NALSPA

National Automotive Leasing
and Salary Packaging Association
ACN 169 223 161

.

Manager
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

28 February 2020
By email

FSRconsultations@treasury.gov.au

Dear Sir/Madam

Submission: Deferred Add-On Sales Model Bill 2020

As the representative body for Australia's major salary packaging providers, the National Automotive Leasing and Salary Packaging Association (**NALSPA**) welcomes the opportunity to make a submission on the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020: Deferred sales model for add-on insurance* (**Draft Bill**).

We refer to and repeat our *Treasury Proposal Paper Submission – Reforms to the sale of add-on insurance products* dated 30 September 2019, which is ***attached*** for ease of reference.

1 Introduction – About NALSPA

NALSPA's members help over 800,000 Australian employees utilise their pre-tax salary to package a number of different employment-related benefits including products and services which come within the scope of the Exposure Drafts of certain legislation proposed by the Treasury.

NALSPA members currently administer over 180,000 novated leases for Australian employees, equating to a total asset-value of around $6.7bn, driving significant economic value through the Australian economy.

One of the key employer-provided benefits that employees' salary package under Australian taxation law is a motor vehicle via a novated lease arrangement. With a novated lease, the costs associated with the finance and operation of a vehicle, including insurances, can be packaged into a single, regular fixed, payroll deduction, comprising a mix of pre-tax and post-tax dollars.

Over the past two decades novated leasing has become a popular method for employees in the health, charitable, public and private sectors to cost effectively finance and operate a motor vehicle. It is estimated that a novated lease structure is used for nearly 1 in 10 of all new annual car sales in Australia (PwC estimate).

Given the potential impact of the reforms outlined in the Draft Bill to the many employers across Australia who provide a motor vehicle benefit and their employees who utilise the benefit to procure and tax effectively operate a vehicle, we have outlined our concerns and proposed solutions in this submission and we would welcome the opportunity to engage further with Treasury in relation to such matters.

2 Submission Summary

a) **Interaction of the Add-On Insurance Pre-Deferral Period with Anti-Hawking Prohibitions:** We suggest a drafting change in the draft Hawking of Financial Products Bill to clarify that the relevant Anti-Hawking Prohibition does not apply to the 'sale' of salary packaging arrangements which are completed ('settled') outside the 6-week period, in circumstances where all aspects of the deferred sales regime have been adhered to. This clarification is critical to ensure that extended new vehicle delivery times do not inadvertently result in a breach of the Anti-Hawking Prohibition.

b) **Alternatively the 6 week period (beginning from the point of Commitment) during which the Anti-Hawking Prohibition does not apply ("Deferral Model Period") must be extended to allow for the extended settlement periods applicable for novated leasing arrangements (and associated add-on insurances).**

To reduce the risk of breaching the anti-hawking prohibition, it is our recommendation that this period should be indefinite (or alternatively should at least be 6 months) to allow sufficient time for vehicle deliveries and settlement of novated leasing arrangements without risk of breaching the Anti-Hawking Prohibition.

c) **Add-On Insurance Deferral Period:** The deferral period should be 2 clear days after the day of Commitment equating to a total deferral period of 4 days.

d) **The information to be given to consumers during the Pre-Deferral Period:** This information should be sufficiently generic so that it continues to apply if the consumer decides to, after the deferred sales period, request amendments to the add-on insurance products (or the principal service or product). The Treasury should either clarify this expectation in the Explanatory Memorandum or include this requirement relating to the prescribed information in the legislation itself (at section 12DS(4) of the Draft Bill).

3 NALSPA welcomes the creation of a "Pre-Deferral Period"

NALSPA welcomes the inclusion of a "Pre-Deferral Period" in the Draft Bill.

In our September 2019 Submission, we outlined that:

a) the sale of add-on insurance (AOI) products via salary packaging arrangements already contains natural pauses at various stages in the procurement process. In other words, a deferred sales mechanism is already embedded within the salary packaging context in which the customer is specifically considering a 'whole of life' vehicle cost, thus achieving the desired outcome of giving the customer the opportunity to consider the appropriateness of the products for them away from a salesperson/consultant.

b) the sale process for add-on insurances through a novated lease product is fundamentally different from the sale processes associated with add-on insurance products that are offered and/or sold at the point-of-sale (often face-to-face) of the principal product.

The novated lease product and associated salary packaging channel warrants different considerations and it is imperative that the definition of the 'trigger point' for the deferred sales period in any legislation specifically accommodate the salary packaging sales process.

c) any regulatory change which diminished an employee's ability to accurately assess, from the beginning, the true total monthly (or fortnightly) cost of the vehicle, including associated financing, operating and related costs including insurances, for their personal situation and in the context of their take home pay, would result in a disadvantage to the employee, limiting their understanding and ability to make a properly informed decision.

d) if the salary packaging provider was required to wait until after the customer has applied for finance to be able to discuss the insurance arrangements that a customer desired to apply to a lease, we risk the customer being forced to make an incomplete decision on their lease and also potentially risk the customer losing the ability to include required insurances as part of their financed total monthly payment and therefore suffer a potential loss of the associated taxation benefits.

We believe the creation of a **Pre-Deferral Sales Period** as outlined in the Draft Bill will, if passed, enable salary packaging customers to continue to make an informed decision in relation to their novated lease by allowing the inclusion of all running costs (including the cost of the vehicle, associated financing, operating and related costs such as insurances) at the point of the initial quote, being the point in time when the consumer indicates an intention to acquire the principal product or service.

However, in relation to the interaction of the Pre-Deferral Sales Period with the Anti-Hawking Prohibitions under the draft Hawking of Financial Product Bill, we think the following drafting clarification (in bold, underlined) should be made to section 992A(2)(j):

an offer of, or a request or invitation relating to, a financial product that is an add-on insurance product in relation to a product or service (the ***principal product or service****)* ***<u>supplied or to be supplied</u>*** *~~sold~~ to a consumer by:*

(i) the ***person*** *making the offer, request or invitation; or*

(ii) another person with whom that person has an arrangement that relates to the provision of add-on insurance products in relation to products or services that include the principal product or service.

This will assist in:

a) clarifying the timing and that the relevant Anti-Hawking Prohibition does not apply at all where the consumer expresses an intention to acquire the principal product or service but does not proceed to complete the sale within the nominated period before the Anti-Hawking Provisions apply; and

b) use language which is consistent with the use of 'acquisition' and 'acquire' in section 12DP(2) (and other sections) of the Deferred Sales Model Bill.

4 Add-On Insurance Deferral Period - Deferral Period should be reduced to 2 clear days

We think that the deferral period should be reduced from 4 clear days to **2 clear days**.

The effect of the proposed deferral period is that the customer cannot finalise the documentation until the fifth day after the deferral period commences. When coupled with the fact that most, if not all, salary packaging providers operate Monday – Friday, this results in an effective deferral period of one week. While this would not be a concern for all customers, our experience is that some customers prefer to resolve their novated leasing arrangements on a more expedient basis, particularly for example where a car is already available or is being purchased second hand and time is of the essence for the settlement of the sale.

We also note that the Treasury Proposal Paper – Reforms to the sale of add-on insurance products dated 9 September 2019 had originally proposed a deferral period of **4 days** with the ability for the sale of an add-on insurance product to be concluded the day after the commencement of the deferral period if, and only if, the customer initiates completion of the sale.[1]

However, given the Draft Bill does not appear to include this right for the consumer to complete the sale of the add-on insurance product if they wished to do so during the deferral period, we think that it is even more important that the deferral period be no more than 2 clear days (equating to 4 days in total).

In a salary packaging context it is not unusual for lessees to have already selected their vehicle before arranging for the novated lease and in these circumstances it is important for consumers to have the ability to complete the arrangements in a shorter time frame.

5 The information to be given to consumers during the Pre-Deferral Period

We submit that the information to be given to consumers which will be prescribed by ASIC, should be sufficiently generic so that it continues to apply if the consumer decides to, after the deferred sales period, request amendments to the add-on insurance products (or the principal service or product).

We submit that the Treasury should either clarify this expectation in the Explanatory Memorandum or include this requirement relating to the prescribed information in the legislation itself (at section 12DS(4) of the Draft Bill).

NALSPA's concern is that the more specifically this information relates to an individual add-on insurance product (e.g., specific pricing information) the greater the risk that if a consumer, after having considered the product during the deferral period, requests changes to either the principal product (e.g., the addition of window tinting to the car, which may increase the overall cost and so change insurance pricing where pricing is linked to the value of the principal product) or to the add-on insurance product selection (e.g., changing the selected level of cover or adding or removing a particular type of insurance from the package), it could restart the deferred sales model period. (For example because the information originally given to the consumer no longer applies to, or is no longer accurate in respect of, the amended principal product or add-on insurance product.)

If the only change to an add-on insurance offering is price, due to the level of cover being offered, and the change is being made after the relevant prescribed information has been provided, there should be no requirement to re-issue updated prescribed information.

NALSPA's view is that the Treasury should emphasise in the Explanatory Memorandum to the Draft Bill that the information to be prescribed by ASIC should achieve the balance of ensuring sufficient disclosures to be made to consumers and at the same time avoid the practical difficulties (both from consumer and industry perspective) of restarting the deferred sales model periods where amendments to the principal product or service or to the add-on insurance product is requested by the customer.

[1] Paragraph 1.6 of the Treasury Proposal Paper.

6 Interaction of the Add-On Insurance Deferred Sales Regime with Anti-Hawking Prohibitions

One of the unique features of the salary packaging channel, as it relates to novated motor vehicle leases, is the fact that there can be an extended delay between the finalisation of the arrangements in relation to the package (vehicle, accessories, insurances etc) and the delivery of the vehicle (and ultimate 'settlement' of the package). This is fundamentally different to other industries to which the deferred sales model will apply, where the relevant products or services are generally at hand, available in-store etc.

As an example, travel insurance (as an add-on insurance product to purchase of a travelling service) can simply be purchased online with very short completion time from the Commitment to the sale of the principal travel service as well as the add-on travel insurance product.

On the other hand, novated leasing transactions for motor vehicles (unlike transactions relating to other types of principal products) are significantly affected by the customer's preference of vehicle type and accessories required, as well as the underlying economic or other conditions which may have an impact on the manufacturing times.

In addition, certain types of vehicles such as in-demand electric vehicles could see the delivery time for the vehicle up to 12 months or more after the order is placed for the car.

We suggest a drafting change in the draft Hawking of Financial Products Bill to clarify that the relevant Anti-Hawking Prohibition does not apply to the completion of salary packaging arrangements which are settled outside the 6-week period, in circumstances where all aspects of the deferred sales regime are adhered to.

This clarification is critical to ensure that extended vehicle delivery times do not inadvertently result in a breach of the Anti-Hawking Prohibition.

Although our **strong** preference is for the position to be clarified as we have set out above, in the alternative we would propose that the currently proposed 6-week period be significantly extended to accommodate lengthy vehicle delivery times.

The 6 week period (beginning from the Commitment) during which the Anti-Hawking Prohibitions under the draft Hawking of Financial Products Bill do not apply is simply not long enough to cover the settlement of a significant number of novated leasing arrangements (and associated add-on insurances).

NALSPA is concerned that the **6 week** period has been proposed without sufficient consideration having been given to the specific circumstances of salary packaging processes, which may be quite different to other primary products, eg travel insurance.

Typically, the experience of the salary packaging sector more generally is as follows:

- approximately, 80% of all sales are settled within 6 weeks from the final quote being provided, which may be after the deferral period;
- 95% of all sales are settled within approximately 4 months; and
- the vast majority (up to 99%) of all sales are settled within 6 months.

While the above figures represent the typical proportion of novated leasing transactions that are settled within the specified time periods, we note that any impact on the motor vehicle manufacturing/assembly industry will also have an impact on the timing of settling of the novated lease arrangements.

We think that 20% of the sales is a relatively high number of customers for whom, due to the fact that their packages may be settled outside the 6-week period, the industry would have to develop specific communication and interaction processes to ensure compliance with the deferred sales model.

It is not unusual for specific industries or issues to occur affecting delivery times for particular vehicles. For example, there have been recent issues regarding battery shortages for a particular model of an electrical vehicle and it may be possible that a particular car manufacturer's delivery times materially increase due to this.

To reduce the risk of breaching the Anti-Hawking Prohibition, it is our recommendation that the proposed 6-week period be indefinite in respect of arrangements where all aspects of the deferred sales regime are adhered to but which may merely settle after an extended delay due to external factors (such as vehicle availability).

In the alternative, the nominated period should be 6 months (instead of 6 weeks) to ensure that virtually all novated leasing arrangements could be finalised without risk of breach of the Anti-Hawking Prohibitions.

We also note that from a consumer protection perspective, certain anti-hawking style prohibitions do continue to apply during the proposed 6 week Deferred Sales Model Period (including prohibition on offering to sell an add-on insurance product unless in writing or in response to contact initiated by the consumer) which will continue to prevent pressure-selling interactions with customers at all times.

Please let us know if it is helpful to elaborate on any aspect of this submission.

Yours sincerely

Rohan Martin
Secretary