

WEstjustice

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By email: product.regulation@asic.gov.au

Product Regulation
Australian Securities and Investments Commission (ASIC)

Dear Product Regulation Team

ASIC Consultation – Product intervention: The sale of add-on financial products through caryard intermediaries – Revised Draft Instrument

Thank you for the opportunity to comment on the Australian Securities and Investments Commission's (ASIC) proposed amendments to the draft product intervention order, *Draft ASIC Corporations (Product Intervention – Add-on Motor Vehicle Financial Risk Products) Instrument 2020 (Draft Instrument)*, addressing the sale of add-on insurance and warranty products sold with motor vehicles.¹ The following organisations have contributed to this submission:

- Consumer Action Law Centre (**Consumer Action**)
- Financial Rights Legal Centre (**Financial Rights**)
- WEstjustice

This submission includes updated data and case studies that demonstrate the ongoing significant detriment that consumers will experience until ASIC intervenes in the sale of caryard junk insurance. We also highlight the impact of COVID-19 on consumers, who can ill-afford to continue bearing the costs of junk insurance that continues to be sold in caryards.

DemandaRefund.com has now assisted people to generate 13,218 letters of demand for refunds totalling **\$28 million** from 2016 until 30 June 2020. Over \$10.5 million relates to the car dealership sales channel alone. Not a single user responded that they would have bought the add-on if they knew then what they know now.

Despite years in the spotlight and promises of change, junk insurance continues to be mis-sold by car dealers and warranty providers. DemandaRefund.com has been used to seek refunds for at least **134** add-on financial products sold between 1 January 2019 and 30 June 2020 in car/motor dealerships alone, amounting to over **\$190,820** in refunds demanded—and these are just the cases we know of so far.

ASIC inaction will only see this harm grow.

We do not propose to rehash all the submissions, evidence and arguments we have provided throughout the many consultations on this issue to date. Junk insurance sales practices are continuing to cause harm, and the problems raised in our previous submissions have not been solved. The need to prevent high pressure selling of junk financial products in caryards still remains. We are still seeing caryards selling harmful junk insurance and warranty products,

¹ Consultation documents available at: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-179mr-asic-consults-on-proposed-product-intervention-order-for-the-sale-of-add-on-motor-vehicle-financial-risk-products/>.

despite all the work done in this area. Accordingly, our organisations still consider that the sale of add-on financial products by motor car dealers should be banned.

However, short of a ban, we strongly support ASIC's intention to introduce a deferred sales model (**DSM**) for the sale of financial products at the point of sale in caryards and the restrictions on warranties. We see this intervention as the bare minimum needed to curb problematic junk insurance sales. We strongly support ASIC extending these protections to dealer-issued and direct warranties.

We accordingly encourage ASIC to make the Draft Instrument as soon as possible. The economic fallout from COVID-19 means people cannot afford this ongoing rip-off. The incentives for dealers to prop up revenue by flogging junk products remain strong. The evidence is well established that the sale of junk insurance in caryards is continuing to cause significant detriment to consumers.

ASIC's product intervention power is designed to 'allow ASIC to regulate, or if necessary, ban potentially harmful financial and credit products where there is a risk of significant consumer detriment. The power is intended to enable ASIC to take action before harm, or further harm, is done to consumers.'² Despite Parliament's intent that ASIC use its power to intervene proactively to prevent harm, 10 months since ASIC's Original Instrument was released for consultation—and 3 years since Consultation Paper 294—ASIC has proposed further commencement delays. Furthermore, ASIC has proposed to water down conduct restrictions and has removed specific protections from the consumer roadmap. Any further delays and rollbacks of protections pose an unacceptable risk of consumer harm, and would be at odds with the purpose of ASIC's intervention powers.

The Draft Instrument would significantly reduce the detriment caused by junk financial products being sold in caryards. However, it will not stop junk financial products from being sold through caryards altogether. The Draft Instrument will still leave loopholes that can be exploited by auto dealers, insurers and warranty providers. Our comments below address the ways in which we think the Draft Instrument could be improved to better protect consumers. To the extent that ASIC considers limitations on its product intervention power (**PIP**) hinders ASIC's ability to address these suggestions, we encourage ASIC to seek reform to make the PIP more robust in future.

Our key recommendations on the Draft Instrument are:

- Reduce or remove the commencement delays;
- Explicitly ban unfair sales conduct known to occur in caryard add-on sales, such as pre-filling forms, and representing that add-ons are required or will help obtain car finance;
- Amend the definition of 'arranging conduct' and delay the availability of the online consumer roadmap to prevent dealers from pressuring people to open and use the online consumer portal while still at the dealership; and
- Remove exclusions for junk insurance sold for no consideration, or as the result of an extension to a motor vehicle loan or lease.

This submission should be read in conjunction with the joint submission by Consumer Action and Financial Rights to ASIC's Consultation Paper 324 (**CP324**), commenting on the original draft product intervention order (**Original Instrument**).

A summary of recommendations is available at **Appendix A**.

Updated data from DemandaRefund.com is available at **Appendix B**.

Information about the contributors to this submission is available at **Appendix C**.

² *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019 Explanatory Memorandum* para 2.7.

Recommended changes to the Draft Instrument

Question 1: Please summarise your views on any of the changes made to the revised draft product intervention order, including whether the changes would be more or less effective in addressing the significant consumer detriment previously identified by ASIC, including in CP 324. Please explain the reasons for your position.

The amendments made in the Draft Instrument are a mixed bag. There are some changes that clearly enhance consumer protections and the effectiveness of the Draft Instrument. Disappointingly, other changes to the Draft Instrument reduce the protections for retail clients. It also appears most of the recommendations made in Consumer Action and Financial Rights' submission to CP324 (**Original Submission**) have not been adopted.

As a general comment, the changes in the Draft Instrument make the operation of the Order more complex than the Original Instrument. In the absence of a written explanation for the reasons for the proposed amendments and intended impact, the purpose of some of the changes is not obviously apparent.

Table 1 below indicates the sections of the Draft Instrument that we have concerns about, and the relevant parts of the detailed feedback that relates to those sections (in response to both questions 1 and 2).

Section	Relevant feedback
1	Nil
2	See ' Commencement timeframe too long '
3	Nil
4	See ' Capturing referral arrangements '
5	Nil
6	See ' Commencement timeframe too long ' and ' Capturing referral arrangements '
7	See ' Watered down conduct restrictions '
8	See ' Universal junk warranty restrictions '
9	See ' Exclusion for "free" products ' and ' Extension exclusion ' (both response to Question 2)
10	Nil
11	See ' Removal of "unsuitable class" requirement altogether ' and ' Capturing referral arrangements '
12	Nil
13	See ' Universal junk warranty restrictions ', ' Exclusion for "free" products ', ' Extension exclusion '

Commencement timeframe too long

Section 2 of the Draft Instrument introduced a three-month general transition period before the Instrument comes into effect. In addition, the obligations imposed by section 6 of the Draft Instrument do not commence for an additional six months after the commencement date of the Instrument—a total of 9 months. We oppose this new delay to the commencement timeframe for the Instrument, and strongly oppose the six-month delay to the commencement of section 6 of the Draft Instrument.

Car dealers and junk insurance product issuers were put on notice of the proposed product intervention by ASIC in CP324 nearly a year ago, after many years work by ASIC in the caryard add-on market and a Royal Commission

into the banking and insurance sector. ASIC proposed a deferred sales model three years ago.³ The prospect of this reform has been intended for years. The product intervention is needed because the industry's conduct and mis-selling of junk financial products has caused significant detriment to consumers for decades both in Australia⁴ and abroad.⁵ This intervention is addressing a serious scandal that was wholly created by this industry. There is no reason for there to be any further delay to the commencement of the Instrument. Giving industry a longer lead time is a decision to put the interests of the junk insurance industry ahead of consumers. In short – the delay facilitates a further nine months of consumer harm in addition to the years of delays and inaction.

At the very least, we strongly encourage ASIC to reconsider the additional six-month delay imposed by subsection 6(1). Subsections 6(2) and (3) (in giving effect to Part 4), which introduce a DSM, are the most important parts of the Draft Instrument. The introduction of a DSM was recommended by Commissioner Hayne in the Final Report of the Financial Services Royal Commission.⁶ It would largely stop the high pressure, misleading sales model that has ripped off Australians purchasing cars for decades. There is absolutely no justification for a nine-month delay to the implementation of this provision.

Considering the lifespan of a product intervention order is only 18 months (unless Ministerial approval under section 1023H(4) of the *Corporations Act 2001* is provided to extend the order), this deferral is even more non-sensical. It would mean that the most important protections in the Draft Instrument would not apply for half of the lifespan of the Order. Further, if ASIC decides to seek Ministerial approval to extend the Order's life, it must provide a report to the Minister, before the Order ceases to be in force. Surely having a longer period to assess the impact of the Order would also be necessary to help ASIC determine whether the Order should be extended, amended or otherwise.

Too many critical financial services reforms have already been delayed, purportedly due to the impact of COVID-19. This is in sharp comparison to other sectors where reforms have pushed ahead, in recognition of the need for industry to lift its standards during a time of heightened consumer vulnerability. For example, the Victorian energy regulator has proceeded with significant reforms to energy contracts (such as limiting price increases to once per year and capping late payment penalties), has capped energy prices in embedded networks to a fair regulated price and will be requiring retailers to provide additional support to customers during COVID-19.⁷

The implementation of the Order is consistent with multiple aspects of ASIC's stated regulatory mission, such as to "act against misconduct to maintain trust and integrity in the financial system", and "change behaviours to drive good consumer and investor outcomes."⁸ A delay is not. A delay in implementation allows known systematic misconduct leading to poor consumer outcomes to continue. A delay would counter ASIC's stated vision of a fairer, stronger and more efficient financial system. ASIC must proceed with reform in the face of industry self-interest, as other regulators have done.

RECOMMENDATION 1. The order should commence from the date the Order is made. At the least, the additional six-month delay to the commencement of subsections 6(2) and (3) should be removed or reduced.

³ ASIC, *Consultation Paper 294*, para 6(a), 24 August 2017: <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-294-the-sale-of-add-on-insurance-and-warranties-through-caryard-intermediaries/>.

⁴ The Australian Financial Counselling and Credit Reform Association (now known as Financial Counselling Australia) released reports as early as 1987 regarding CCI. C Clothier and G Renouf's report *Need or greed: a report on consumer credit insurance*. This was followed in 1991 by G Renouf (1991) *Thirty-one cents in the dollar: a report on consumer credit insurance from the consumer's perspective*.

⁵ Emily Saint-Smith at Risk Info Magazine, a financial services industry publication, reports that PPI first emerged in the UK in the 1990s and a 'scandal was brewing' from the early 2000s. 'UK insurance scandal: Could it happen here?' *Risk Info Magazine*, edition 16: <http://magazine.riskinfo.com.au/16/uk-insurance-scandal-could-it-happen-here/>.

⁶ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report: Volume 1*, page 288.

⁷ <https://www.esc.vic.gov.au/media-centre/new-protections-energy-customers-take-effect>.

⁸ <https://asic.gov.au/about-asic/what-we-do/our-role/asic-vision-and-mission/> (accessed 19 August 2020).

Watered down conduct restrictions – removal of unconscionable conduct and manipulation

We are disappointed to see that section 7 of the Draft Instrument provides a limited version of the restrictions imposed on unfair sales conduct that were contained in section 8 of the Original Instrument. The new section now only restricts intermediaries from requiring a retail client to sign an acknowledgement to the effect that they may suffer financial loss if they do not obtain an add-on motor vehicle financial risk product (**Add-on Product**).

The previous section 8 also restricted intermediaries from:

- making representations to the same effect; or
- engaging in conduct using a technique that should not in good conscience have been used; or
- engaging in conduct which manipulates the client in relation to an Add-on Product.

We understood this section was intended to address the issues raised in paragraph 132 of CP324 – particularly, to stop the use of pressure selling or other unfair tactics at the point of sale.

In the Original Submission, we recommended that ASIC amend the Original Instrument to specifically ban intermediaries from engaging in pressure selling and unfair tactics, as we were concerned the original provision would not capture all types of this conduct. Obviously, our concern in this regard is even greater as section 8 of the Draft Instrument has lessened coverage further.

The removal of the representations restriction previously contained in section 8(2)(a) of the Original Instrument is extremely disappointing. Many of the people we speak with who have been sold junk Add-on Products report being told by the dealer that if they did not buy the Add-on Product, they were exposing themselves to financial risk. It is also common feedback received from users of our online website tool, DemandaRefund.com.

This could leave an obvious loophole for intermediaries to exploit. While the sale of the Add-on Product may not occur in the caryard, the intermediary can still create the perceived need for a consumer to subsequently purchase an Add-on Product, by misrepresenting its apparent financial importance. This leaves the opportunity open for car dealers to misleadingly make use of their perceived position of expertise. The original subsection 8(2)(a) was an important, and (we think) sufficiently specific, restriction. Introducing the restriction on representations would be a valuable deterrent, and this conduct should be punishable, if evidence it occurred is available (such as repeated claims of this conduct by multiple retail clients).

Consumer Action Case Study – Ray’s story

Ray (name changed) told us how he was sold add-on insurance when he purchased a car from a caryard in Perth in January 2020, with a loan arranged at the caryard:

The car cost \$24,990, but the total loan was for \$29,491, which also covered:

- Consumer credit insurance, for \$1,855;
- GAP insurance, for \$952; and
- A 5 year warranty, for \$2,850.

He didn’t really understand what these products did, but agreed to purchase them largely because of the high pressure sales tactics used. The dealer said everyone who purchases a car with a loan gets CCI and GAP insurance, and he really should get them. He was told that GAP insurance was really important in case his car was written off and he couldn’t pay the remainder of the loan.

Ray told us that his car’s agreed value under his comprehensive car insurance (also arranged at the caryard) was over \$26,000, leaving a gap between this and his loan of around \$3,000, yet he reported that he had paid for ‘level 3’ coverage under his GAP policy, of up to \$10,000.

Ray repeatedly said he wasn’t interested in the warranty, but eventually agreed to purchase it because he was told that everyone who buys a car needs this, and he would be stupid if he didn’t get it. He remembers the staff member flicking through the pages of the warranty document, vaguely explaining what it covered, but not giving him a proper chance to read it.

Within a few months of purchasing the car, Ray told us he had to replace the battery and the front left indicator, neither of which were covered by the warranty.

Ray used Consumer Action’s DemandARefund.com tool to send letters to both the insurance and warranty dealers, seeking a refund on the CCI, GAP insurance and extended warranty. He tells us he was told by both companies that he had to take it up with the dealer. When we last spoke to Ray, he told us after repeated attempts, the dealer had finally agreed to refund him for the GAP insurance and warranty.

Note: Ray’s story is an updated, deidentified version of a case study provided to ASIC by Consumer Action in letter dated 3 July 2020

We are also disappointed by the removal of the general prohibition on unconscionable conduct imposed by section 8(1) of the Original Instrument, without replacing it with any restriction on pressure selling or unfair sales tactics. Considering the abundance of cases where the conduct of caryard intermediaries had resulted in poor consumer outcomes, it is clear additional restrictions are needed to address these tactics. The existing unconscionable conduct laws have not stopped dealers and insurers mis-selling hundreds of millions of dollars of junk insurance over a multi-decade scandal, and cannot be relied on as a sufficient mechanism to prevent harm. Unconscionable conduct laws have consistently failed to protect consumers from significant harm or provide an accessible means of recourse.⁹ Dealers’ selling tactics are clever and unfair. ASIC should replace this section with a specific restriction on the use of pressure selling or unfair sales tactics by intermediaries. This could be designed as marketing conduct that restricts the freedom of choice of a consumer.¹⁰

In addition, we recommend prohibiting the following types of conduct specifically in the Order:

⁹ See for example, *James 2 Pty Ltd v Stubbings* [2020] VSCA 200.

¹⁰ The design of an unfair trading prohibition is discussed in our submission to the Treasury consultation on the ACCC Final Digital Platforms report: <https://consumeraction.org.au/20190902-digital-platforms-fairness/>.

- Pre-filling application forms for Add-on Products for retail clients, or requiring retail clients to pre-fill application forms for Add-on Products, as part of the purchase or lease process;
- Arranging for a retail client to complete the online consumer roadmap while at the caryard (this could otherwise be achieved by delaying the point at which the online consumer roadmap is made available, or clarification that this would be treated as 'arranging conduct');
- Indicating to retail clients that purchasing an Add-on Product is in any way linked to finance approval or interest rates on any loan or lease, or is otherwise mandatory;
- Packaging other 'extras' that come with a vehicle purchase as being linked to, or conditional on, the purchase of an Add-on Product;
- Price shrouding techniques, as described in paragraphs 136-137 and Case Study 6 of ASIC Consultation Paper 294;
- Imposing penalties on consumers if insurance and/or warranties are not obtained.

Tables 2 to 4 below indicates how often users of DemandaRefund.com reported the use of pressure or other misleading sales tactics being used in the sale of Add-on Products when the seller type 'auto dealer' was selected (full tables are available in **Appendix B**). While the DSM will help address many aspects of this, including additional restrictions would only strengthen the impact of the Order in this regard.

Table 2: User responses to closed questions – Consumer Credit Insurance sold by car dealers

Question	Yes %	No %
Overall, do you think the sales process was fair?	10.37%	89.63%
Important question: Please read and answer carefully. If you had known what you know now, would you have decided to buy the insurance?	0%	100%
Did the salesperson explain your 'cooling off' rights?	12.93%	87.07%
Did the salesperson give you information that was misleading?	58.24%	41.76%
Did the salesperson pressure you into buying the insurance?	65.73%	34.27%
Did the salesperson tell you that you had to buy the insurance?	63.30%	36.70%
Did the salesperson use other unfair sales tactics?	52.00%	48.00%
Did this information or lack of information influence your decision to buy the insurance?	82.30%	6.30%
Did you have a pre-existing health condition when you took out the policy?	3.22%	95.07%
Did you know you had bought the insurance?	59.88%	40.12%
Did you receive a product disclosure statement (PDS)?	46.55%	53.45%
Do you think the salesperson explained all the important exclusions and limitations?	1.51%	98.49%
Were you aged 60 or over when you took out the policy?	1.25%	90.04%
Were you aware the cover might be limited because of your personal circumstances when you took out the policy?	2.02%	75.94%
Were you given an opportunity to go through the documents before agreeing to buy the insurance?	23.70%	76.30%
Were you retired when you took out the insurance?	0.27%	99.27%
Were you self-employed when you took out the insurance?	6.76%	90.94%
Were you unemployed when you took out the insurance?	3.60%	95.93%
Were you working on a casual/temporary/seasonal/non-renewable basis when you took out the insurance?	11.52%	86.18%
Were you working part-time when you took out the insurance?	12.32%	85.37%

Table 3: User responses to closed questions – GAP insurance sold by car dealers

Question	Yes %	No %
If you had known what you know now, would you have decided to buy the insurance?	0%	100%
Overall, do you think the process was fair?	8.33%	91.67%
Were you given an opportunity to go through the documents before agreeing to the purchase?	33.42%	66.58%
Do you think the salesperson explained all the important exclusions and limitations?	2.51%	97.49%
Did you receive a product disclosure statement (PDS)?	46.90%	53.10%
Did you know you had bought the insurance?	61.86%	38.14%
Did this information or lack of information influence your decision to buy the insurance?	87.31%	5.76%
Did the salesperson use other unfair sales tactics?	51.19%	48.81%
Did the salesperson tell you that you had to buy the insurance?	64.12%	35.88%
Did the salesperson pressure you into buying the insurance?	64.54%	35.46%
Did the salesperson give you information that was misleading?	60.50%	39.50%
Did the salesperson explain your 'cooling off' rights?	14.67%	85.33%
Did the salesperson explain the full cost of the insurance?	18.79%	81.21%

Table 4: User responses to closed questions – Extended warranties sold by car dealers

Question	Yes (%)	No (%)
If you had known what you know now, would you have decided to buy the warranty?	0%	100%
Overall, do you think the sales process was fair?	14.15%	85.85%
Did the salesperson explain the full cost of the warranty?	34.76%	65.24%
Did the salesperson explain your 'cooling off' rights?	13.69%	86.31%
Did the salesperson give you information that was misleading?	66.67%	33.33%
Did the salesperson pressure you into buying the warranty?	69.90%	30.10%
Did the salesperson suggest that the warranty would be the only protection you'd get if something went wrong with the car?	74.57%	25.43%
Did the salesperson tell you that you had to buy the warranty?	48.98%	51.02%
Did the salesperson use any other unfair sales tactics?	44.09%	55.91%
Did this information or lack of information influence your decision to buy the warranty?	90.45%	8.93%
Did you know the warranty was optional?	49.66%	50.34%
Did you know you had bought the warranty?	84.42%	15.58%
Did you receive a product disclosure statement (PDS)?	41.53%	58.47%
Do you think the salesperson explained all the important exclusions and limitations?	3.09%	96.91%
Were you given an opportunity to review the documents before agreeing to the purchase?	33.78%	66.22%

RECOMMENDATION 2. Replace section 7(2) of the Draft Instrument with section 8(2) of the Original Instrument.

RECOMMENDATION 3. Amend the Draft Instrument to explicitly ban intermediaries from engaging in specific pressure-selling and other unfair tactics.

Universal junk warranty restrictions

We strongly support the introduction of section 8(5) in the Draft Instrument, and its expansion to require that all warranty products comply with the requirements in section 13, including so-called 'dealer issued' warranties. These

are important basic requirements for warranties. If a warranty fails to comply with any of these requirements, it is almost certainly going to be junk. We accordingly support these restrictions applying to warranties irrespective of how they are issued.

The harm caused by junk warranties and mechanical breakdown insurance occurs regardless of whether the product is bought through a caryard intermediary, or directly from an insurer or warranty provider. Our submission to CP324 sets out detailed data on extended warranties from DemandaRefund.com across sales channels. It is clear that 'significant consumer detriment' arises irrespective of sales channel for these junk products. There is no good reason in principle or practice that direct sales should be carved out from the product intervention. These failings are a result of poor product design, so the intervention is required for all products regardless of sales channel.

Applying the warranty restriction to all warranties would have a number of benefits:

- Fairer and more equitable protections for consumers regardless of sales channel—it would be unfair that some people would not be entitled to a pro-rata refund, or must endure onerous servicing requirements, simply because they bought a warranty directly from a warranty provider;
- Avoid the consumer confusion that would otherwise arise from having different consumer rights and remedies depending on the sales channel;
- Reduce the risk of avoidance and regulatory arbitrage, where junk warranties move from intermediated sales through car dealers to direct sales; and
- Remove the commercial disadvantage that would be faced by insurers or warranty providers that wanted to apply the obligations to all warranties regardless of sales channel.

We also strongly support the inclusion of subsections 13(b) and (g), which require that mechanical risk products must provide coverage for a minimum of 12 months, and must not contain cancellation fees. These are important and very reasonable requirements that reduce the risk of warranties being sold that cause detriment to consumers.

However, we do not agree that the application of section 8(5) should be excluded from the situations described in subsections 9(1) and (2) – the exclusions for 'free' products and extensions of loans and leases. Our response to question 2 below provides further detail on our concerns here.

Removal of 'unsuitable class' requirement altogether

We oppose the proposed removal of the knock-out question process that was contained at section 6(2) of the Original Instrument. As set out in CP324, the knock-out question process was intended to help restrict sales of unsuitable products to people that are unlikely to provide them with a significant benefit.¹¹

The removal of this requirement altogether is contrary to the ASIC's own commentary in CP324, and would significantly increase the risk of consumers being sold unsuitable junk products. It essentially means that an intermediary without an Australian Financial Services Licence is free to offer unsuitable financial products (with the exception of warranties falling foul of section 12 or 13) to consumers after the deferral period. We are strongly opposed to this.

These knock-out questions would complement the introduction of the design and distribution obligations (DADOs). Regardless, ASIC has disappointingly deferred the implementation of the DADOs to October 2021 so imagined overlap is largely irrelevant.

DemandaRefund.com data at **Appendix B** reveals that many people continue to be sold add-ons where relevant exclusions may apply and prevent a claim on the policy—for example, where they were employed casually, not

¹¹ ASIC CP324, at para 141-142.

employed, or had a pre-existing health condition. Over 66% of users who made demands on Consumer Credit Insurance responded that they had life insurance through their superannuation (see Table 10).

ASIC should reinstate the knock-out question protections in the Original Instrument. We also recommend strengthening the knock-out question requirements in the manner recommended in our Original Submission (see Recommendations 8 and 9 from the Original Submission). These recommendations related to the need for:

- ASIC to be involved in a transparent process to help develop 'knock-out' questions; and
- the provision be amended to reflect the intent described in CP324, being that Add-on Products should not be offered to people who are unlikely to receive a significant benefit from them.

RECOMMENDATION 4. Reinstate the 'knock-out' concept contained in subsection 6(2) of the Original Instrument.

RECOMMENDATION 5. Amend the 'knock-out' question concept to require ASIC oversight of the questions asked by salespeople, and ensure Add-on Products cannot be offered to people who would not receive a significant benefit from them.

Capturing referral arrangements

We support defining 'arranging conduct' to clarify the specific conduct intermediaries are prevented from engaging in (unless in accordance with the section 11 requirements). However, we are concerned that the definition does not go far enough to stop all methods that may be used to facilitate junk Add-on Product sales. We suggest two specific additions to clarify the definition.

Firstly, we recommend specifically clarifying that the definition of arranging conduct includes helping a retail client to complete the online consumer roadmap, in person. This would help to ensure that the online consumer roadmap enables consumers to escape pressure sales environments as intended, before deciding if they are interested in purchasing Add-on Products. If this conduct is not included, we are concerned that auto dealers would make filling out the online consumer roadmap a step that retail clients can take in store, under pressure or implied direction.

Secondly, we recommend clarifying that the definition of arranging conduct includes making referrals to product issuers of Add-on Products. On our reading of sections 6 and 11, it is arguable that an intermediary could still refer a retail client to a product issuer at any time, without mentioning Add-on Products. After the deferral period ends, as long as the intermediary does not specifically *arrange* for an Add-on Product to be issued, they could be permitted to both talk about the 'importance' of Add-on Products, and mention product issuers generally. We have concerns that if this conduct is permitted by the Draft Instrument, looser referral models might still be used to push retail clients toward junk products.

RECOMMENDATION 6. Confirm that arranging conduct includes an intermediary directing, helping or assisting a retail client complete the online consumer roadmap in person.

RECOMMENDATION 7. Confirm that arranging conduct includes an intermediary referring a retail client to a product issuer, or suggesting that a retail client contact a product issuer about an Add-on Product.

Question 2: Do you consider that any further changes should be made to the revised draft order before ASIC proceeds to a final decision on whether to exercise the product intervention power?

Exclusion for "free" products

We hold the same concerns raised in the Original Submission about the exclusion of products from the application of the Draft Instrument which are provided for no consideration—products thrown in for 'free' or as a sweetener to get the deal done on the sale of the car. We recommend that ASIC to remove section 9(1). As stated in our previous submission, the reality is that the consumer *always* pays for the product, either directly or indirectly. We

are concerned that creating this loophole will incentivise dealers to restructure add-on products to appear free and hide the cost in other products.

Harm can come from a 'free' product, particularly where it is used to convince a person to buy a car that turns out to be a lemon. These warranties contribute to an illusory belief that a consumer has effective financial protection from buying a lemon car. Offering a free warranty may give people false comfort that if there are issues with the car, the warranty will cover it. However, our experience is that junk warranties rarely assist people. We're concerned that people on low or fixed incomes buying second-hand cars are at higher risk of being sold lemon cars and given false comfort by the addition of the 'free' warranty. The market price of a second-hand car is also highly variable, such that dealers are able to increase the price of the vehicle yet purport that the warranty product is 'free'. Competition is limited in playing a role protected against this harm, particularly in relation to purchasers that are in desperate need of a vehicle.

At the very least, we recommend ASIC remove this exclusion from applying to subsection 8(5). Warranties that do not comply with section 13 are almost undoubtedly junk products that offer consumers little to no value. Considering ASIC's finding that on average, 96 per cent of low-value warranties are given away for free,¹² we are particularly concerned that this loophole would paint a path for junk products to continue to be sold to consumers in harmful ways.

This is still conduct that is causing significant detriment, so in our view falls within the remit of what must be addressed by the Draft Instrument.

RECOMMENDATION 8. Remove the section 9(1) exclusion for Add-on Products issued for no consideration.

Extension exclusion

As also stated in the Original Submission, there is no good reason for subsection 9(2) to exclude Add-on Products that are extended as a result of extending the term of the car loan or lease from the application of the Draft Instrument.

As with the exclusion for 'free' warranties, allowing warranty products to be extended that do not meet the requirements of subsection 8(5) is concerning. A warranty that doesn't meet these requirements will almost always be junk. There is no reason to leave consumers who are extending financial arrangements as easy prey for junk product sales.

We do not see this provision as necessary to comply with the limit on the product intervention power to apply to existing contracts, under section 1023D(1) of the *Corporations Act* 2001. If arranging conduct is occurring, we would view the extension as the acquisition of a new financial product, to which a product intervention order could apply.

RECOMMENDATION 9. Remove the section 9(2) exclusion for Add-on Products sold as a result of an extension to a motor vehicle loan or lease.

The need for guidance from ASIC

As mentioned above, the Draft Instrument is complex. We think the likelihood of compliance would be significantly increased if ASIC issues a straightforward, plain English guidance on how the Order works to be made available for all stakeholders including insurers, car dealerships and their sales representatives. The likelihood of compliance will be far greater if the meaning is accessible and understandable.

This would not necessarily require a detailed regulatory guide – even a brief, easily accessible document summarising the restrictions would be a useful resource for car dealers and consumers to understand what is

¹² ASIC CP324, at para 195.

required under the Order. We doubt many car dealers will refer to the Explanatory Statement accompanying the Order and relying on industry-led information campaigns is unrealistic.

RECOMMENDATION 10. Publish brief, plain English guidance on the operation of the Order, once it is made.

Question 3: Do you consider there is a significant risk of avoidance of the revised draft order as a result of any changes made by ASIC? If so, should ASIC introduce additional measures to address that risk?

Yes, as discussed in our response to question C7Q7 of CP324 in the Original Submission, we are very concerned that car dealers, insurers and warranty providers will seek to avoid the operation of the Draft Instrument.

As ASIC is well aware, this is an industry with a long history of avoidance.¹³ As the representative of the Insurance Council of Australia admitted in evidence to the Financial Services Royal Commission, car dealers have become dependent on commissions and volume-based bonuses that were likely to create incentives to engage in poor sales practices.¹⁴ There is no level of reassurance from the auto dealer industry that should convince ASIC it is now dealing with a group not intending to exploit loopholes, and treat consumers with respect.

The intended effect of the Draft Instrument will only be achieved if it is robustly made. We strongly encourage ASIC to insert a general anti-avoidance provision, intended to capture conduct clearly intended to avoid the restrictions in the Draft Instrument. An anti-avoidance provision would help to ensure the effectiveness of the Order.

Additionally, specific aspects of the Draft Instrument we consider to be specifically susceptible to gaming or avoidant conduct, that could be improved, include:

- Defining Add-on Products by way of a restrictive definition. This leaves a potential loophole whereby new junk products may be developed and sold that fall outside the boundaries of the restricted definitions.
- The start of the deferral period not being aligned with taking possession of the vehicle will allow for additional opportunities for pressure sales conduct, such as upon car collection or delivery.
- Enforcing the restriction on intermediaries *initiating* contact will be difficult to enforce and could be easily bypassed by motor dealers creatively causing retail clients to initiate contact about Add-on Products. Further, proving an intermediary did not *initiate* contact will often come down to the consumer's word against the intermediary.
- allowing motor dealers to make verbal representations about the risks involved in not acquiring an Add-on Product.
- Excluding Add-on Products provided for no direct consideration.

¹³ Productivity Commission, Report No 89, *Competition in the Australian Financial System*, 29 June 2018, p 430.

¹⁴ Evidence of Rob Whelan, 21 September 2018, para 6408 available at: <https://financialservices.royalcommission.gov.au/public-hearings/Documents/transcripts-2018/transcript-21-september-2018.pdf>.

Financial Rights' Case Study – Jeanette's Story C206990

Jeanette got a car loan in 2013 which was arranged with finance through the caryard salesman. The salesman also advised her to take out insurance so that if she became unemployed, the insurance would cover the repayments. She ended up having to leave her job in 2017 to care for her mother, and when her mother recently died she was moved from carer's payment to job seeker. She fell behind in her payments to the bank and they refused her request for a hardship variation. She ended up lodging a dispute in AFCA about the bank, and a dispute about the insurance company, because she discovered that she wasn't covered for unemployment, only Total and Permanent Disability. After lodging this dispute she ended up receiving \$3000 from the insurance company, but was unsure exactly what this payment was for. We assume it was a refund of her premium, but this was not communicated to her nor did it account for any interest she paid on the premiums.

She has now received a default notice on the overdue car loan. Jeanette has assets which she is trying to sell to clear the car loan debt, but does not want the car repossessed in the meantime, and cannot afford to clear the arrears or payout the loan at this time.

Relevance of COVID-19 pandemic

Question 4: Do you consider that the consequences of the COVID-19 pandemic have had, or are likely to have, any effect on the significant consumer detriment identified by ASIC in CP 324? Please provide evidence in support of your response.

The proportion of Australians experiencing financial hardship is currently increasing, and will continue to increase for many months and years, with the full economic impact of the COVID-19 pandemic yet to be felt across Australia. CPRC reports that 12 million Australians are concerned about the impact of COVID-19 on their financial wellbeing; 1 in 5 are 'very' concerned.¹⁵ With increased hardship, effective consumer protections are more important than ever. It has also significantly increased the level of urgency and pressing need for an effective intervention.

People are living on tighter budgets. Every extra dollar someone is charged when making a big purchase is going to matter. This is even more so when this is a dollar is financed, which meaning the true cost will be even larger. The harm these junk sales cause will be amplified by the increased hardship created by COVID-19.

Further, many people without employment or resorting to casual employment may not be caught by exclusions under consumer credit insurance policies. We have had clients contact us during this period hoping to be able to rely on these insurances they purchased but found out they were not covered, when they believed they would be. Casual workers have been some of people hardest hit by COVID-19 – the last thing they need is junk insurance when trying to buy a car for work, perhaps as a delivery driver.

Caryards are experts in selling cars, not financial products. Further, we are already seeing businesses—whether due to desperation or opportunism—market themselves in ways that aim to exploit the increased fear and uncertainty that challenging financial times bring. These are products that have long been misleadingly sold on the suggestion they offer financial protection. Effective and timely intervention is essential to protect the increasing numbers of financially strapped consumers who might be more susceptible to these sales tactics.

Furthermore, second-hand car sales volumes appear to be increasing.¹⁶ People struggling financially are more likely to purchase a second-hand car. In our experience, it is these consumers, who might find themselves in

¹⁵ Consumer Policy Research Centre, *Consumers and COVID-19: from crisis to recovery*, June 2020, p 5: <https://cprc.org.au/2020/06/25/consumersandcovid/>.

¹⁶ See: <https://www.theaustralian.com.au/life/motoring/coronavirus-secondhand-car-sales-rebound-driven-by-people-seeking-alternatives-to-buses-trains/news-story/ec2db0fe758033f908edf85ec17b378>.

vulnerable circumstances, who tend to be mis-sold the trifecta: a lemon car, high-cost point-of-sale finance and junk insurance to boot.

If a consumer with some financial stability is sold a lemon car and find out the expensive warranty offers them no help, they will be financially harmed and very frustrated, but likely still get by. The people we see who junk car sales hurt the most are those doing it tough. Finding out your warranty is useless hits a lot harder if it means you can't afford to pay to fix your car and are left without transport to get to work or university. Sadly, the fallout of COVID-19 will leave more people at risk of falling into this position.

Consumer Action Case Study – Danielle's story

Danielle (name changed) lives in regional Victoria. She has three children under 10 and is a survivor of family violence. In April 2019, Danielle sought to trade in her car for another because the car triggered memories of family violence for her.

Danielle told us that she contacted a Melbourne dealership to enquire about a used car she saw advertised online. Danielle arranged a date and time in May 2019 to test drive the car at their dealership but on the day the car was at their other caryard, across town.

Danielle reported that while at the original caryard (without seeing the car), she was asked to sign documents to purchase the car and to take out a loan. Danielle signed the papers without understanding them, in part because she was being rushed and had her children with her who were all tired and hungry. The purchase also included a 3-year warranty from Integrity Car Care, which added \$1485 to the loan.

Danielle told us that the car broke down on the way home from the dealership, two hours out of Melbourne. She called the dealership and asked for her old car back, but this was refused. She said the dealership offered to have their mechanic look at it, but Danielle had no way to get the car back to Melbourne. Danielle didn't know what to do for a few hours, until the car fortunately started again.

Danielle told us that a few weeks later, the car would not start again. She called the dealership, who told her it was not their problem. Danielle contacted a local mechanic who fixed the car and was able to claim on the warranty.

Danielle told us that in November 2019, the car's steering failed. Danielle was told the repairs weren't covered by the warranty, and she had to seek assistance from a charity to pay for the repairs.

We spoke to Danielle in June 2020, and she told us that the car's motor and radiator are broken and it won't start. The caryard has asked for a quote to determine if the repairs will cost more than the \$10,000 exclusion limit under the warranty. Mechanics have told Danielle they cannot provide her with a quote, and that the repairs would cost more than the car is worth. This leaves Danielle with a useless car and a warranty that is of no help.

Updated data from DemandaRefund.com

DemandaRefund.com continues to receive considerable traffic in relation to caryard junk insurance sales, including on junk insurance sold recently. The table below sets out claims made using DemandaRefund from 1 October 2019¹⁷ where the add-on was sold to the consumer between 1 January 2019 to 30 June 2020. As can be

¹⁷ This is the date from which Consumer Action started collecting this data field from DemandaRefund.com users.

seen, in just 8 months of data collection, the website has been used to generate a total of **134** letters seeking refunds for junk products recently sold by car dealers, totalling demands of nearly **\$190,820**.

Table 5: Demands on add-on products sold between 1 January 2019-30 June 2020 – breakdown by seller type

Seller Type	Total Refunds Demanded (\$)	Letters generated
Auto Dealer	190.82K	134
Financing Company	68.45K	60
Bank	43.92K	38
Insurance Provider	19.57K	9
Credit Union	7.91K	3
Other	4.45K	4
Retailer	0.06K	1

These figures clearly demonstrate the significant amount of money consumers have been charged by car dealers, for financial products they did not want or were not suitable for their needs.

As has been the case for all past users of DemandaRefund.com, not a single user stated they would have decided to buy the CCI, GAP insurance, or warranty, knowing what they know now.

However, perhaps the most concerning trend revealed by DemandaRefund.com is that there are still sales of these junk products occurring in caryards across Australia. It appears these sales are occurring in much the same way as they ever have, even after all the work ASIC and others have put into stopping them.

Some of these sales are extremely recent. At least eight of these letters were produced for consumers who reported that these products were sold to them **after 10 December 2019**. Most worryingly, a review of the circumstances in which these users reported that the products were sold to them largely reflect the same deceptive and unfair sales practices that have been in use in caryards for years. Some reported they didn't understand what the products they were buying did, some say they were told the purchase was mandatory, and some didn't understand they were paying for the products.

The same poor value products are still being sold and the same consistent sets of circumstances in which these sales are made in caryards continue to arise:

- some were completely unaware they purchased these junk add-on products;
- some were told their purchase of the financial product was a mandatory condition of finance; and
- some were told they were purchasing a valuable financial product by the dealer, only to learn of the broad and significant exclusions contained in the products when they sought to claim from them.

We hold significant concerns that caryards are still regularly mis-selling these products in blatant disregard of recent policy debates, the foreshadowed ASIC product intervention, and the findings from the Financial Services Royal Commission. As has been the case for many users of DemandaRefund.com, many consumers may only realise they were sold a junk financial product with their car many years down the track, when they unsuccessfully seek to make a claim, or are prompted to review their paperwork. We expect the number of refund claims on add-on products sold in 2019 and 2020 to grow significantly over the coming years.

Question 5: Please provide any information on likely compliance savings or costs, the likely effect on competition and other impacts, costs and benefits.

The proposed intervention will:

- improve competition by reducing dealers' situational monopoly at the point of sale, which has allowed high and uncompetitive prices to be charged. As the Productivity Commission found, the caryard distribution channel does not provide consumers with adequate capacity to compare different products

such as the cost of an add-on product sold by one dealership to the same or similar products sold by another dealership.¹⁸ This gives insurers and product retailers that sell add-on insurance price setting power.

- improve competition by levelling the playing field for warranty providers—at the moment, 'dealer-issued' warranties are not regulated like mechanical risk insurance and regulated third-party warranties.
- reduce remediation and compliance cost for firms following decades of mis-selling—we note that ASIC has announced over \$130 million in remediation for over 245,000 consumers for caryard add-on insurance and extended warranties, and over \$28 million in refunds have been demanded through DemandaRefund alone;
- have significant beneficial impacts for consumers through reduced sales of junk insurance and worthless warranties;
- benefit consumers and industry through reduced internal dispute resolution and complaints to the Australian Financial Complaints Authority;
- over time, see benefits from reduced supervision—ASIC, along with consumer advocates, industry peaks and individual firms, have invested significant time and resources into reform and redress of caryard junk insurance; and
- improve trust in car dealer and insurers.

An evaluation of the 4-day deferred sales model introduced in the United Kingdom for GAP insurance found that, one year after the intervention an estimated £26-28 million of ongoing consumer benefits, which exceeded the total costs of implementation, and shopping around for add-ons doubled, increasing from 17 to 45 per cent.¹⁹ ASIC should be striving for similar impact as a result of its intervention. The only way this can be achieved is ensuring its intervention is timely and robust.

Contact details

Please contact Cat Newton at **Consumer Action Law Centre** on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Gerard Brody | CEO
CONSUMER ACTION LAW CENTRE



Karen Cox | CEO
FINANCIAL RIGHTS LEGAL CENTRE



Melissa Hardham | CEO
WESTJUSTICE

¹⁸ Productivity Commission, Report No 89, *Competition in the Australian Financial System*, 29 June 2018, 421.

¹⁹ Financial Conduct Authority, Evaluation Paper 18/1: An evaluation of our guaranteed asset protection insurance intervention. July 2018, page 40: <https://www.fca.org.uk/publications/corporate-documents/evaluation-guaranteed-asset-protection-insurance-intervention>.

APPENDIX A – SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** The order should commence from the date the Order is made. At the least, the additional six-month delay to the commencement of subsections 6(2) and (3) should be removed or reduced.
- RECOMMENDATION 2.** Replace section 7(2) of the Draft Instrument with section 8(2) of the Original Instrument.
- RECOMMENDATION 3.** Amend the Draft Instrument to explicitly ban intermediaries from engaging in specific pressure-selling and other unfair tactics.
- RECOMMENDATION 4.** Reinstate the 'knock-out' concept contained in subsection 6(2) of the Original Instrument.
- RECOMMENDATION 5.** Amend the 'knock-out' question concept to require ASIC oversight of the questions asked by salespeople, and ensure Add-on Products cannot be offered to people who would not receive a significant benefit from them.
- RECOMMENDATION 6.** Confirm that arranging conduct includes an intermediary directing, helping or assisting a retail client complete the online consumer roadmap in person.
- RECOMMENDATION 7.** Confirm that arranging conduct includes an intermediary referring a retail client to a product issuer, or suggesting that a retail client contact a product issuer about an Add-on Product.
- RECOMMENDATION 8.** Remove the section 9(1) exclusion for Add-on Products issued for no consideration.
- RECOMMENDATION 9.** Remove the section 9(2) exclusion for Add-on Products sold as a result of an extension to a motor vehicle loan or lease.
- RECOMMENDATION 10.** Publish brief, plain English guidance on the operation of the Order, once it is made.

APPENDIX B – DemandaRefund data

The data below applies for all DemandaRefund.com data until 30 June 2020, unless otherwise indicated.

Total figures as at 30 June 2020

Total Amount Demanded: \$28.09 million

Total Valid Letters Generated: 13,218

Table 6: Breakdown by Insurance Types

Insurance Type	Total Refund Demanded	Average Refund Demanded	Number of Letters
CCI	18,538.08K	2.93K	7459
GAP	6936.36K	1.77K	4072
Warranty	2611.70K	1.92K	1687

Table 7: Breakdown by Seller Types

Seller Types	Total Refund Demanded	Number of Letters
Auto Dealer	10.56M	5204
Bank	9.40M	4209
Financing Company	6.65M	3170
Insurance Provider	0.60M	293
Credit Union	0.58M	231
Other	0.21M	69
Retailer	0.09M	42

Add-on products recently sold (1 January 2019 – 30 June 2020)

Note: Consumer Action only started collecting data on the year the product was sold to the consumer from 1 October 2019. The tables below are data collected from 1 October 2019 where the user has indicated the add-on product was sold between 1 January 2019 to 30 June 2020.

Table 8: Breakdown by Insurance Type

Insurance type	Total Refund Demanded	Average Refund Demanded	Number of Letters
CCI	129.35K	1.64K	98
GAP	99.51K	1.29K	79
Warranty	106.34K	1.90K	72

Table 9: Breakdown by Seller Type

Seller Types	Total Refund Demanded (\$)	Number of Letters
Auto Dealer	190.82K	134
Financing Company	68.45K	60
Bank	43.92K	38
Insurance Provider	19.57K	9
Credit Union	7.91K	3
Other	4.45K	4
Retailer	0.06K	1

User responses to closed questions - Add-on products sold by car dealers

Table 10: Consumer Credit Insurance

Question	Yes	No	I don't know	Yes%	No%	I don't know (%)	Total
Did the salesperson explain your 'cooling off' rights?	197	1326		12.93%	87.07%		1523
Did the salesperson give you information that was misleading?	887	636		58.24%	41.76%		1523
Did the salesperson pressure you into buying the insurance?	1001	522		65.73%	34.27%		1523
Did the salesperson tell you that you had to buy the insurance?	964	559		63.30%	36.70%		1523
Did the salesperson use other unfair sales tactics?	792	731		52.00%	48.00%		1523
Did this information or lack of information influence your decision to buy the insurance?	823	63		82.30%	6.30%		886
Did you have a pre-existing health condition when you took out the policy?	47	1387		3.22%	95.07%		1434
Did you know you had bought the insurance?	912	611		59.88%	40.12%		1523
Did you receive a product disclosure statement (PDS)?	709	814		46.55%	53.45%		1523
Do you think the salesperson explained all the important exclusions and limitations?	23	1500		1.51%	98.49%		1523
Important question: Please read and answer carefully. If you had known what you know now, would you have decided to buy the insurance?	0	1523		0.00%	100.00%		1523
Overall, do you think the sales process was fair?	158	1365		10.37%	89.63%		1523
Were you aged 60 or over when you took out the policy?	14	1012		1.25%	90.04%		1026
Were you aware the cover might be limited because of your personal circumstances when you took out the policy?	16	603		2.02%	75.94%		619
Were you given an opportunity to go through the documents before agreeing to buy the insurance?	361	1162		23.70%	76.30%		1523
Were you retired when you took out the insurance?	4	1488		0.27%	99.27%		1492
Were you self-employed when you took out the insurance?	91	1225		6.76%	90.94%		1316
Were you unemployed when you took out the insurance?	54	1439		3.60%	95.93%		1493
Were you working on a casual/temporary/seasonal/non-renewable basis when you took out the insurance?	155	1160		11.52%	86.18%		1315
Were you working part-time when you took out the insurance?	166	1150		12.32%	85.37%		1316
Did the salesperson recommend the insurance to you personally based on something he or she knew about you, such as your age, state of health or employment status?	306	567	650	20.09%	37.23%	42.68%	1523
Do you have life insurance through your Superannuation fund?	669	86	124	66.50%	8.55%	12.33%	879

Table 11: GAP Insurance

Question	Yes	No	I don't know	Yes %	No %	I don't know (%)	Total
Were you given an opportunity to go through the documents before agreeing to the purchase?	786	1566		33.42%	66.58%		2352
Overall, do you think the process was fair?	196	2156		8.33%	91.67%		2352
If you had known what you know now, would you have decided to buy the insurance?	0	2352		0.00%	100.00%		2352

Do you think the salesperson explained all the important exclusions and limitations?	59	2293		2.51%	97.49%		2352
Did you receive a product disclosure statement (PDS)?	1103	1249		46.90%	53.10%		2352
Did you know you had bought the insurance?	1455	897		61.86%	38.14%		2352
Did this information or lack of information influence your decision to buy the insurance?	1335	88		87.31%	5.76%		1423
Did the salesperson use other unfair sales tactics?	1204	1148		51.19%	48.81%		2352
Did the salesperson tell you that you had to buy the insurance?	1508	844		64.12%	35.88%		2352
Did the salesperson pressure you into buying the insurance?	1518	834		64.54%	35.46%		2352
Did the salesperson give you information that was misleading?	1423	929		60.50%	39.50%		2352
Did the salesperson explain your 'cooling off' rights?	345	2007		14.67%	85.33%		2352
Did the salesperson explain the full cost of the insurance?	442	1910		18.79%	81.21%		2352
Did the salesperson recommend the insurance to you personally based on something they knew about you, such as your age, state of health or employment status?	528	830	994	22.45%	35.29%	42.26%	2352
Were you told (either in person, on the phone or in writing) that the salesperson would receive a commission for selling you this insurance?	80	1990	282	3.4%	84.61%	11.99%	2352

Table 12: Extended Warranties

Question	Yes	No	I don't know	Yes (%)	No (%)	I don't know (%)	Total
Did the salesperson explain the full cost of the warranty?	462	867		34.76%	65.24%		1329
Did the salesperson explain your 'cooling off' rights?	182	1147		13.69%	86.31%		1329
Did the salesperson give you information that was misleading?	886	443		66.67%	33.33%		1329
Did the salesperson pressure you into buying the warranty?	929	400		69.90%	30.10%		1329
Did the salesperson suggest that the warranty would be the only protection you'd get if something went wrong with the car?	991	338		74.57%	25.43%		1329
Did the salesperson tell you that you had to buy the warranty?	651	678		48.98%	51.02%		1329
Did the salesperson use any other unfair sales tactics?	586	743		44.09%	55.91%		1329
Did this information or lack of information influence your decision to buy the warranty?	1155	114		90.45%	8.93%		1269
Did you know the warranty was optional?	660	669		49.66%	50.34%		1329
Did you know you had bought the warranty?	1122	207		84.42%	15.58%		1329
Did you receive a product disclosure statement (PDS)?	552	777		41.53%	58.47%		1329
Do you think the salesperson explained all the important exclusions and limitations?	41	1288		3.09%	96.91%		1329
If you had known what you know now, would you have decided to buy the warranty?	0	1329		0.00%	100.00%		1329
Overall, do you think the sales process was fair?	188	1141		14.15%	85.85%		1329
Were you given an opportunity to review the documents before agreeing to the purchase?	449	880		33.78%	66.22%		1329

Did the salesperson recommend the warranty to you personally based on something he or she knew about you, such as your age, state of health or employment status?	346	420	563	26.03%	31.60%	42.36%	1329
Was the cost of the warranty added to your loan or paid for by credit card?	1017	205	107	76.52%	15.43%	8.05%	1329
Were you told (either in person, on the phone or in writing) that the salesperson would receive a commission for selling you this insurance?	31	1149	149	2.33%	86.46%	11.21%	1329

APPENDIX C – About the Contributors

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

WEstjustice

WEstjustice provides free legal advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine, and outreach across the West. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, law reform, and advocacy.