25 August 2020

Mr James Shipton
Chairman
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

Via email: james.shipton@asic.gov.au

Dear Mr Shipton,

We write on behalf of the respective members of our Associations across the Australian automotive sector in relation to the Australian Securities and Investments Commission's (Commission or ASIC) proposal to use its Product Intervention Power to implement a deferred sales model for the sale of add-on insurances and warranties sold with motor vehicles (ASIC Consultation Paper 324 and Media Release 20-179MR).

The signatories to this letter have come together not to oppose reform in the best interests of consumers, but to oppose the specific timing pertaining to consultation and implementation in this instance, and in particular the mechanism proposed by the Commission.

The signatories respectfully suggest that ASIC, at the very least, consider an **immediate deferment** of the proposed Product Intervention Order (PIO) due to:

- The significant financial pressure that the automotive sector is already under at this time as a result of the impacts of COVID-19 and the ongoing decline in new motor vehicle sales across Australia;
- The alternative legislative processes already well underway, namely the Federal Treasury lead industry wide deferred sales model across all add-on insurance products in response to the Financial Services Royal Commission (recommendation 4.3);
- The additional cost ramifications and management time that the proposed Instrument will impose on businesses at a time of least affordability; and
- Product issuer and industry reform that has already occurred across products, disclosure, sales practices and commission structures relating to the provision of add-on insurances, ultimately which are already achieving ASIC's objectives in our view.

We note the comments of the Commission that the proposed PIO would complement the proposed industry-wide deferred sales model for add-on insurance to be implemented as part of the Government's response to the Financial Services Royal Commission (recommendation 4.3), and that the deferred sales model and additional obligations set out in the draft order are tailored to the unique risks consumers experience when offered add-on products in relation to the sale of motor vehicles.

All member organisation's who are party to this correspondence were surprised and disappointed by the decision of ASIC to apparently proceed with a PIO with only a two week consultation period and a three (3) month transition period during the COVID-19 Global Pandemic and the associated devastating health and economic impacts this health crisis is causing domestically.

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION

MOTOR TRADES ASSOCIATION OF AUSTRALIA

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The member organisations regard this decision as inappropriate and with respect somewhat dismissive of the **significant product and sale reforms** which have already taken place. More importantly such timing does not take account of the current market and economic conditions, and the hardships being faced by the automotive sector and new car retailing across Australia in particular.

Like most parts of the economy, the automotive and related sectors have been hard hit by the impacts of COVID-19. These impacts are continuing with the length and depth of their tenure uncertain at this time.

VFACTS data shows that in the July 2020 year to date, the total number of new vehicles sold in Australia were down 122,730 units or **19.2%** compared with the same period to July 2019. Despite the lessening of COVID-19 related restrictions in most States, new vehicle sales in July 2020 were still the **lowest July total vehicles sales volume since 2002**. Recent Federal Government assistance programs such as the extended Instant Asset Write Off policy announced in March 2020, whilst positive, have not been able to impede this decline and industry disruption.

In contrast to the Federal Treasury developed deferred sales model, the proposed ASIC PIO also involves considerable additional cost burden for those within the automotive sector responsible for its implementation and ongoing compliance, at a time of significant financial duress for many of these businesses.

In addition, the new car retailing industry is also contending with: the General Motors Holden decision to vacate the Australasian market; moves by other car manufacturers and distributors to alter business and product sale and distribution models impacting dealer networks; supply chain issues for product, parts and accessories; employee roles and job security under threat, and a range of other issues.

Various member organisations held discussions with ASIC officials across May and June of this year related to the express impacts (and likely future impacts) of COVID-19 and general conditions of the automotive sector more widely, with some providing data to ASIC outlining the changes in declining sale volumes of add-on insurances and warranties, and motor vehicles.

As a result of these discussions and data provided, member organisations had not unreasonably assumed that ASIC would, at a minimum, follow recent delay precedents established by both the Federal Government and ASIC.

We note that on 8 May 2020, the Federal Government in recognising the devastating impacts of COVID-19, announced it would be delaying the legislative passage of recommendations relating to the Banking, Superannuation and Financial Services Royal Commission by a **period of six months**.

In addition, we note on 8 May 2020, that ASIC announced it would defer the commencement date of the mortgage broker best interest duty and remuneration reforms and the design and distribution obligations **for six months** from their original commencement dates, given *"the significant impact of COVID19 on the Australian economy, especially on the financial system and consumers*".

With automotive businesses in general and car retailing in particular focused in many instances on survival, and the health and welfare of their people, we consider that now is simply not the time to reasonably expect such businesses to consider the draft PIO. We also question why a more punitive approach is considered necessary for the automotive sector compared with the likes of mortgage brokers.

Nor is it realistic to expect automotive and related businesses to respond to the proposed instrument and to absorb and implement further regulatory change in such a narrow time frame as proposed– particularly during a period of time when their resources and capital are under significant duress, with the somewhat uncertain futures.

So at a minimum we ask for the **Commission's strongest consideration of our request for immediate deferment of the proposed PIO.**

This request is also predicated on our collective view that the issuance of a PIO to implement a deferred sales model for the sale of motor vehicle add-on insurance and warranties is an unnecessary duplication given that Federal Treasury is already well advanced with development and introduction of a deferred sales model in relation to the sale of add-on insurance products more generally across the whole Australian economy in response to Royal Commission Recommendation 4.3.

This model, which we understand is to be implemented in a timely manner given likely passage of necessary legislation this calendar year, could reasonably apply to the sale of such products associated with a new or used motor vehicle given that it aims to provide the same consumer protections as those inherent in the ASIC PIO, and without the cost impost of the proposed PIO.

Your earliest attention to the matters raised in this correspondence and our request of the Commission would be greatly appreciated.

Yours sincerely,

James Voortman
Chief Executive Officer
Australian Automotive Dealer Association

Tony Weber
Chief Executive Officer
Federal Chamber of Automotive Industries

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia

Rob Bazzani
Chairman
National Automotive Leasing and Salary Packaging Association

Cc: The Hon Josh Frydenberg MP, Federal Treasurer
The Hon Michael Sukkar MP, Federal Assistant Treasurer
Dr Steven Kennedy, Secretary to the Australian Treasury