to whether the insurance they offer falls within the definition of add-on insurance and the extent to which prohibitions relating to the offer and sale of add-on insurance should apply. Broadly, a third party provider commits a civil offence only if they are reckless as to these facts.

#### ***Prohibitions on selling add-on insurance products***

1.57 The third party provider commits an offence if they sell an add-on insurance product to the consumer where either of the following applies and the third party provider is reckless as to whether it applies:

- there is no add-on insurance deferral period; or

- the third party provider sells the add-on insurance product to the consumer before the end of the add-on insurance deferral period.

*[Schedule [4.3], items 3 and 10, subsection 12DQ(4) and paragraph 12GBCN(3A)(a)]*

**Example 1.7 – third party selling add-on insurance during the add-on insurance deferral period**

Roger purchases a dog from Pets4you. The salesperson emails Roger’s contact details to a third party insurer with whom the store has an arrangement to sell pet insurance. The arrangement between the pet store and insurer is well established and includes the process for the insurer to sell add-on insurance in compliance with the deferred sales model. The arrangement is well understood by the insurer.

The insurer receives Roger’s details and proceeds to offer pet insurance during the add-on insurance deferral period. Roger buys the pet insurance during the deferral period.

The insurer has committed an offence by selling the pet insurance before the end of the add-on insurance deferral period.

***Prohibitions on offering add-on insurance products***

1.58 The third party provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where the offer, request or invitation is not in writing, and is made during the add-on insurance deferral period and the third party provider is reckless as to that fact. *[Schedule [4.3], items 3 and 10, subsection 12DR(3) and paragraph 12GBCN(3A)(b)]*

1.59 The third party provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where the offer, request or invitation is not in writing, and is made during the period of six weeks beginning on the first day of the add-on insurance deferral period and the third party provider is reckless as to that fact. *[Schedule [4.3], items 3 and 10, subsection 12DS(3) and paragraph 12GBCN(3A)(c)]*

1.60 However, the offences relating to a third party provider offering add-on insurance products to consumers do not arise if the offer, request or invitation is made in response to contact initiated by the consumer (see the below section below titled ‘Responding to consumer initiated contact’). *[Schedule [4.3], item 3, subsections 12DR(4) and 12DS(4)]*

1.61 The third party provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite

the consumer to ask for, apply for, or purchase an add-on insurance product, where, before the offer, request or invitation is made, the consumer informs the third party provider that they do not want to receive such offers, requests or invitations (see the section below titled ‘Consumer requests for no further contact’). *[Schedule [4.3], item 3, subsection 12DT(1)]*

1.62 The third party provider commits an offence if they offer an add-on insurance product for issue or sale to the consumer, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where before the offer, request or invitation is made, the consumer informs either of the following parties that they do not want to receive such offers, requests or invitations and the third party is reckless as to that fact:

- the principal provider; or
- any person with whom the principal provider has an arrangement which covers the add-on insurance product.

*[Schedule [4.3], items 3 and 10, subsection 12DT(2) and paragraph 12GBCN(3A)(d)]*

## **Responding to consumer-initiated contact**

1.63 Both the principal provider and a third party provider can respond to consumer inquiries during and after the add-on insurance deferral period.

1.64 During the add-on insurance deferral period, if either the principal provider or a third party provider is contacted by the consumer, either party may respond to the consumer’s inquiry using any method of communication if:

- the offer, request or invitation is made in response to contact initiated by the consumer; and
- the offer, request or invitation relates only to the purposes for which the consumer initiated the contact.

*[Schedule [4.3], item 3, subsection 12DR(4)]*

1.65 Responses to consumer-initiated contact during the deferral period are permitted because they may assist consumers to make informed decisions about add-on insurance products and allow for comparisons with products available on the standalone market.

1.66 However, to avoid committing an offence, any offer, request or invitation to a consumer to apply for an add-on insurance product must relate only to the purposes for which the consumer initiated the contact. This is to prevent providers of add-on insurance from using contact initiated by the consumer as an opportunity to pressure consumers and undermine the deferred sales model.

1.67 After the add-on insurance deferral period, if either the principal provider or third party provider is contacted by the consumer, either party may respond to the consumer’s inquiry using any method of communication if the offer, request or invitation is made in response to contact initiated by the consumer. [*Schedule [4.3], item 3, subsection 12DS(4)*]

**Example 1.8 – responding to consumer-initiated contact**

Angus purchases new glasses lenses from an optometrist. The optometrist offers Angus add-on insurance to cover damage to the lenses and provides the prescribed information about the product. During the add-on insurance deferral period, Angus calls the optometrist requesting more information about the claims ratio for the lens insurance. The optometrist provides the further information about claims ratio over the phone.

The optometrist has not committed an offence because their communication was initiated by the consumer and related only to the purpose for which the consumer initiated the contact.

**Example 1.9 – responding to consumer-initiated contact**

Frank buys a mobile phone. He discusses with the retailer the possibility of purchasing mobile phone insurance. The retailer provides Frank with the prescribed information. The retailer receives a phone call from Frank during the add-on insurance deferral period where Frank asks for additional information about the mobile phone insurance product. The retailer provides that information but then offers to sell Frank the mobile phone insurance.

The retailer has committed an offence as they have offered to sell the add-on insurance product during the add-on insurance deferral period, and the defence of responding to Frank’s inquiry does not apply as the response was not limited to the purposes for which Frank initiated the contact.

**Consumer requests no further contact**

1.68 At any stage, a consumer can inform the principal provider or a third party provider that they no longer wish to receive offers, requests or invitations to purchase or apply for an add-on insurance products.

1.69 A principal provider or a third party provider commits an offence if they offer an add-on insurance product for issue or sale, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, after the consumer has informed them that they no longer wish to receive such offers, requests or invitations. [*Schedule [4.3], item 3, subsection 12DT(1)*]



1.70 A person (either a principal product provider or third party provider) commits an offence if they offer an add-on insurance product for issue or sale, or request or invite the consumer to ask for, apply for, or purchase an add-on insurance product, where before the offer, request or invitation is made, the consumer informs any of the following parties that they do not want to receive such offers, requests or invitations, and the person is reckless as to that fact:

- the principal product provider (if that person is not the first person); or
- any person who has an arrangement with the principal product provider which covers the add-on insurance product.

*[Schedule [4.3], items 3 and 10, subsection 12DT(2) and paragraph 12GBCN(3A)(d)]*

1.71 If a principal provider or third party provider contravenes the prohibitions relating to offering, requesting or inviting a consumer to purchase or apply for an add-on insurance product after the consumer has opted-out of such a requests, they will also commit an offence under the anti-hawking obligations.

**Example 1.10 – Consumer requests no further contact**

Jamie applies for a loan. She discusses with the lender the possibility of purchasing consumer credit insurance in relation to the loan. However, after three days, Jamie rings the lender and states that she no longer wishes to be contacted about the consumer credit insurance product. The lender contacts Jamie three weeks later, by email, to invite her to apply for the consumer credit insurance product.

The lender has committed an offence as they have offered an add-on insurance product to Jamie after she has informed them that she does not wish to receive such offers.

**Summary of prohibitions in the deferred sales model**

1.72 The below table summarises the various prohibitions in the deferred sales model which apply in each time period.

**Table 1.1 – Summary of the deferred sales model provisions**

<b>Period</b>	<b>Prohibitions</b>	<b>Exceptions</b>
<b>Add-on insurance pre-deferral period</b>	A principal provider and a third party provider cannot sell the add-on insurance product to the consumer (section 12DQ).	None.

*Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add-on insurance Corporations (Fees) Amendment (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020*

<b>Period</b>	<b>Prohibitions</b>	<b>Exceptions</b>
	<p>A principal provider and a third party can offer the add-on insurance product for sale (section 12DR).</p> <p>If the consumer has indicated that they no longer wish to receive offers for the add-on insurance product the principal provider and a third party cannot offer the add-on insurance product for sale (section 12DT).</p>	None.
<b>Add-on insurance deferral period</b>	A principal provider and a third party cannot sell the add-on insurance product to the consumer (section 12DQ).	None.
	<p>A principal provider and a third party cannot offer the add-on insurance product for sale, other than in writing (section 12DS).</p> <p>If the consumer has indicated that they no longer wish to receive offers for the add-on insurance product the principal provider and a third party cannot offer the add-on insurance product for sale (section 12DT).</p>	If a principal provider or a third party is contacted by the consumer, either party may respond to the consumer’s inquiry using any method of communication, as long as the response relates only to the purpose for which the consumer initiated the contact (subsection 12DR(4)).
<b>After the deferral period and before the</b>	A principal provider and a third party can sell the add-on insurance product to the consumer (section 12DQ).	

Period	Prohibitions	Exceptions
<b>anti-hawking obligations apply</b>	<p>A principal provider and a third party cannot offer the add-on insurance product, other than in writing (section 12DS).</p> <p>If the consumer has indicated that they no longer wish to receive offers for the add-on insurance product the principal provider and a third party cannot offer the add-on insurance product for sale (section 12DT).</p>	<p>If a principal provider or a third party is contacted by the consumer, either party may respond to the consumer's inquiry (section 12DS(4)).</p>
<b>After the deferral period and after the anti-hawking obligations apply</b>	<p>Any contact made by a principal provider or a third party will be considered unsolicited, and the anti-hawking obligations will apply in relation to the add-on insurance product.</p>	

### Exclusions from the deferred sales model

1.73 The deferred sales model will not apply where another regime already gives appropriate consumer protection in relation to the sale or offer of add-on insurance products.

1.74 Financial advisers providing personal advice are exempted from the deferred sales model as they are already subject to requirements under the *Corporations Act 2001*. The deferred sales model does not apply to advice given by a person who is required under Division 2 of Part 7.7A of the *Corporations Act 2001* to act in the best interests of the client in relation to that advice:

- where the advice recommends a principal product the adviser is authorised to provide; and
- where the add-on insurance product relates to the principal product.

*[Schedule [4.3], item 3, section 12DU]*

1.75 The deferred sales model does not apply to products which are covered by a product intervention order under Part 7.9A of the *Corporations Act 2001* which provides for a period during which the product must not be sold or offered. This is to avoid any conflicting requirements between the deferred sales model and requirements under the product intervention order. *[Schedule [4.3], item 3, section 12DV]*

1.76 The deferred sales model does not apply to comprehensive motor vehicle insurance sold as an add-on insurance product. Add-on comprehensive motor vehicle insurance is defined as an add-on insurance product which:

- provides cover to an individual who either wholly or partly owns a motor vehicle or has the use of a motor vehicle under a lease of at least four months duration; and
- provides cover for loss of or damage to:
  - the insured’s vehicle resulting from an accident;
  - property of another person resulting from an accident in which the insured’s motor vehicle is involved; and
  - the insured’s vehicle caused by fire, theft or malicious acts.

*[Schedule [4.3], item 3, section 12DW]*

#### ***Exemptions from the deferred sales model by regulations***

1.77 The regulations may exempt a class of add-on insurance products from the deferred sales model on the recommendation of the Minister. *[Schedule [4.3], item 3, subsections 12DX(1), (5) and (6)]*

1.78 In considering whether to recommend an exemption, the Minister must have regard to the matters in subsection 12DX(2). *[Schedule [4.3], item 3, subsection 12DX(2)]*

1.79 An exemption in the regulations for a class of add-on insurance products may be subject to conditions. Contravention of a condition of an exemption is an offence. *[Schedule [4.3], item 3, subsections 12DX(3) and (4)]*

1.80 An exemption under the regulations does not apply to an add-on insurance product to which a product intervention order is in force under Part 7.9 of the *Corporations Act 2001* which provides for a period during which the add-on insurance product must not be sold. *[Schedule [4.3], item 3, subsection 12DX(7)]*

#### ***Exemptions from the deferred sales model by ASIC***

1.81 ASIC has the power to exempt certain products and entities from the deferred sales model.

1.82 ASIC may, by notifiable instrument exempt an add-on insurance product or a class of add-on insurance products sold by a specific person. *[Schedule [4.3], item 2, subsections 12DY(1), (6) and (7)]*

1.83 In considering whether to make such an exemption, ASIC must have regard to the matters in subsection 12DV(2). [*Schedule [4.3], item 2, subsection 12DY(2)*]

1.84 ASIC's exemptions power differs from the power to make exemptions through the regulations. ASIC has the ability to exempt a product or class of products sold by a specified person, whereas the regulations exempt a class of product regardless of who sells the products. The matters that are considered in exercising the each power also differ to reflect the different scope of the powers.

1.85 ASIC may, by legislative instrument, exempt a class of add-on insurance products from the deferred sales model if ASIC considers there is a need for coverage by the add-on insurance products immediately after the consumer acquires, or makes a commitment to acquire, the principal product or service. This exemption power differs from the other exemptions powers as it seeks to mitigate the risk of underinsurance for certain classes of products where there is an immediate risk of loss or damage. [*Schedule [4.3], item 3, subsections 12DY(3), (6) and (7)*]

1.86 ASIC may place conditions on both kinds of exemptions. Contravention of a condition of an exemption is an offence. [*Schedule [4.3], item 3, subsections 12DV(4) and (5)*]

1.87 A decision to refuse to exempt an add-on insurance product, or a class of add-on insurance products sold by a specific person, is reviewable by the Administrative Appeals Tribunal. A decision to vary or revoke such an exemption, or to impose or vary a condition on such an exemption, is also reviewable by the Administrative Appeals Tribunal. [*Schedule [4.3], item 17, paragraphs 244(2)(d), (e) and (f)*]

1.88 An exemption does not apply to an add-on insurance product to which a product intervention order is in force under Part 7.9 of the *Corporations Act 2001*, which provides for a period during which the add-on insurance product must not be sold. [*Schedule [4.3], item 3, subsection 12DY(8)*]

## **Penalties for breaching the deferred sales model**

1.89 The prohibitions in the deferred sales model are ordinary offences under section 12GB and carry a maximum penalty of 2,000 penalty units for individuals. [*Schedule [4.3], items 5 to 8, section 12GB*]

1.90 Section 93E outlines the penalty applicable to an offence where the offence is committed by a body corporate. In accordance with that provision, the maximum penalty for a body corporate is 10 times the fine specified for the offence. Therefore for the prohibitions in the deferred sales model, the maximum penalty for a body corporate is 20,000 penalty units.

1.91 Each offence in the deferred sales model is also a civil penalty provision. [Schedule [4.3], item 9, paragraph 12GBA(6)(ba)]

1.92 If ASIC believes on reasonable grounds that a person has committed an offence under the deferred sales model, ASIC may give the person an infringement notice for the alleged contravention (section 12GXA). [Schedule [4.3], item 16, paragraph 12GXA(ba)]

## **Consequential Amendments**

1.93 The Bill amends the definition of *chargeable matter* in subsection 4(1) of the *Corporations (Fees) Act 2001* to allow ASIC to charge a fee for an application by an entity to be exempted from the deferred sales model.

1.94 The definition of *consumer* is amended to allow it to take its ordinary meaning in relation to services which are not financial services. [Schedule [4.3], item 2, subsection 12BA(1)]

1.95 A series of other consequential amendments are made to ensure the deferred sales model draws on general provisions that form part of the unconscionable conduct and consumer protection provisions in Part 2 Division 2 of the *Australian Securities and Investments Commission Act 2001*. These general provisions include:

- the savings of other laws and remedies;
- actions for damages;
- general criminal defences;
- the making of non-punitive orders; and
- the making of orders prohibiting the payment or transfer of money or other property.

[Schedule [4.3], items 4, 11 to 15, sections 12AE, 12GF, 12GI, 12GLA and 12GN]

## **Transitional Provisions**

1.96 The deferred sales model will apply to commitments to acquire principal products and services entered into on or after the commencement of the deferred sales model. [Schedule [4.3], item 18, section 329]