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| **EXPOSURE DRAFT** |

Inserts for

Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add‑on insurance

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [4.3] | The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent. |  |
| 2. |  |  |
| 3. |  |  |

Schedule [4.3]—Deferred sales model for add‑on insurance

Australian Securities and Investments Commission Act 2001

1 Subsection 12BA(1)

Insert:

***add‑on insurance deferral period*** has the meaning given by section 12DP.

***add‑on insurance pre‑deferral period*** has the meaning given by section 12DP.

***add‑on insurance product***, in relation to a product or service, has the meaning given by section 12DO.

2 Subsection 12BA(1) (definition of *consumer*)

After “***consumer***”, insert “, in relation to financial services,”.

3 After Subdivision D of Division 2 of Part 2

Insert:

Subdivision DA—Deferred sales for add‑on insurance products

12DO Meaning of *add‑on insurance product*

(1) An ***add‑on insurance product***, in relation to another product or service (the ***principal*** ***product or service***), is a financial product that:

(a) is offered or sold to a consumer in connection with the consumer acquiring, or entering into a commitment to acquire, the principal product or service as a consumer; and

(b) is offered or sold by:

(i) the provider of the principal product or service; or

(ii) another person, in accordance with an arrangement between that other person and the provider of the principal product or service; and

(c) manages financial risk (within the meaning of section 12BAA) relating to the principal product or service; and

(d) either:

(i) is a contract of insurance; or

(ii) provides for the consumer to benefit from a contract of insurance to which the provider of the financial product is a party.

(2) For the purposes of subsection (1), ***contract of insurance*** includes:

(a) 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

(b) 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.

(3) The regulations may provide that a consumer is, for the purposes of this Subdivision, taken to have entered into a commitment to acquire a product or service of a specified class at a time specified in the regulations.

12DP Meaning of *add‑on insurance deferral period* and *add‑on insurance pre‑deferral period*

(1) A person who acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***) as a consumer may be given the information determined under paragraph (4)(a), in the manner determined under paragraph (4)(b), in connection with the acquisition or proposed acquisition.

Note: There is no obligation for a person who provides a product or service to give the information to a consumer. However, if the information is not given, there will be no add‑on insurance deferral period and certain conduct relating to the sale or offer of add‑on insurance products may be prohibited (see sections 12DQ to 12DS).

(2) If the information is so given to the consumer, then:

(a) there is an ***add‑on insurance deferral period*** in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service; and

(b) the add‑on insurance deferral period is the period beginning at the later of:

(i) the time the consumer enters into the commitment (or, if the consumer acquires the principal product or service without previously entering into a commitment to do so, the time the consumer acquires the principal product or service); and

(ii) the time the consumer is given the information;

and ending at the end of 4 days after the day on which the period begins.

(3) The ***add‑on insurance pre‑deferral period*** in relation to the principal product or service is a period that:

(a) begins when the consumer indicates an intention to acquire the principal product or service; and

(b) if there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service—ends immediately before the start of that period; and

(c) if there is no such add‑on insurance deferral period—does not end.

(4) ASIC may, by legislative instrument, determine the following:

(a) information that may be given to consumers of products or services for the purposes of subsection (1);

(b) the manner in which the information is to be given (which may require the information to be given to a particular consumer each time the consumer enters into a commitment to acquire, or acquires, the products or services).

(5) Information determined under paragraph (4)(a) must include information that relates to the consumer giving notice that the consumer does not want to receive:

(a) offers of add‑on insurance products; or

(b) requests or invitations for the consumer to ask or apply for add‑on insurance products;

in relation to the principal product or service.

12DQ Prohibition on selling add‑on insurance products before end of add‑on insurance deferral period etc.

Contraventions by provider of principal product or service

(1) A person contravenes this subsection if:

(a) a consumer acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***) from the person; and

(b) the person also sells a financial product to the consumer; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) A person contravenes this subsection if:

(a) a consumer acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***) from the person; and

(b) another person sells the consumer a financial product that is an add‑on insurance product in relation to the principal product or service.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for sale after add‑on insurance deferral period

(3) Subsections (1) and (2) do not apply if:

(a) there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service; and

(b) the add‑on insurance product is sold to the consumer after the end of the add‑on insurance deferral period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Contravention by third party provider

(4) A person (the ***third party provider***) contravenes this subsection if:

(a) the third party provider sells a financial product to a consumer; and

(b) the financial product is an add‑on insurance product in relation to a product or service (the ***principal*** ***product or service***) offered or provided by another person; and

(c) either:

(i) there is no add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service; or

(ii) there is such an add‑on insurance deferral period, and the third party provider sells the add‑on insurance product to the consumer before the end of the period.

Note: Failure to comply with this subsection is an offence (see section 12GB).

12DR Prohibition on offering add‑on insurance product during add‑on insurance deferral period

Offer by provider of principal product or service

(1) A person (the ***principal*** ***provider***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***) from the principal provider; and

(b) the principal provider offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exceptions for subsection (1)—offer made outside add‑on insurance deferral period

(2) Subsection (1) does not apply if the offer, request or invitation is made:

(a) during the add‑on insurance pre‑deferral period in relation to the principal product or service; or

(b) if there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service—after the end of the add‑on insurance deferral period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Offer by third party provider

(3) A person (the ***third party*** ***provider***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***); and

(b) the third party provider offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing; and

(e) there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service; and

(f) the offer, request or invitation is made during the add‑on insurance deferral period.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for subsections (1) and (3)—contact initiated by consumer

(4) Subsections (1) and (3) do not apply if:

(a) the offer, request or invitation is made in response to contact initiated by the consumer; and

(b) the offer, request or invitation relates only to the purpose for which the consumer initiated the contact.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

12DS Prohibition on offering add‑on insurance product after add‑on insurance deferral period

Offer by principal provider

(1) A person (the ***principal*** ***provider***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***) from the principal provider; and

(b) the principal provider offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for subsection (1)—offer made outside 6‑week period

(2) Subsection (1) does not apply if the offer, request or invitation is made:

(a) during the add‑on insurance pre‑deferral period in relation to the principal product or service; or

(b) if there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service—after the end of the period of 6 weeks beginning on the first day of the add‑on insurance deferral period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Offer by third party provider

(3) A person (the ***third party*** ***provider***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***); and

(b) the third party provider offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) the offer, request or invitation is made otherwise than in writing; and

(e) there is an add‑on insurance deferral period in relation to the consumer acquiring, or entering into a commitment to acquire, the principal product or service; and

(f) the offer, request or invitation is made during the period of 6 weeks beginning on the first day of the add‑on insurance deferral period.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Exception for subsections (1) and (3)—contact initiated by consumer

(4) Subsections (1) and (3) do not apply if the offer, request or invitation is made in response to contact initiated by the consumer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

12DT Prohibition on offering add‑on insurance product—consumer opt‑out

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***); and

(b) the first person offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) before the offer, request or invitation is made, the consumer informs the first person that the consumer does not want to receive such offers, requests or invitations.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***consumer***) acquires, or enters into a commitment to acquire, a product or service (the ***principal*** ***product or service***); and

(b) the first person offers a financial product for issue or sale to the consumer, or requests or invites the consumer to ask or apply for a financial product or to purchase a financial product; and

(c) the financial product is an add‑on insurance product in relation to the principal product or service; and

(d) before the offer, request or invitation is made, the consumer informs any of the following that the consumer does not want to receive such offers, requests or invitations:

(i) the person who provided the principal product or service (if that person is not the first person);

(ii) any person (other than the first person) with whom the person mentioned in subparagraph (i) has an arrangement of a kind mentioned in subparagraph 12DO(1)(b)(ii).

Note: Failure to comply with this subsection is an offence (see section 12GB).

12DU Exception for financial advisers

Section 12DQ does not apply in relation to the sale of an add‑on insurance product, and sections 12DR, 12DS and 12DT do not apply in relation to an offer to issue or sell an add‑on insurance product, or a request or invitation to ask or apply for an add‑on insurance product, by a person if:

(a) the person sells the add‑on insurance product, or makes the offer, request or invitation, in the course of providing personal advice (within the meaning of Chapter 7 of the *Corporations Act 2001*) in circumstances where Division 2 (best interests obligations) of Part 7.7A of that Act applies; and

(b) the add‑on insurance product relates to a principal product or service that is provided by the person, and that the person recommends in the course of providing the advice.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

12DV Exception for product covered by product intervention order

(1) Section 12DQ does not apply in relation to the sale of an add‑on insurance product by a person if a product intervention order in force under Part 7.9A of the *Corporations Act 2001*:

(a) covers that sale; and

(b) provides for a period during which the product must not be sold.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) Sections 12DR, 12DS and 12DT do not apply in relation to:

(a) an offer to issue or sell; or

(b) a request or invitation to ask or apply for;

an add‑on insurance product that would, if offered to a consumer, be covered by a product intervention order in force under Part 7.9A of the *Corporations Act 2001* that provides for a period during which the product must not be sold to the consumer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

12DW Exception for comprehensive motor vehicle insurance

(1) Section 12DQ does not apply in relation to the sale of an add‑on insurance product by a person if the add‑on insurance product provides insurance cover:

(a) to an individual who:

(i) wholly or partly owns a motor‑powered road vehicle (including a 4‑wheel‑drive vehicle) (a ***motor vehicle***); or

(ii) has the use of a motor vehicle under a lease of at least 4 months’ duration; and

(b) in respect of all of the following (whether or not the product also provides insurance cover in respect of other matters):

(i) loss of, or damage to, the motor vehicle resulting from an accident;

(ii) loss of, or damage to, property of another person resulting from an accident in which the motor vehicle is involved;

(iii) loss of, or damage to, the motor vehicle caused by fire, theft or malicious acts.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) Sections 12DR, 12DS and 12DT do not apply in relation to an offer to issue or sell an add‑on insurance product described in subsection (1) of this section, or a request or invitation to ask or apply for such an add‑on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

12DX Exemption by regulations

Regulations may exempt a class of products

(1) The regulations may exempt a class of add‑on insurance products from sections 12DQ, 12DR, 12DS and 12DT.

(2) In considering whether to advise the Governor‑General about the making of regulations for the purposes of subsection (1) in relation to a class of add‑on insurance products, the Minister must have regard to:

(a) whether add‑on insurance products in the class provide good value for money; and

(b) the extent of any potential financial consequences for consumers of not being covered by the products; and

(c) the extent of any potential financial consequences for Australian governments of consumers not being covered by the products; and

(d) any other matters the Minister considers relevant.

Conditions on exemptions

(3) An exemption under subsection (1) may be subject to conditions specified in the regulations.

(4) A person who:

(a) sells or offers to sell an add‑on insurance product to which an exemption applies; or

(b) sells a product or service, if:

(i) there is an arrangement between the person and another person that relates to the provision by the other person of add‑on insurance products in relation to that kind of product or service; and

(ii) an exemption applies to any of those add‑on insurance products; or

(c) offers an add‑on insurance product for issue or sale to a consumer, or requests or invites a consumer to ask or apply for an add‑on insurance product or to purchase an add‑on insurance product, where an exemption applies to the add‑on insurance product;

must not contravene a condition of the exemption.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Effect of exemption

(5) Section 12DQ does not apply in relation to the sale of an add‑on insurance product by a person if an exemption under subsection (1) of this section applies to the add‑on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

(6) Sections 12DR, 12DS and 12DT do not apply in relation to an offer to issue or sell an add‑on insurance product, or a request or invitation to ask or apply for an add‑on insurance product, if an exemption under subsection (1) of this section applies to the add‑on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Product intervention orders

(7) Subsections (4), (5) and (6) do not apply to an add‑on insurance product if:

(a) a product intervention order is in force under Part 7.9A of the *Corporations Act 2001* in relation to the product; and

(b) the product intervention order provides for a period during which the product must not be sold.

12DY Exemption by ASIC

Exemptions for products sold by specified persons

(1) ASIC may, by notifiable instrument, exempt from sections 12DQ, 12DR, 12DS and 12DT:

(a) an add‑on insurance product sold by a specified person; or

(b) a class of add‑on insurance products sold by a specified person.

Note: For review of a decision to refuse to make an exemption under subsection (1), or to vary or revoke such an exemption, see section 244.

(2) In considering whether to make an exemption under subsection (1), ASIC must have regard to the following:

(a) any evidence as to whether the add‑on insurance product, or the class of add‑on insurance products, has historically been good value for money;

(b) whether, without an exemption, there is a high risk of underinsurance or non‑insurance;

(c) any evidence as to whether the add‑on insurance product, or the class of add‑on insurance products, is well understood by consumers;

(d) any differences between the add‑on insurance product, or add‑on insurance products in the class, and financial products of a similar kind that are not sold as add‑on insurance products;

(e) any other matters that ASIC considers relevant.

Exemptions for classes of products

(3) ASIC may, by legislative instrument, exempt from sections 12DQ, 12DR, 12DS and 12DT a class of add‑on insurance products if ASIC considers that consumers are likely to need to be covered by the products immediately on acquiring the principal products or services to which the products relate.

Conditions on exemptions

(4) An exemption under subsection (1) or (3) may be subject to conditions specified in the exemption.

Note: For review of a decision to impose or vary a condition on an exemption under subsection (1), see section 244.

(5) A person who:

(a) sells or offers to sell an add‑on insurance product to which an exemption applies; or

(b) sells a product or service, if:

(i) there is an arrangement between the person and another person that relates to the provision by the other person of add‑on insurance products in relation to that kind of product or service; and

(ii) an exemption applies to any of those add‑on insurance products; or

(c) offers an add‑on insurance product for issue or sale to a consumer, or requests or invites a consumer to ask or apply for an add‑on insurance product or to purchase an add‑on insurance product, where an exemption applies to the add‑on insurance product;

must not contravene a condition of the exemption.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Effect of exemption

(6) Section 12DQ does not apply in relation to the sale of an add‑on insurance product by a person if:

(a) an exemption under subsection (1) of this section applies to the sale of the add‑on insurance product by the person; or

(b) an exemption under subsection (3) of this section applies to the add‑on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

(7) Sections 12DR, 12DS and 12DT do not apply in relation to an offer to issue or sell an add‑on insurance product, or a request or invitation to ask or apply for an add‑on insurance product, if:

(a) an exemption under subsection (1) of this section applies to the sale of the add‑on insurance product; or

(b) an exemption under subsection (3) of this section applies to the add‑on insurance product.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

Product intervention orders

(8) Subsections (5), (6) and (7) do not apply to an add‑on insurance product if:

(a) a product intervention order is in force under Part 7.9A of the *Corporations Act 2001* in relation to the product; and

(b) the product intervention order provides for a period during which the product must not be sold.

4 Subsections 12AE(1) and (3)

After “Subdivision D (sections 12DA to 12DN)”, insert “, Subdivision DA (sections 12DO to 12DY)”.

5 Section 12GB (at the end of the heading)

Add “**or DA**”.

6 Subsections 12GB(1), (1A) and (1B)

Omit “other than section 12DA”, substitute “, other than section 12DA, or a provision of Subdivision DA”.

7 Paragraphs 12GB(2)(a) and (3)(a)

After “Subdivision D (sections 12DA to 12DN)”, insert “or Subdivision DA (sections 12DO to 12DY)”.

8 Subsection 12GB(4)

After “Subdivision D (sections 12DA to 12DN)”, insert “or Subdivision DA (sections 12DO to 12DY)”.

9 After paragraph 12GBA(6)(b)

Insert:

(ba) a provision of Subdivision DA;

10 After subsection 12GBCN(3)

Insert:

(3A) Despite subsection (1), in proceedings referred to in that subsection:

(a) in relation to a contravention by a person of subsection 12DQ(4), it is necessary to prove that the person was reckless as to the matters in paragraph 12DQ(4)(c); and

(b) in relation to a contravention by a person of subsection 12DR(3), it is necessary to prove that the person was reckless as to the matters in paragraphs 12DR(3)(e) and (f); and

(c) in relation to a contravention by a person of subsection 12DS(3), it is necessary to prove that the person was reckless as to the matters in paragraphs 12DS(3)(e) and (f); and

(d) in relation to a contravention by a person of subsection 12DT(2), it is necessary to prove that the person was reckless as to the matters in paragraph 12DT(2)(d).

(3B) For the purposes of subsection (3A), a person is reckless as to a fact if:

(a) the person is aware of a substantial risk that the fact exists; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

11 Subsection 12GF(1)

Omit “or Subdivision D (sections 12DA to 12DN)”, substitute “, Subdivision D (sections 12DA to 12DN) or Subdivision DA (sections 12DO to 12DY)”.

12 Subsections 12GI(1) and (4)

After “Subdivision D (sections 12DA to 12DN)”, insert “or Subdivision DA (sections 12DO to 12DY)”.

13 Subsection 12GI(4)

After “amount to a contravention of a provision of Subdivision D”, insert “or DA”.

14 Subsection 12GLA(4) (after paragraph (b) of the definition of *contravening conduct*)

Insert:

(ba) contravenes a provision of Subdivision DA (sections 12DO to 12DY); or

15 Paragraph 12GN(1)(c)

After “Subdivision D (sections 12DA to 12DN)”, insert “or Subdivision DA (sections 12DO to 12DY)”.

16 After paragraph 12GXA(b)

Insert:

(ba) a provision of Subdivision DA;

17 At the end of subsection 244(2)

Add:

; or (d) to refuse to make an exemption under subsection 12DY(1); or

(e) to vary or revoke an exemption under subsection 12DY(1); or

(f) to impose or vary a condition on an exemption under subsection 12DY(1).

18 In the appropriate position

Insert:

Part 31—Application and transitional provisions relating to Schedule [4.3] to the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020

329 Application—deferred sales model for add‑on insurance

(1) The amendments made by Schedule [4.3] to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Act 2020* apply in relation to a principal product or service (within the meaning of section 12DO) if:

(a) a person enters into a commitment to acquire the principal product or service on or after the commencement of that Schedule; or

(b) a person acquires the principal product or service on or after the commencement of that Schedule without previously having entered into such a commitment.

(2) Regulations made for the purposes of subsection 12DO(3) apply for the purposes of this section.