



**Submission by the
Financial Rights Legal Centre**

Submission in response to:

Aioi Nissay Dowa Insurance Company Australia Ltd &
Ors applications for authorisation A91556-A91557 to
the ACCC

21 October 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's 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 Credit & Debt Hotline, 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. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

Credit & Debt Hotline 1800 007 007

Insurance Law Service 1300 663 464

Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on application for authorisation by Aioi Nissay Dowa & Ors. The Financial Rights Legal Centre has had the opportunity to review the Consumer Action Law Centre submission and it is noted that we agree with their conclusions that:

1. The proposed cap would not deliver a net public benefit; and
2. The application could deliver a net public benefit if it was enhanced by:
 - a. Including a ban on single premium policies
 - b. Proposed unbundling the sale of add-on insurances from the sale of loans
 - c. Including a ban on the sale of life (trauma) insurance in dealerships
 - d. Limiting commissions to a lower level (say 10%)

Financial Rights' recommends that the authorisation be denied unless it is improved as outlined in point 2 above.

Add-on insurance sales in car dealerships

Financial Rights has been providing specialist insurance legal advice for over 9 years. In that time, we have repeatedly seen systemic problems with the sale of add-on insurance in car dealerships. The systemic problems include:

1. The products are poor value with very poor successful claims rates
2. The product sold is completely unsuited to the consumer's needs
3. Not even being told that the insurance has been added
4. Being told that the insurance is compulsory to get the loan (when it is not)
5. Adding significant costs to the loan with single premiums that make the loan a lot more expensive and exacerbates financial hardship if circumstances change (even slightly)

The above problems are systemic and have not been resolved to date. The harm caused to consumers over many years by these practices is inestimable. It is very likely that many consumers had their car repossessed when their circumstances changed (even slightly) for the worst because of the extra costs on the loan from insurance that did not assist them at all.

It is very rare in our advice and casework service to find a consumer that has successfully claimed on the insurance (that was meant to protect them) to enable them to keep their car. Our experience reflects very poorly on the value of these products.

We believe that the only way to adequately protect consumers from these poor value products is to ban the sale of life insurance and similar products through car yards.

Case study 1

CCI, GAP and Warranty

Our client was 23 years and resides in regional NSW. He earned approximately \$2600 net per month. He attended a car yard and purchased a Toyota Hilux which was priced at \$56,000. He traded in an existing car that was on finance. The dealership arranged the finance through Finance Company (the **FSP**);

The total vehicle price as \$68,035.71 it included the following:

- i. Consumer Credit Insurance \$1,475
- ii. Warranty insurance \$1,210;
- iii. Gap insurance \$1,728 (herein “the **Extra’s**”)
- iv. Credit fees and charges 973.00;
- v. Previous Credit Union finance of \$5,177.04

The proposed finance included payments of \$1,304.41 for 47 months, including a balloon payment of \$22,533.23. Our client struggled with the repayments, as the payments amounted to 50% of his income.

He instructs us he has been struggling with payments since the loan was advanced. Our client sought advice from the local financial counsellor 18 months after entry and it was only at this stage he became aware of the Extra’s, he was not aware of the CCI, Warranty or GAP.

Case study 2

GAP INSURANCE

Our clients (the complainants) attended the “**Car Yard**” looking to purchase a vehicle. That day, the complainant was told she could buy a second hand for \$8,750. The complainant explained they could pay \$2,000 that day, but would need finance to pay the remaining balance. The complainant returned to the Car Yard and paid an additional \$1,000 deposit. Accordingly, the complainant had now paid a total of \$3000 towards the sale price of the vehicle and she understood that she would be obtaining finance for the remaining balance in the sum of \$5,750.

Unbeknownst to the complainant, the Car Yard had included in the sale and finance documents extras to the value of \$7,400 (the “**Extras**”). The Extras included, among other things:

- Asset Protection Insurance, \$1,920 (“**GAP**”)
- 3 Year Bi-Annual Servicing, \$1,650
- 3 Year Premium Warranty \$2,950 and
- 3 Year National Towing Service \$585.

By adding the Extras to the sale price of the vehicle, the Car Yard had now calculated that the complainant would need finance in the sum of \$13,150 instead of \$5,750.

The sale and finance documents included the following terms, among others (the “**Loan**”):

- A. that the loan balance was \$13,150;
- B. that an interest rate of 39% per annum would apply to the loan;
- C. no cooling off period would apply in relation to the loan;
- D. in the event of ongoing delinquency (regular ongoing non payment), the finance company have permission to authorise direct debit payments on an ad-hoc basis in order to recover any outstanding arrears, until such time as a payment arrangement is agreed and adhered to; and
- E. the loan would be repaid by 104 fortnightly instalments of \$250.85.

At the time of taking out the Loan with FSP:

1. Client 1:
 - a. was unemployed;
 - b. only received income from Centrelink;
 - c. had a negative credit rating and had been rejected by a number of other finance companies; and
 - d. as her native language is Tagalog, had limited understanding of English.
2. Client 2, who was only 19 years of age, was unemployed and her only source of income came from Centrelink.

The complainant advised the Car Yard of their circumstances, she provided Centrelink statements, bank statements and advised that their joint fortnightly income was approximately \$1,650.

The loan was patently unsuitable, and our clients were never in the position to afford repayments.

The Extra’s inflated the loan, and the only gap between the asset and value of the vehicle necessitating the need for insurance was the very payment of the premiums included and paid for on finance at 39% per annum.

ASIC Reports

ASIC has released a number of reports that examine the sale of add-on insurance being:

1. Report 470 – Buying add-on insurance in car yards: Why it can be hard to say no
2. Report 471 – The sale of life insurance through car dealers: Taking consumers for a ride
3. Report 492 – A market that is failing consumers: The sale of add-on insurance through car dealers

The reports are damning. The reports also identify significant reforms required to fix the problems identified.

ASIC's letter dated 22/8/16 to Gilbert & Tobin significantly states:

*"As we noted at our meeting of 10 August, we consider a cap is **necessary** but not a **sufficient** component of the package of measures required of the industry to improve consumer outcomes."*

ASIC's words were chosen very carefully and even stressed that the cap is not enough to address their concerns. We agree with ASIC that the cap is not sufficient at all.

The decision by Aioi Nissay & Ors in only applying for authorisation for one measure to address the issues identified by ASIC appears to be a deliberate attempt to avoid proceeding with the remaining required measures. It is also a waste of valuable regulator time (both ASIC and the ACCC) to start an authorisation process that necessarily requires further authorisation processes to address the issues identified.

ASIC has made it clear in its reports that a range of measures are required. A piecemeal approach is completely inadequate and inappropriate way to solve the problems identified. Based on the ASIC reports and the ASIC letter, the ACCC cannot conclude that the cap has a demonstrated net public benefit.

20% cap in CCI

As the authorisation submission correctly points out, there has been a 20% cap in commissions for CCI in the Consumer Credit Code and National Credit Code since 1996. The existing cap has not been effective in protecting consumers.

ASIC Report 471 made a number of findings in relation to CCI and ASIC Report 492 also made further findings about add-on insurance generally. It is significant that the 20% commission did not provide protection or benefits to consumers compared to the other types of insurance. The findings continue to be the same or similar.

Aioi Nissay & Ors have failed to provide any evidence that the 20% cap would deliver the benefits stated. In fact their submission uses the word "likely" to describe the purported benefits. We submit that based on the long history of the CCI commission cap and the ASIC Reports that there is no real evidence to support their conclusion. In our view, the cap is a necessary step but it is "likely" that the change will be ineffective without the other measures required by ASIC.

The proposed 20% cap

There is no evidence or reasoning given on why a proposed cap of 20% on commissions has been chosen. There is also no analysis of whether a lower cap is appropriate or necessary. Financial Rights believes it is critical that evidenced based policy occur in consumer protection. Numbers should not be just plucked from the air. There should be clear reasoning, analysis and evidence to support the proposed cap. There is none. In addition, there is no proposal on how the effectiveness of the cap would be evaluated.

Net Public Benefit

We contend that there has been no real evidence produced that a 20% cap would produce a net public benefit or consumers. The submission for authorisation seems to be made on the basis that “something is better than nothing”. It does not follow that doing something (a small action) when there are serious and systemic issues identified with the sale of add-on insurance is better than nothing. Consumers deserve to have these serious systemic issues fixed and Aioi Nissay & Ors are instead starting with a token action that is unproven.

The authorisation submission identified a number of alleged public benefits including:

- **Lower prices and better value for consumers**

It has to be noted that CCI prices have been consistently high despite a 20% cap. ASIC report 471 (page 14) found that CCI was more expensive in car dealers than through ADIs which indicates that poor competition rather than the cap was driving prices. The authorisation also seeks to minimise circumvention which apparently occurs with CCI. However, we contend that the CCI example is an indication that circumvention could still be an issue with the wider cap. In our experience, dodgy industry players are very good at finding loopholes.

- **Continued availability**

The ASIC Report 492 found that:

1. Consumer receive low claim payouts relative to premiums
2. Consumers receive much less in claims than dealers receive in commissions
3. Lack of price competition results in poor consumer outcomes
4. Insurers sell products that are poorly designed
5. Single premium policies increase the cost for consumers

The public benefit of continued availability is very hard to argue (if not impossible) given the above list of findings from the ASIC Report.

- **Benefits to motor vehicle dealerships**

It is unclear how industry benefit can be argued as a net public benefit given the serious detriment identified in the ASIC Reports.

Overall, the identified public benefits are unproven and lack evidence.

We are asking that Aioi Nissay & Ors amend their authorisation request to take action now to address the issues identified in the ASIC reports and seek authorisation for the following additional measures:

- a. Including a ban on single premium policies
- b. Proposed unbundling the sale of add-on insurances from the sale of loans

- c. Including a ban on the sale of life (trauma) insurance in dealerships
- d. Limiting commissions to a lower level (say 10%)

Pre-decision conference

Financial Rights requests that ACCC to arrange a pre-decision conference with consumer advocates and the ACCC.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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