

AMTA Submission to The Treasury

Reforms to the sale of add-on insurance products

30 September 2019



**Australian Mobile
Telecommunications
Association**

INTRODUCTION

The Australian Mobile Telecommunications Association (AMTA) welcomes the opportunity to provide comment to The Treasury on the proposed reforms to the sale of add-on insurance products (Proposal Paper) in the context of mobile devices.

AMTA is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators, service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

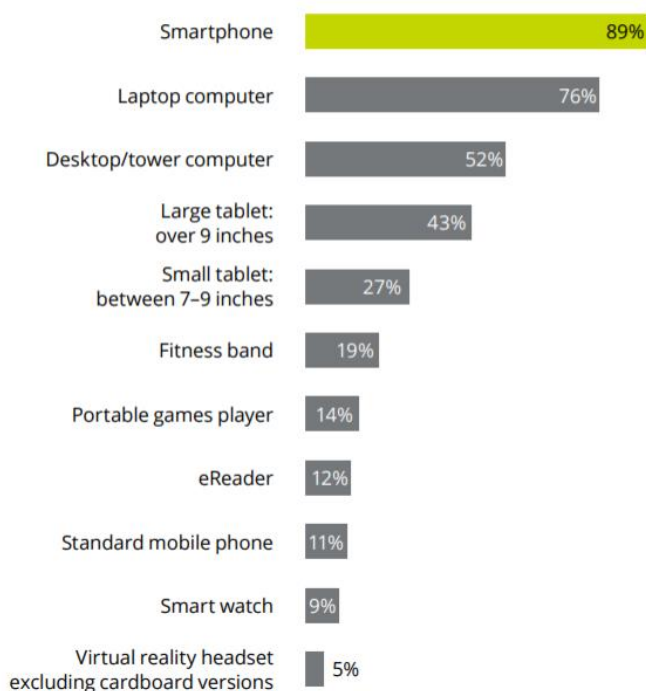
OVERVIEW OF AMTA POSITION

In Australia, smartphone ownership is now around 89%,¹ resulting in most customers demanding higher levels of security to protect their confidential data in the event of device loss or theft. Some smartphones can now retail for as much as \$3,000 so purchasers are understandably concerned about security and theft/loss prevention to protect their investment.

¹ [Deloitte Mobile Consumer Survey 2018 - The Australian cut](#)

Graph 1: Device ownership

Which, if any, of the following devices do you own or have ready access to (i.e. that is readily available for you to use)?



Source: Deloitte, Mobile Consumer Survey 2018 - The Australian cut

AMTA submits that mobile device protection does not suffer from the same issues raised during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) that justify the implementation of an industry-wide deferred sales model for add-on insurance products, and specifically the motor dealer and consumer credit insurance (CCI) industries. We believe it more properly fits within the same product category as comprehensive motor vehicle insurance which is to be exempted.

The mobile device protection industry also has its own unique characteristics that warrant its exemption. Not exempting mobile device protection products runs a real risk of:

- causing customer detriment via increased risk of underinsurance; reduced availability and competition; increased cost, inconvenience and complexity of protection; and
- a significant adverse impact on the telecommunications industry in terms of:
 - viability of future offerings; and
 - costs arising from having to separately engage with a direct insurer model, which would ultimately be passed on to end.

We submit that recent Government reforms, such as the Design and Distribution Obligations, ASIC's new Product Intervention Power, Unfair Contract reform, claims handling, settlement reforms and penalty increases etc, already exist to address the consumer risk in a robust manner. Adding a further deferral layer of protection is not justified.

We provide detail below in support of this position.

CONCERNS REGARDING REGULATORY QUALITY AND PERFORMANCE

The Proposal Paper puts forward a Government position that a catch all approach will be taken. Feedback is to be focussed on “how the measure can be best implemented, not whether it should be implemented”.

We note that there has been no prior consultation or engagement with key stakeholders on the model being implemented, despite the Royal Commission’s Recommendation that a taskforce be set up and the Government’s commitment to do so. AMTA submits that full consultation process is a reasonable expectation, especially in light of a catch all model proposal.

AMTA notes that its members have been given 21 days in which to make a submission to Government on whether they should be exempted or not in primary legislation, with the option of later seeking relief from ASIC if this is not done, or if done, unsuccessful at first instance. The ASIC relief is only available once the legislation is in force and the transition period proposed is not clear.

The above is clearly not in accordance with sound regulatory principles (we refer you to OECD Guiding Principles for Regulatory Quality and Performance).

No issues have been identified in relation to the mobile device protection industry by ASIC, the Productivity Commission, the Australian Securities and Investments Commission (ASIC), other relevant bodies or internationally.

To us, the basis for reform appears to stem from issues identified in the *specific context* of the motor dealer and CCI industries, assumed to arise in all other add-on insurance areas. This means that all should be caught, unless the industry or entity can justify their exemption.

This approach has been taken without any cost benefit analysis and in circumstances where there is already significant consumer protection in force by reason of recent Government reforms and a new ability of ASIC to shut down products where it identifies significant consumer detriment (Product Intervention Power). We note this power was not considered in the Productivity Commission Report that the Royal Commission seems to rely on as the basis for recommending a catch all change. Hence, we submit that there is insufficient justification for imposing an additional layer of regulation.

EXEMPTION IN PRIMARY LEGISLATION SHOULD BE PROVIDED FOR MOBILE DEVICE PROTECTION PRODUCTS

Several factors operating together in the specific context of the motor dealer and CCI industries led to consumer detriment. Although mobile device protection products offered by telecommunications companies and mobile device retailers are typically sold at the same time as the mobile device, the result is not the same in this context.

We address the issues raised in the Proposal Paper in this regard.

Historically good value for money

Whilst we are unable to provide specific member details, our position is that mobile device protection products are of value to those buying them in terms of the level of protection for loss that could be suffered by consumers in relation to their device from time of purchase. In most cases when customers made a claim, the total cost of insurance and the excess in making a claim is lower than the outright cost or a repair and/or replacement.

The telecommunications industry has also typically provided customers with the flexibility of paying for their device protection month-to-month in contrast to standalone providers which require premiums to be paid upfront for the contract term. The financing arrangements that telecommunications providers have offered delivers real value to consumers.

Unlike CCI and motor dealer add-on insurance products:

- loss ratios are at a reasonable level;
- claims payment rates are at a reasonable level; and
- complaint and Australian Financial Complaints Authority (AFCA) dispute levels are low.

Such products are issued worldwide and no equivalent jurisdiction, such as the UK, applies a deferred sales model to these products.

We understand that some members will be making individual submissions to support the above and we can also seek to arrange for direct engagement with Treasury in this regard.

High risk of underinsurance

With the purchase of a car, the ability to buy comprehensive motor vehicle insurance before or at the time a consumer takes possession of the car is important because:

- a failure to do so can expose the consumer to a significant loss; and
- insurance is ultimately a grudge purchase and if not taken, the risk of loss or liability lies with the consumer and ultimately the community.

This works where the product is of value to the consumer, the cost of the product is affordable, and sales practices are fair.

Further, Government has already implemented significant measures to protect consumers as described above.

In our view, mobile device protection is of a similar nature to comprehensive motor vehicle insurance.

If mobile device protection cannot be purchased at point of sale of the device:

- the customer is exposed to an immediate risk (mobile devices can retail for up to \$3,000) when they gain possession of the device and would continue to be billed the continuing monthly costs of the voice and data plan; and
- there is a significant risk that the consumer will then not buy it after that time, either:
 - deliberately (a grudge purchase); or
 - by omission, despite an intention to purchase as the deferral period creates inertia requiring customers to transact on a separate occasion (they forget or are too inconvenienced). Based on consumer behaviour, we understand that the preferred time to purchase mobile device protection is at the point of sale of the device.

Loss of a mobile device can have a significant adverse effect on a consumer who walks out of a store and damages their device, or has it stolen. This is especially the case as consumers are increasingly

relying on their mobile devices to feel connected and secure in their personal, social and work lives. In fact, a study in 2017 found that Australians check their mobile phones ~100 times a day.²

If a person cannot afford to replace a device, the loss can have far larger social and financial costs than the cost of the device. Nomophobia is now a defined medical condition.³ And research by Deloitte Access Economics has found that 94% of Australians take their mobile phone with them when they leave the house and more than 80% of us report that our mobile provides us with peace of mind, helping us to feel safe in the event of an emergency.⁴

Similarly, if Government proposals make the model unworkable for industry and a standalone insurance option is not viable, consumers may end up with significantly reduced protection options. See competition discussion below.

Well understood by consumers

A consumer will generally understand at a high level the types of loss and liability covered by a motor policy, as they would with a mobile device loss or damage type cover. That said, the reality (which has been acknowledged widely) is that no matter how well a product is drafted or explained, a consumer may still not engage. This is an issue common to insurance.

It is important to note that add-on motor dealer insurance and CCI understandability is worse for a consumer because the transfer of the risks/liability covered by these low value products is less obvious, especially in the context of evidence of *pressure and poor sales practices of those involved*.

This is not the case with mobile device protection where no evidence has been identified of any:

- systemic low value concern relating to risk transfer or cost; or
- adverse consumer complaint trends suggesting poor sales practices.

Strong competition

In the context of mobile devices, unlike motor dealer or CCI distributors, the involvement of the telecommunications company in the mobile device protection product lifecycle is crucial and of real benefit to the consumer. Mobile device protection originally arose to fill a gap in the direct insurance market space as no such protection was provided. Because of this, the competition issues and impact are very different.

Telecommunications companies pay a significant role in relation to mobile device protection. For example, they are involved in marketing, arrangement and sale, systems access, monthly premium collection, buying power reducing handset prices, bad debt support, reduced repair prices, logistical support, managing damaged or lost/stolen devices, claims handling assistance, data retrieval and fraud detection services.

We also understand that remuneration levels are not in the same category as those identified as being of concern in the motor dealer and CCI add-on insurance space and are justifiable given the significant role played by telecommunications companies in the process.

² [The University of Sydney, Are we slaves to our smartphones? August 2017](#)

³ [Wikipedia, Nomophobia, accessed September 2019](#)

⁴ Deloitte Access Economics, [Mobile Nation 2019: The 5G Future](#), p2

Without the partnering or involvement of the telecommunications company in the mobile device protection offering, the cost to the consumer of such protection is likely to increase alongside the complexity of the process and quality of service.

For example, a standalone insurer:

- would have to set up and rely on its own systems. Under current arrangements, use can be made of the telecommunications companies' own systems, reducing cost and complexity for the consumer. An insurer that is unable to rely on the involvement of the telecommunications company would bear significant costs. This explains the lack of any real competing standalone market in the industry.
- would need to engage in multiple communications with the consumer and mobile device retailer to obtain required information relevant to the device and any claims. This would increase cost and delay and the levels of documentation provided to and required from the consumer. Under current arrangements the consumer engages with the telecommunications company in most cases and information flow is efficient, and most convenient and natural for the consumer;
- would need to factor in the risk of insuring a phone post-delivery (which comes at a higher risk and cost, assuming such a risk will be undertaken and noting that fraud risk in the mobile device protection industry is high); and
- will not be subject to the same competitive pressure telecommunications companies can apply to the protection provider, given their close relationship and the need to have consumer claims resolved quickly to continue their use of the telecommunications services.

If the new model is not viable for telecommunications companies, they may exit the market or restrict current availability of cover. Given the majority of mobile device protection sales occur at the point of sale of the device itself, sales volumes may be insufficient to justify the expense of the process or the post-sale risk may not be viable.

In addition to the above, from a competition perspective, telecommunications companies are in intense competition regarding their entire portfolio offering.⁵ They are compelled to be competitive in every aspect of their deals, including the mobile device protection offer which is well known to consumers and their concerns regarding the increasing cost and risk of loss of such devices.

WHY EXEMPTING MOBILE PHONE DEVICES WILL WORK FOR CONSUMERS

Comfort in the value of the cover being offered

The Government is introducing:

- Design and Distribution Obligations on insurers to ensure products are designed to be suitable for the target market; and
- Unfair Contract legislation in relation to insurance which will further improve the quality of products and the rights of consumers.

Current laws continue to operate, such as the prohibitions on Misleading or Deceptive Conduct under the Corporations Act and ASIC Act, Breach of the Duty of Utmost Good Faith under the Insurance Contracts Act and licensing obligations under Chapter 7 of the Corporations Act e.g. to

⁵ [ACCC Communications Market Report 2017-18](#)

provide financial services efficiently, honestly and fairly (Current laws). The Government has recently increased penalties that apply for breaches of such obligations that will have a significant deterrent effect.

Adding the deferred sales model may ultimately reduce consumers' access to cover if telecommunications providers and mobile device retailers cannot make their add-on insurance offering commercially viable. Standalone insurers may not be prepared to underwrite a post-delivery risk at all or on terms acceptable to a consumer.

Comfort in the value of the cost of the product

As noted above, the role of telecommunications companies serves to help reduce cost.

If it is not likely that a standalone insurance industry is viable the issue is moot.

Without the role of the telecommunications companies the cost to consumers is likely to be greater.

Comfort in sales practices

The new Government Design and Distribution Obligations will be imposed on insurers to ensure products are designed to be suitable for the target market and that distribution conditions are applied to protect consumers.

The Current laws referred to above also prohibit such practices and the increased penalties that can be applied, along with ASIC's new approach to regulation and Product Intervention Powers, will act as a significant disincentive to misconduct.

Comfort in the understandability of the product

See 'Well understood by consumers' section above.

Comfort in protection if something goes wrong

Currently, if an issue is identified, the consumer has access to significant consumer protection and ASIC can use its Product Intervention Power. ASIC will also be obtaining Internal Dispute Resolution (IDR) data from licensees that will assist in early warning. Consumers can also access AFCA for insurance-related disputes. Further, a contract term that is unfair can be voided under the Unfair Contracts regime. ASIC can also bring representative actions for consumers and significant penalties apply for a breach based on recent Government reform.

Australian Financial Services Licensees are required to have internal dispute resolution schemes that meet ASIC requirements and must belong to the independent external dispute resolution body, AFCA. Its decisions are binding on members and this avoids litigation.

The Government may also remove any exemption were an issue to arise.

CONCLUSION

In summary, it is clear that mobile device damage, loss and theft is a problem and that underinsurance is a risk for consumers. Our members want to provide their customers with the peace of mind of that they are covered by insurance at the time of sale.

In a non-deferred sales model:

- the consumer gets the choice to walk out protected, the risk of underinsurance is reduced, and they have a cooling off period for insurance products in which to change their mind or seek alternative offers;
- existing legal protections relating to product value and suitability and sales practices are significant, particularly those recently introduced by Government; and
- the nature of the market and telecommunications company involvement in this process helps reduce the cost of this protection for consumers and improves the efficiency and value to the consumer.

For these reasons, AMTA submits that mobile device protection should be exempt from the proposed deferred sales model.

Contact:

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