EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Australian Securities and Investments Commission Act 2001

Australian Securities and Investments Commission Amendment (Deferred Sales Model) 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) Regulations 2021* (the Regulations) is to prescribe when a consumer is taken to have entered a commitment to acquire certain commonly sold products or services, and to exempt certain classes of add-on insurance products from the general prohibitions set out in 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 deferred sales model separates the sale of an add-on insurance product, as defined in section 12DO of the Act, from that of the principal product or service. Broadly, the deferred sales model prohibits the sale of add-on insurance products for four days after a customer has entered into a commitment to acquire the principal product or service.

The Act allows for regulations to prescribe when the consumer is taken to have entered into a commitment to acquire a principal product or service (subsection 12DO(3)). The Act further allows for regulations to exempt a class of add-on insurance products from specific prohibitions in the deferred sales model (subsection 12DX(1)).

The Regulations amend the *Australian Securities and Investments Commission Regulations 2001* to prescribe, for the purposes of subsection 12DO(3) of the Act, when a consumer is taken to have entered a commitment to acquire certain classes of products or services. This amendment is designed to provide clarity for industry and consumers as to when the deferred sales period for add-on insurance products commences, and to ensure deferred sales model achieves the intended policy outcome.

The Regulations further amend the *Australian Securities and Investments Commission Regulations 2001*, for the purposes of subsection 12DX(1) of the Act, to exempt specific classes of add-on insurance products from the deferred sales model. These exempt classes of products are not subject to any conditions specified in the Regulations.

The purpose for exempting specific classes of add-on insurance products is 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.

Treasury released exposure drafts of the Regulations for public consultation, and considered submissions made during this consultation in finalising the Regulations. Treasury also extensively consulted the Australian Securities Investments Commission (ASIC) in the development 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.

The Office of Best Practice Regulation has confirmed that no Regulation Impact Statement was required as the measure is likely to only have a minor regulatory impact.

A statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

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

Section 2 – Commencement

The Regulations commence 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 prescribe when a consumer enters a commitment to acquire particular classes of products or services and insert class add-on insurance product exemptions from the deferred sales model.

When a consumer enters into a commitment

This amendment inserts new regulation 3B and prescribes when a consumer is taken to have entered into a commitment to acquire certain principal products or services.

The purpose for the amendment is to prescribe specific commitment points for particular products or services to which the deferred sales model will apply to avoid perverse policy outcomes for consumers. The amendment will ensure a consistent commitment point across the wide range of add-on insurance products or services. The prescribed products and services are the key classes identified by Treasury in consultation with ASIC and industry stakeholders.

For the following types of products or services, the Regulations prescribe that the consumer is taken to have entered into a commitment to acquire the product or service when the consumer is informed in writing that the credit facility is approved:

- a credit card;
- a loan secured by a mortgage, charge or other security interest over residential property in Australia;
- a loan for the purchase of a motor vehicle; and
- a loan for personal, domestic or household purposes.

For the hire of a motor vehicle, the Regulations prescribe that the consumer is taken to have entered into a commitment to acquire the principal product or service (in this case, the hiring of the motor vehicle):

- if the consumer makes a prior reservation for the motor vehicle, when the consumer makes the reservation; or
- if the consumer takes possession of the motor vehicle without making a prior reservation, when the consumer takes possession of the vehicle.

The meaning of 'motor vehicle' is defined for the purposes of this new regulation 3B as a motor-powered road vehicle, including a four-wheel drive. This definition ensures that a broad range of motor vehicles sold as principal products or as a service are appropriately captured by the deferred sales model.

The definition is intended to include, in addition to four-wheel drives: passenger cars, motorcycles, and heavy road vehicles (for example, motorhomes, trucks and buses).

Exempt classes of add-on insurance products

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 in the context of the relevant add-on insurance product.

Regulation 12B prescribes, for the purposes of subsection 12DX(1) of the Act, the classes of add-on insurance products exempt from the operation of the deferred sales model.

The effect of the amendment means the prohibitions set out in sections 12DQ, 12DR and 12DS of the Act do not apply to the sale of an add-on insurance product (see section 12DZ of the Act).

It is necessary and appropriate to exempt these classes of add-on insurance products to prevent unreasonable or unacceptable policy outcomes in relation to financial products for consumers. As noted above, these prescribed classes of add-on insurance products provide historical value for money, are well understood by consumers, and there is a risk of underinsurance if certain product exemptions are not made. These exemptions will provide consumers with greater accessibility to appropriate insurance options for insurance products of higher customer value.

Furthermore, subregulation 12B(2) provides that the prescribed classes of add-on insurance products be exempt from the deferred sales model for a period of five years, from the commencement of the regulation.

An exemption period of five years gives providers of add-on insurance products certainty to allow them to invest in systems and align their market and operational practices (for example, consumer policy guidelines, business agreements) with compliance requirements under the deferred sales model. Adjusting systems and practices to ensure compliance with the deferred sales model comes with costs and imposes regulatory burden to business. The timeframe will also allow Government to monitor and review the market and regulatory impact of these exempt classes of add-on insurance products.

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, motorcycles, caravans, motorhomes and other heavy road vehicles, and boats owned (or partially owned) or leased for a fixed period of at-least four months, by a consumer. A consumer can include both an individual and a business.

This regulation uses the term ***designated vehicle or vessel***, which is a 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, caravans and heavy road vehicles (for example motorhomes, buses and trucks), and aligns with the intent to include a range of vehicles within this exempt class of add-on insurance product. This meaning of motor vehicle, when used in regard to any exempt class of insurance product prescribed in the Regulations, is broader than the meaning given in new regulation 3B of these Regulations (which only applies to regulation 3B).

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.

The definition of comprehensive insurance in regulation 12C is intentionally modelled on the exemption provided in section 12DW of the Act, whilst providing a broader policy intention to cover the types and range of motor vehicles and boats owned or leased by individuals or businesses. Regulation 12C also clarifies that this class of add-on insurance product does not include the exempt comprehensive motor vehicle insurance product covered in section 12DW of the Act.

The effect of this class exemption will assist in providing consumers, including businesses, with financial options to ensure a greater range of motor vehicle and boat assets are appropriately insured and mitigate the risk of underinsurance of significant or valuable consumer assets.

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 in regulation 12A.

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. It 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*. However, for the purposes of this class of add-on insurance product, the meaning of ***building*** includes a caravan (see regulation 12A). In contrast to classes of add-on insurance products which include towed caravans in the meaning of motor vehicle, the intent for this class is to include fixed onsite caravans used a place of residence.

Paragraph 12E(1)(c) uses the term ***designated contents*** to capture the contents aspect of this product, 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. However, for the purposes of this class of add-on insurance product, the meaning of ***building*** includes a caravan.

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 or vessel 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 or vessel insurance product and uses the term ***designated vehicle or vessel*** in its broad meaning as defined regulation 12A.

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 own a designated vehicle or vessel, or has use of the designated vehicle or vessel under lease for at least four months; and
- the insurance provides cover for the loss or damage to the property of another person resulting from an accident in which the designated vehicle or vessel is involved, and/or, loss or damage caused by fire or theft.

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

This class is referred to as a 'limited' motor vehicle and vessel insurance product to reflect the intent to provide a class exemption appropriate for third party property insurance products, whist providing some flexibility for consumers, within this class of product, to be offered insurance cover for loss or damage from additional events.

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 and incidental storage. 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. This class further provides insurance cover for loss or damage to items while in storage which may be incidental to the transport or delivery of the item.

The class captures 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 person's specified journey, becoming sick while travelling, loss or damage to personal belongings and for financial loss associated with the costs of transport or accommodation while travelling.

Business-related add-on insurance product

The deferred sales model currently applies to add-on insurance products acquired by consumers, which includes businesses.

The Government considers it appropriate for the deferred sales model to not apply to commercial add-on insurance products sold to businesses where the price of the add-on insurance product exceeds $1000. The intention for this business-related class exemption is to provide commercial flexibility and options for businesses to ensure their assets are appropriately insured, and to mitigate the risk of underinsurance for higher valued business assets.

Therefore, to give effect the Government's intention, an add-on insurance product acquired by consumers who acquire a product or service in the course of carrying on a business are exempt from the deferred sales model, if the price payable for the product exceeds $1000.

This class exemption is intended to provide some flexibility for businesses to purchase add-on insurance products according to their commercial needs and circumstances in the context of the regulatory environment provided by deferred sales model. This threshold is not intended to provide a definition of small business, but rather reflects the characteristics of add-on insurance products sold in this environment and the circumstances in which they are sold.

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 price by the business for the add-on insurance product that exceeds $1000.

Superannuation-related add-on insurance product

The purpose in providing an exemption for superannuation-related add-on insurance products is to provide certainty to 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 in a registerable superannuation entity.

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.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Australian Securities and Investments Commission Amendment (Deferred Sales Model) Regulations 2021* (the Regulations) is to prescribe when a consumer is taken to have entered a commitment to acquire certain commonly sold products or services, and to exempt certain classes of add-on insurance products from the general prohibitions set out in the deferred sales model, for a period of five years.

The Regulations amend the *Australian Securities and Investments Commission Regulations 2001* to prescribe, for the purposes of subsection 12DO(3) of the *Australian Securities and Investments Commission Act 2001* (the Act), when a consumer is taken to have entered a commitment to acquire certain classes of products or services. This amendment is designed to provide clarity for industry and consumers as to when the deferred sales period for add-on insurance products commences, and to ensure deferred sales model achieves the intended policy outcome.

The Regulations further amend the *Australian Securities and Investments Commissions Regulations 2001*, for the purposes of subsection 12DX(1) of the Act, to exempt specific classes of add-on insurance products from the deferred sales model. These exempt classes of products are not subject to any conditions specified in the Regulations.

The purpose for exempting specific classes of add-on insurance products is 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.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.