

## EXPLANATORY STATEMENT

### Issued by authority of the Treasurer

*Australian Securities and Investments Commission Act 2001*

*Australian Securities and Investments Commission Amendment (Deferred Sales Model Exemptions) Regulations 2021*

Section 251 of the *Australian Securities and Investments Commission Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Australian Securities and Investments Commission Amendment (Deferred Sales Model Exemptions) Regulations 2021* (the Regulations) is to exempt certain classes of add-on insurance products from the deferred sales model for a period of five years.

The deferred sales model is set out in Schedule 3 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* and inserts new subdivision DA of Division 2 of Part 2 into the Act, commencing 5 October 2021. Division 2 of Part 2 of the Act deals with unconscionable conduct and consumer protection in relation to financial services.

The meaning of an ***add-on insurance product*** is set out in new section 12DO of the Act, and means a financial product that:

- is offered or sold to a customer in connection with the customer 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
  - a third party who has an arrangement with that person 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 provides a benefit under a contract of insurance.

The deferred sales model separates the sale of an add-on insurance product from that of the principal product or service. Broadly, the deferred sales model prohibits the sale of add-on insurance products for at least four days after a customer has entered into a commitment to acquire the principal product or service.

Treasury consulted industry and has considered submissions as to whether particular classes of add-on insurance have provided historical value for money, or whether the insurance is well understood by consumers, and whether there is a high risk of underinsurance if certain product exemptions are not made.

The Regulations amend the *Australian Securities and Investments Commissions Regulations 2001* to exempt specific classes of add-on insurance products from the deferred sales model to manage the risk of underinsurance within the operation of the deferred sales model for certain primary products and services, and to allow consumers greater accessibility to appropriate insurance options for insurance products of high customer value. The exemptions will apply to the prescribed add-on insurance products for a period of five years from the commencement of the Regulations.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the later of the day after they are registered and 5 October 2021.

**Details of the *Australian Securities and Investments Commission Amendment (Deferred Sales Model Exemptions) Regulations 2021***

**Section 1 – Name of the Regulations**

This section provides that the name of the regulations is the *Australian Securities and Investments Commission Amendment (Deferred Sales Model Exemptions) Regulations 2021* (the Regulations).

**Section 2 – Commencement**

The Regulations commences the later of the day after the instrument is registered on the Federal Register of Legislation and 5 October 2021.

**Section 3 – Authority**

The Regulations are made under the *Australian Securities and Investments Commission Act 2001* (the Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Australian Securities and Investments Commission Regulations 2001***

**Overview**

The Schedule 1 amendments insert exemptions from the deferred sales model into Part 2A of the *Australian Securities and Investments Commissions Regulations 2001*.

Regulation 12A sets out the definitions used for new Part 2A and predominantly refer to the meaning of a prescribed class of add-on insurance product at the regulation made for that specific class of add-on insurance product. An explanation of other defined terms used in new Part 2A are identified and discussed below in the context of the relevant add-on insurance product.

**Exempt classes of add-on insurance products**

Regulation 12B prescribes for the purposes of subsection 12DX(1) of the Act the classes of add-on insurance products exempt from the prohibitions set out in sections 12DQ, 12DR and 12DS of the Act.

Subsection 12DX(1) of the Act provides that regulations may be made to exempt a class of add-on insurance products from those specific prohibitions in the deferred sales model.

Paragraphs 12B(1)(a) to (j) of the Regulations set out each class of add-on insurance products exempted from the deferred sales model.

Subregulation 12B(2) provides that the prescribed classes of add-on insurance products to be exempt from the deferred sales model for a period of five years, from the commencement of the regulation. This means that the exemptions will only last five years.

The purpose of regulations 12C to 12M is to explain the meaning of each exempted add-on insurance product.

#### *Add-on comprehensive motor vehicle or vessel insurance product*

Regulation 12C explains the meaning of an add-on comprehensive insurance product which provides insurance cover to cars, boats, motorcycles, motorhomes, caravans, trucks and boats owned (or partially owned) or leased for a fixed period of at-least four months, by a consumer. A consumer includes both individuals and businesses.

This regulation uses the term ***designated vehicle or vessel***, which is defined in regulation 12A and means a motor vehicle, or vessel within the meaning of the *Navigations Act 2012*. Regulation 12A further defines ***motor vehicle*** as having the meaning given by subsection 12BA(1) of the Act, which in effect, includes cars, motorcycles, motorhomes, caravans and trucks, and aligns with the intent to include this range of vehicles within this exempt class of add-on insurance product.

The term ***vessel*** is defined in section 14 of the *Navigation Act 2012* and means any kind of vessel used in navigation used by water, however propelled or moved, and includes a barge, lighter or other floating craft; an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

The regulation lists the events this add-on insurance product provides insurance coverage over.

#### *Add-on compulsory third party motor vehicle insurance product*

Regulation 12D explains the meaning of an add-on compulsory third party motor vehicle insurance product. This exemption captures add-on compulsory third party insurance, which provides insurance cover against liability in respect of the death or injury of a person due to the use of a motor vehicle. Compulsory third party insurance is often required under State and Territory law to be held by motor vehicle owners.

This regulation uses the term ***motor vehicle*** in its broad meaning as defined regulation 12A, and aligns with the intent to include cars, motorcycles, motorhomes, caravans and trucks.

#### *Add-on home and contents insurance product*

Broadly, an add-on home and contents insurance product provides insurance cover for the destruction or damage to the home building principally used as a place of residence and the contents within the home residence, and provides convenience for consumers, value for money and has a low risk of underinsurance.

Regulation 12E explains the meaning of an add-on home and contents insurance product which is modelled, in part, on the definition of a “home building insurance product” and “home content insurance product” used in existing legislation, in particular the *Corporations Regulations 2001* and the *Insurance Contracts Regulations 2017*.

Paragraph 12E(1)(c) uses the term ***designated contents*** which is defined in regulation 12A and includes a range of contents commonly within a home, for example, furniture, personal effects and household goods.

This exemption does not cover add-on home contents insurance sold in isolation of add-on home building insurance.

#### *Add-on home building insurance product*

Similar to add-on home and contents insurance product, home building insurance provides convenience for consumers, value for money and has a low risk of underinsurance. It generally just covers loss in the event of destruction or damage to a building principally used as a place of residence

Regulation 12F explains the meaning of an add-on home building insurance product and is modelled on the definition of a building insurance product used in the *Corporations Regulations 2001* and replicated in the *Insurance Contracts Regulations 2017*.

#### *Add-on landlord insurance product*

Landlord insurance typically covers the destruction of, or damage to, a rented residential or commercial property, and may also cover financial loss, including loss of rental income, resulting from damage to the property.

Regulation 12G explains the meaning of an add-on landlord insurance product as add-on insurance that is commonly regarded as landlord insurance, and an insurance product that provides insurance cover for the loss or damage of real property leased to another person, or for financial loss relating to the lease of the property to another person.

The phrase *real property* commonly encompasses interest in land and fixtures or structures upon the land, and includes structures for residential or commercial purposes.

#### *Add-on limited motor vehicle insurance product*

This class of add-on insurance is commonly referred to as third party property insurance which provides insurance cover for one or all of the following events for motor vehicles: third party damage resulting from an accident, fire or theft.

Regulation 12H explains the meaning of an add-on limited motor vehicle insurance product and uses the term ***motor vehicle*** in its broad meaning as defined regulation 12A, and aligns with the intent to include cars, motorcycles, motorhomes, caravans and trucks.

This class of add-on insurance product consists of three elements:

- the insurance cover is for a consumer, which includes both individuals and businesses, who own or partly owns a motor vehicle, or has use of the motor vehicle under lease for at least four months; and
- the insurance covers for the loss or damage to the property of another person resulting from an accident in which the motor vehicle is involved, and/or, the loss or damage to the motor vehicle caused by fire or theft; and
- the insurance coverage is in respect to no other matter, hence limited to the insurance cover detailed above in elements (1) and (2).

An add-on limited motor vehicle insurance product does not include the insurance cover in respect of loss or damage to the consumers' motor vehicle resulting from an accident. This class of insurance is often sold as a cheaper alternative to comprehensive insurance.

#### *Add-on transport and delivery insurance product*

Add-on transport and delivery insurance provides coverage for loss or damage to any matter or thing during transportation. The postage, transport or delivery of goods are often acquired at short notice and may involve significant financial risks to consumers.

Regulation 12J explains the meaning of an add-on transport and delivery insurance product and is an add-on insurance product that provides insurance cover for loss or damage to items (that is, any matter or thing) in the course of their transport or delivery.

The meaning of this class enables insurance cover for items posted and delivered by mail; courier services; or services transporting items from one location to another, for example removalist services.

#### *Add-on travel insurance product*

Travel insurance is often required urgently by consumers and there is often a potentially significant adverse financial impact on an individual if it is not obtained and an insured event occurs (for example, being injured overseas in a country without appropriate healthcare coverage).

Regulation 12K explains the meaning of add-on travel insurance products as an add-on insurance product that provides insurance cover for any of the prescribed matters, and includes, amongst other matters relating to a persons specified journey, becoming sick while travelling, loss or damage to personal belongings and for financial loss associated with fares or accommodation while travelling.

#### *Business related add-on insurance product*

The deferred sales model currently applies to add-on insurance products acquired by consumers. A person is taken to be acquiring a financial service as a consumer under if, among other matters, the price of the services did not exceed \$40,000 (see section 12BC of the Act). This threshold was recently raised to \$100,000.

The Government considers it appropriate for the deferred sales model to not apply to larger commercial add-on insurance products and that applying the increased consumer threshold to the deferred sales model results in unintended consequences and perverse policy outcomes. Therefore, add-on insurance products acquired by consumers in the course of carrying on a business are exempt from the deferred sales model if the premium payable under the product exceeds \$40,000.

Regulation 12L explains the meaning of business related add-on insurance products and provides the context that this add-on insurance product is designed for a business acquiring products or services in the course of carrying on the business, and involves a payable premium by the business for the add-on insurance product that exceeds \$40,000.

#### *Superannuation-related add-on insurance product*

The purpose in providing an exemption for superannuation-related add-on insurance products is to provide certainty for the superannuation industry for specific types of add-on insurance products sold by superannuation trustees, involving insurance products commonly known as life insurance, total and permanent disability and income protection.

Regulation 12M explains the meaning of superannuation-related add-on insurance products and provides, in effect, that it is an add-on insurance product offered or sold when a consumer is acquiring or entering a commitment to acquire a primary product or service from the trustee.

A **registrable superannuation entity** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993* and means a regulated superannuation fund; an approved deposit fund; a pooled superannuation trust; but does not include a self-managed superannuation fund.

The add-on insurance product offered or sold to the consumer by the trustee must provide insurance cover of one or more of the events in relation to the consumer prescribed in paragraph 12M(b), that is, the consumers' death, their total and permanent disability, or loss of income.