Law Council
OF AUSTRALIA

*Legal Practice Section*

**12 August 2026**

The Treasury
Langton Cresent
Parkes ACT 2000

By email: EDconsultationDSMclassexemptions@treasury.gov.au

Dear Sir/Madam

**Consultation on Deferred Sales Model for add-on insurance class exemptions—Exposure draft regulations**

1. This submission has been prepared by the National Insurance Law Committee (the **Committee**) of the Law Council of Australia's Legal Practice Section.

2. The Committee welcomes the opportunity to make a submission to The Treasury on the class exemptions for the Deferred Sales Model for add-on insurance (the **DSM**).

3. The Committee supports the policy intent of the DSM, being the prevention of pressure-selling of low-value products. Additionally, we support the continuation and extension of the class exemptions in their current form, and the form of the exposure draft.

4. However, we urge Treasury to utilise the extension period to undertake a review of the utility of the DSM in the current regulatory environment. In our view the misconduct sought to be addressed by the DSM is already addressed by other regulations. Chapter 7 of the *Corporations Act 2001* (Cth), the design and distribution obligations (**DDO**) (since October 2021) and other regulatory measures (including efficiently, honestly and fairly, anti-hawking prohibitions and regulations around conflicted remuneration) all substantially address the mischief the DSM was intended to remedy. Other legislation, such as the *Insurance Contracts Act 1984* (Cth), with its duty of utmost good faith imposed on insurers is also relevant.

5. Treasury and the regulator have recognised the importance of easing the regulatory burden on business, to ensure efficiency and sustainability of the Australian financial services markets, provided consumers remain protected. In that context, a review of the effectiveness of the DSM should come before any further extensions of the class exemptions subject to this consultation.

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### *Historical context of the DSM*

6. The DSM was introduced as part of the Hayne Royal Commission Response legislation,[1] implementing recommendation 4.3[2] of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (the **Royal Commission**). The Royal Commission concluded that significant segments of the add-on insurance market were characterised by poor-value products, unfair sales practices and poor consumer outcomes in the Australian insurance markets. These concerns drew heavily on earlier work undertaken by the Australian Securities and Investment Commission (**ASIC**) which identified that add-on insurance sold through motor vehicle dealerships often provided poor value to consumers and was commonly associated with pressure-selling tactics.[3]

7. *ASIC Report 492: A market that is failing consumers: The sale of add-on insurance through car dealers*[4] was the first major Australian regulatory review to propose a deferred sales mechanism as a means of addressing consumer detriment in the add-on insurance market. This report observed that consumers were frequently purchasing add-on insurance products at the point of sale, often in circumstances where they had limited opportunity to assess the value of the product, compare alternatives or consider whether the product met their needs. ASIC recommended that consideration be given to introducing a deferred sales model to address these risks—though this recommendation was limited to add-on insurance policies sold through car dealerships. The Royal Commission subsequently adopted and broadened this approach, recommending the introduction of an industry wide deferred sales model for add-on insurance.

8. In developing the legislative framework for the DSM, Treasury considered comparable international approaches, including the deferral model implemented by the Financial Conduct Authority in the United Kingdom (**FCA**). The FCA's approach was introduced following an extensive market study of the general insurance add-on market, which examined the effectiveness of competition and consumer outcomes across a range of add-on insurance products.[5]

9. Following this market study, the FCA implemented a deferral model that applied specifically to Guaranteed Asset Protection (**GAP**) insurance policies sold in connection with the sale of a motor vehicle. Under the FCA regime, providers are required to observe a two-day deferral period between the provision of prescribed information to the consumer and the conclusion of the GAP insurance contract.[6]

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1 *Financial Sector Reform (Hayne Royal Commission Response) Bill 2020* (Cth).

2 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (Final Report, vol 1, 1 February 2019).

3 Australian Securities and Investments Commission (**ASIC**), *Buying Add-on Insurance in Car Yards: Why It Can Be Hard to Say No* (Report No 470, February 2016), ASIC, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride* (Report No 471, February 2016) & ASIC, *Market That Is Failing Consumers: The Sale of Add-on Insurance through Car Dealers* (Report No 492, September 2016).

4 ASIC, *Market That Is Failing Consumers: The Sale of Add-on Insurance through Car Dealers* (Report No 492, September 2016).

5 Financial Conduct Authority (UK), *General Insurance Add-ons: Provisional Findings of Market Study and Proposed Remedies* (Market Study MS14/1, March 2014).

6 Financial Conduct Authority (UK), *Guaranteed Asset Protection Insurance: Competition Remedy* (Policy Statement PS15/13, June 2015).

10. In contrast to this, Treasury adopted a broader approach. Rather than applying to specific classes of products, Treasury introduced an industry wide four-day deferral period for the sale of add-on insurance products generally. The breadth of this approach was then subjected to limited class-based exemptions, which are the subject of the current consultation.

### *Overlap within the broad regulatory context*

11. The Committee supports the underlying policy objective of the DSM, namely addressing pressure-selling practices and protecting consumers from low-value insurance products, particularly where there is insufficient opportunity for consumers to consider their needs and compare alternative products. Those concerns were appropriately identified by ASIC and subsequently recognised by the Royal Commission as requiring regulatory intervention. However, the DSM was developed and implemented within a significantly different regulatory environment to that which exists today.

12. The Committee considers that a comprehensive review should be undertaken to assess whether the DSM continues to deliver a material regulatory benefit and whether that benefit remains proportionate to the compliance burden that the DSM imposes on insurers, intermediaries and consumers in the context of the totality of the reforms that have fundamentally altered the design, distribution and sale of insurance products. If that review concludes that the policy objectives of the DSM are being effectively achieved through other regulatory mechanisms, consideration should be given to whether the DSM remains necessary.

13. The introduction of the DDO regime[7] has materially reshaped the regulatory framework governing insurance products. Product issuers are now required to identify an appropriate target market and implement distribution controls to ensure that products are sold consistently with that market. These measures are intended to increase the likelihood that consumers who acquire the product fall within the target market and that the product is aligned with their objectives, financial situation and needs. The DDO regime therefore directly addresses concerns regarding the manufacture and distribution of poor-value insurance products that formed part of the original rationale for the DSM.

14. Similarly, significant reforms have been introduced to address remuneration structures associated with add-on insurance products. These reforms include conflicted remuneration prohibitions,[8] caps on commission,[9] and enhanced consent requirements.[10] Together, these measures substantially reduce the commercial incentives that historically contributed to aggressive sales practices and consumer detriment in parts of the add-on insurance market.

15. In addition, Australian financial services licensees remain subject to extensive statutory and regulatory obligations governing the manner in which financial products are distributed. These obligations include the requirement to conduct financial services businesses efficiently, honestly and fairly (which has become a pecuniary

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7 *Corporations Act*, Part 7.8A.
8 *Corporations Act*, Part 7.7A, Division 4.
9 *ASIC Corporations (Product Intervention Order—Add On Financial Risk Products) Instrument 2021/459*.
10 *Corporations Act*, s 963BB.

penalty provision since the DSM was implemented), together with obligations to adequately supervise representatives and ensure compliance with applicable consumer protection requirements.[11] These obligations provide a broad framework for preventing inappropriate sales conduct, including conduct that may constitute pressure selling.

16. Viewed collectively these reforms substantially address the key concerns that gave rise to the Royal Commission's recommendation 4.3. The Committee therefore questions whether the DSM continues to provide standalone consumer protection that is not already achieved through more effective means.

17. This is of particular importance given the DSM operates as a blanket procedural restriction based on method of distribution, rather than the quality or value of the insurance product. As it is currently structured, the DSM captures products irrespective of whether they provide clear value to consumers and in spite of robust product governance and conduct obligations that a distributor may have in place.

18. For these reasons, the Committee considers that the DSM warrants reconsideration as part of the broader regulatory simplification exercises that are currently being undertaken.

19. The Committee would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact the Committee Chair, Andrew Sharpe [redacted]

Yours sincerely



**Greg McIntyre SC**
**Chair, Legal Practice Section**

[11] *Corporations Act*, s 912A.