GILBERT
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Motor vehicle dealership add-on insurance reform

A91556 & A91557

Response to interested party submissions

14 November 2016

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1 Executive summary

As outlined in the application for authorisation lodged with the Australian Competition and Consumer Commission (**ACCC**) on 13 September 2016 (**Application**), the applicants and other life and general insurers including members of the Insurance Council of Australia (**ICA**) and Financial Services Council (**FSC**) have proposed to enter into a contract, arrangement or understanding to limit the commissions that they each pay in respect of add-on insurance products sold through the motor vehicle dealership channel to a maximum of 20% of premiums (**Proposal**).

On 23 September 2016, the ACCC wrote to interested parties seeking submissions in relation to the application. The ACCC has received interested party submissions from the following parties:

- Australian Automotive Dealer Association;
- Choice;
- Consumer Action Law Centre;
- Financial Rights Legal Centre;
- Insurance Council of Australia;
- National Insurance Brokers Association;
- NM Insurance;
- The Board of Underwriting Agencies Council; and
- Yamaha Group.

On 26 October 2016, the ACCC invited the applicants to respond to any issues raised in the above interested party submissions and, in particular, to make further submissions on the following issues:

1. Why the proposed 20% cap is considered an appropriate amount
2. Why/how would lower commissions result in lower prices to consumers given the lack of price sensitivity of typical consumer of add-on insurance products
3. Why a cap on commissions is likely to have an effect on problematic sales practices associated with add-on insurance products
4. The scope of the proposal – does the proposal address all relevant sales channels?

These issues are addressed in detail, together with additional questions raised in the interested party submissions, below.

2 The level of the cap

2.1 Summary of the issue

As detailed in the Application, the conduct to be authorised involves agreement that total commissions paid in connection with each sale of an add-on insurance product through the motor vehicle dealership channel must not exceed 20% of the premium paid (excluding government charges).

Some of the interested party submissions have queried the appropriateness of the specific amount (ie, 20%) of the proposed cap.[1] As outlined in the Consumer Action Law Centre's submission, the concerns are broadly as follows:

> While commissions may be driving problematic sales of add-on insurance, it does not necessarily follow that a 20% cap on commissions will reduce these sales practices. The Application does not detail why 20% would be an appropriate level for a commission cap.[2]

Additionally, both the Consumer Action Law Centre and Choice have submitted that the level of the proposed cap should be 10%, though their preference would be for no commissions to be paid.[3]

Other submissions have argued that the 20% cap is unrealistically low,[4] or that different levels of maximum commission should apply to different products.[5]

2.2 Rationale for the 20% cap

As noted in the Application, the 20% level for the cap was selected to ensure the consistency with the cap on commissions relating to consumer credit insurance (**CCI**) under section 145 of the National Credit Code.[6] A level of commission consistent across all add-on insurance products sold through the motor vehicle dealership channel is important, as it presents a simple position to customers, is easy to administer and will enable insurers to reduce premiums on all products.

The applicants agree with submissions that suggest that, if the level of the cap were set too low, dealerships would not have sufficient revenue to cover the costs associated with selling these products, potentially resulting in the distribution channel disappearing altogether. There are a range of costs associated with the sale of add-on insurance products through motor vehicle dealerships. These costs include:

- the costs of the use of facilities and staff (including opportunity costs);
- the cost of relevant staff training (including training in systems, sales, and competency requirements under the *Corporations Act 2001*);

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[1] See Australian Automotive Dealer Association submission, p 7; Financial Rights Legal Centre submission p 6; and Consumer Action Law Centre submission, p 5 and 6. See also Choice submission, in support of the Consumer Action Law Centre submission.

[2] See Consumer Action Law Centre submission, p 5.

[3] See Consumer Action Law Centre submission, p 6; see also Choice submission, in support of the Consumer Action Law Centre submission.

[4] See Australian Automotive Dealer Association submission, p 10.

[5] See Australian Automotive Dealer Association submission, p 7.

[6] Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth).

- the cost of information technology systems (including implementation and ongoing issues);
- costs associated with the marketing of insurance;
- administration and taxation costs arising in relation to insurance sales; and
- information and assistance to the insurer as required.

It is important that the level of commission that may be negotiated within the cap sufficiently compensates dealers for these costs.

Since CCI commissions are capped by legislation at 20%, any higher cap applying to the other add-on insurance products sold through the motor vehicle dealership channel would result in inconsistency.

A 20% cap also applies to ongoing commissions under the recommendation of the Trowbridge Report as implemented in the *Corporations Amendment (Life Insurance Remuneration Arrangements) Bill.*[7] The CALC submission argues that the recommendation of the Trowbridge Report should not apply in these circumstances since a motor vehicle dealer selling insurance under a general advice model does not incur the same costs as a financial adviser selling insurance under a personal advice model.[8] However, the Trowbridge Report recommended that financial advisers should also receive an initial advice payment of 60% of the first year's premiums (up to $1200) to cover its initial costs,[9] and the government's proposed implementation of that recommendation includes an upfront commission of 60% without limitation.

Even if the costs of providing general advice are lower than the costs of providing personal advice, the flat 20% commission structure of the Proposal, compared to the upfront 60% commission and 20% ongoing commission of the Trowbridge reforms, more than adequately reflects these differences.

Further, the 20% level is commensurate with the commissions paid in relation to a number of other general insurance products distributed by insurance brokers. These products include small business packages and Industrial Special Risk (**ISR**) policies, where commissions paid range between 15% and 25%.

2.3 The importance of a commission structure

Previous ASIC reports, the government in implementing the FOFA reforms, the FSI and the Trowbridge report have all recognised that a form of commission structure contributes to the sale and the continued availability of insurance products.

Insurance products can have higher establishment costs than wealth creation products, and consumers are unlikely to seek them out and may not be willing or able to pay for advice in relation to these products. Reduced availability of insurance products and increased underinsurance could well result if insurers were not permitted to offer commissions to their agents and representatives.

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[7] "Government announces significant improvements to life insurance industry", 6 November 2015.
[8] CALC submission, p 6.
[9] At p 24.

In addition, motor vehicle dealerships will have little incentive to sell add-on insurance products without an appropriate level of commission. If these products are not available at the point at which a vehicle is purchased and financed, customers will need to find these products before or after they purchase a motor vehicle. This could be inconvenient and may result in increased risk and underinsurance. Further, the applicants consider that the provision of insurance products through car dealerships is an important means for reaching customers that often are in need of cover, and in some circumstances is the only practical method for reaching such customers.[10]

As a result, the applicants submit that it is necessary to allow commissions to be paid, albeit at an appropriate level.

2.4 The proposed level is a maximum cap

The proposed level of 20% is a maximum cap only; it is not a prescribed fixed commission. Although commissions for CCI have tended to remain at or near the 20% cap, insurers remain free to compete below the cap level. Where reverse competition between insurers for access to the dealer's customers is replaced by more direct competition for customers – as is the intention of the Proposal – lower rates of commission may well become a significant feature of this competition.

3 Reduction of prices for consumers

3.1 Summary of the issue

In the Application, it was submitted that the limitation of commissions to a maximum of 20% would allow insurers to materially reduce the price of add-on insurance products.[11] Some of the interested party submissions have queried whether the limit on commissions would necessarily result in a reduction in premiums for the associated add-on insurance products.

The Australian Automotive Dealer Association and the Consumer Action Law Centre have submitted that a reduction in commissions may not by itself result in a reduction in prices, and may in fact provide an incentive for insurers to increase prices in order to gain access to a dealership's customers.[12] The Consumer Action Law Centre further submits that discretionary pricing means that dealerships can simply raise premiums in order to maintain commission revenues.

3.2 Correlation between commissions and prices

The applicants submit that there is a clear correlation between the level of commissions paid and the resulting premium charged for the relevant product. This has been recognised by both ASIC and the ACCC.

As referenced in the Application, the ACCC's 1998 *Consumer Credit Review: Final Report* recognised the role of "reverse competition" in driving up commissions paid to agent, resulting in "greater delivery costs".[13] Prior to the introduction of the cap on CCI, the ACCC also found that CCI purchased from motor vehicle dealerships was more

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[10] See pages 14 and 15 of the Application.

[11] See page 12 of the Application.

[12] See Australian Automotive Dealer Association's submission, 4.3.3; Consumer Action Law Centre submission, p 8.

[13] ACCC, *Consumer Credit Review: Final Report*, July 1998.

expensive than CCI purchased from credit providers, largely due to the higher commissions paid to motor vehicle dealerships.[14]

This nexus between higher commissions and higher premiums was highlighted by ASIC in ASIC Report 471, *The sale of life insurance through car dealers: Taking consumers for a ride*. ASIC detailed differences in premiums between business-use car yard life insurance (uncapped commissions) and personal-use car yard life insurance (20% capped commissions). Relevantly, ASIC found the following:

(a) for personal-use car yard life insurance, most insurers paid commissions at the maximum rate permitted under the National Credit Act (20% of the premium); and

(b) for business-use car yard life insurance, the highest level of upfront commission was 50% of the premium (noting that for this insurance product there is currently no restriction on the amount of commission that can be paid to car dealers).

The difference in premium between personal-use and business-use policies offered by the same insurer was 33% for two insurers. The highest difference was 80% (for one insurer).[15]

In the United Kingdom, the Financial Conduct Authority's post-implementation review of the Retail Distribution Review found that prices had fallen by at least the amounts that had previously been paid in commissions:

> Product prices have fallen by at least the amounts paid in commission pre-RDR, and there is evidence some product prices may have fallen even further. This is due in part to the introduction of simpler products and funds which have a lower charge and advisers and platforms exerting more competitive pressure on providers, with platforms increasingly able to negotiate lower product costs.[16]

Further, it is a fundamental component of the Proposal that insurers will report regularly to ASIC on a range of measures including premiums and loss ratios (see section 3.4 below). This will allow ASIC to monitor both price and value for each insurer and thereby ensure that prices reduce and/or value increases in the form of additional coverage, service and product benefits following the introduction of the cap.

3.3 Increased information and customer awareness

ASIC has identified a number of characteristics of the motor vehicle dealership channel that may reduce price sensitivity in customers. The Proposal and the complementary measures being developed by the Insurance Council of Australia (**ICA**) and Financial Services Commission (**FSC**) are intended to address these concerns, including by ensuring that customers have access to useful information about the products that are available to them through the motor vehicle dealership channel, both:

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[14] ACCC, *Consumer Credit Review Final Report*, July 1998; see also TPC, *The Market for Consumer Credit Insurance*, 30 June 1991.

[15] ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride,* February 2016 at p 15 and 16.

[16] At p 3.

- before the customer visits the dealership, through a consumer-friendly website that is designed to enhance understanding about the range of insurance products that could be offered through motor vehicle dealers or elsewhere;
- at the point of sale, through improved product information that will better assist consumers in assessing the value of products against their needs and circumstances; and
- after the sale, by contacting customers following a purchase to ensure they are aware of the product they have purchased and their right to cancel any insurance product during the cooling-off period.

These measures are likely to increase consumers' price sensitivity by helping them to understand the products that are available and the value they provide, and offering additional opportunities to compare prices, investigate alternative products and choose other options before or after the point of sale. These measures will increase downward pressure on prices in a context where reduced prices are made possible through a significant reduction in commissions.

3.4 Proposed data reporting and interaction with ASIC

The reporting and oversight mechanism in the Proposal will require the insurers to report regularly on their product pricing as well as suitable information relevant to the calculation of measures of value such as loss ratios. It is proposed that this information will be collated by Insurance Statistics Australia Limited and provided to ASIC on a regular basis, and will show the changes that insurers have made in implementing the Proposal by comparing data before and after the Proposal comes into effect. ASIC will be able to confirm the extent to which insurers have reduced their prices following the Proposal, and the extent to which overall value has been improved by the Proposal and the other measures being introduced by the ICA and FSC.

The applicants are currently in the process of consulting with Insurance Statistics Australia Limited to determine appropriate formats for capturing data, with a view to ensure that ASIC can effectively monitor price and value.

This reporting will also identify any changes in discretionary or variable pricing by dealers. At present discretionary pricing only applies to a limited number of products and within strict bounds, and a number of insurers do not allow dealers to increase prices at all. If data reporting suggests that discretionary pricing is reducing the effectiveness of the cap, then ASIC will expect insurers to deal with the issue promptly.

Individual insurers have met (and are continuing to meet) with ASIC to discuss their pricing intentions following the introduction of the cap. The applicants are happy to meet individually with the ACCC to discuss these intentions on a confidential basis.

3.5 Concerns about the effectiveness of the CCI framework

The Consumer Action Law Centre and Financial Rights Legal Centre submit that the current cap on CCI commissions does not appear to have reduced problems associated with add-on sales of CCI.[17] The Financial Rights Legal Centre detailed this concern:

> 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

[17] See Consumer Action Law Centre submission, p 5.

> that the 20% commission did not provide protection or benefits to consumers compared to the other types of insurance… 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.

First, we note that that the Centre concurs that the cap is a necessary step. The applicants acknowledge that additional measures will be required to support the achievement of the desired protections and improvements for consumers. Those additional measures are incorporated in the package of reforms being proposed by the FSC and ICA, and the cap on commissions provides the necessary foundation for those additional and supplementary measures (see section 4.3 below).

The applicants recognise that there are concerns that the 20% cap on CCI has not resulted in satisfactory outcomes across the industry.[18] However, they submit that the Proposal addresses many of the underlying causes of the concerns associated with the effectiveness of the CCI framework.

There may be a number of reasons for the limited impact of the CCI cap on the price and value of that product. The ACCC has previously noted that the introduction of a cap on CCI commissions may have introduced administration and compliance costs that may have offset any reduction in commission costs, at least initially:

> Although intended to reduce premiums, increased administration and compliance costs may offset, at least in the short term, any reduction in expenses and underwriting result.[19]

Allocating these costs across all add-on insurance products sold through the motor vehicle dealership channel will result in economies of scope and scale and is likely to increase the effectiveness of a cap on commissions in reducing expenses and premiums and promoting an increase in loss ratios.

Further, some of the differences between premiums and loss ratios relating to motor vehicle dealerships and other channels may be attributable to differences in the channels themselves. For example, the TPC has noted that there could be "relative efficiencies in the sale of CCI through credit provider branch networks as part of a financial package" that were not available to the motor vehicle dealership, as well as a "conjunction of interests between the customer and the credit provider in obtaining insurance against subsequent defaults".[20] These factors may affect acquisition costs and contribute to higher prices for CCI purchased through motor vehicle dealerships relative to other channels, which may in turn contribute to lower loss ratios even where commissions are identical.

However, any higher premiums and lower loss ratios connected with CCI in the motor vehicle dealership channel are also likely to be attributable to the limited application of the cap to one product among many offered, giving rise to pressures to cross-subsidise other products. Extending the cap to all add-on insurance products under this proposal will remove the reverse competition not only on the basis of commissions but also on the basis of upfront and sign-on payments, marketing and advertising subsidies and other benefits that have resulted in higher premiums but will now be considered to be additional

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[18] ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*, February 2016 at p 32.

[19] ACCC, *Consumer Credit Review Final Report*, July 1998 at p 21–22.

[20] TPC, The Market for Consumer Credit Insurance, 30 June 1991 at p 51.

commissions where they are not a genuine advance payment of expected transactional commissions or a genuine reimbursement of reasonable expenses.

3.6 Public benefits other than reduction in price

The applicants submit that the public benefits associated with the Proposal extend beyond the reduction in price that will flow from the cap on commissions. As noted above, competition to secure the dealership channel will become predominantly based on service levels (including enhanced training and advertising support) and the quality and value of products. Along with the other measures being introduced alongside the Proposal, this will drive insurers to continually improve the pricing, coverage and value of their products.

4 Effect on problematic sales practices

4.1 Summary of the issue

In Report 470, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*, Report 471, *The sale of life insurance through car dealers: Taking consumers for a ride* and Report 492, *A market that is failing consumers: The sale of add-on insurance through car dealers*, ASIC raised a number of concerns with the current sales practices, arising in part from high levels of commissions paid.[21]

However, some submissions are concerned that "the cap will not provide a disincentive for dealers continuing to pressure or mislead consumers into buying add-on insurance".[22]

4.2 Higher commissions incentivise poor sales practices

ASIC has found that a significant driver of problematic sales practices is the current high level of commissions. The higher the commission, the greater the incentive to sell the relevant product and the greater the likelihood of problematic sales practices.

In particular, ASIC has recognised that high commissions create conflicts of interest for motor vehicle dealers and "increase the risk of consumers paying for unsuitable products that do not meet their needs".[23] ASIC further explains that:

> These financial incentives result in a conflict of interest for car dealers, significantly increasing the risk of misselling. In particular, volume bonuses encourage high volumes of sales of certain products, which could motivate car dealers to push add-on insurance products to consumers, even where they may not need or want cover.[24]

Under the Proposal, the cap on commissions will reduce sales-based incentives and therefore reduce the risk of financial incentives leading to problematic sales practices.

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[21] ASIC Report 470, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*, February 2016.

[22] Consumer Action Law Centre submission at p 7.

[23] ASIC Report 492, at p 32.

[24] ASIC Report 492, at p 16.

4.3 Complementary measures being developed by the FSC and ICA

The applicants acknowledge that a cap will only partly address issues of inappropriate sales practices. As set out in the Application, the Proposal is presented as part of a package of measures and is intended to complement the reforms being developed by the FSC and ICA.

All of these measures are aimed at improving sales practices in the distribution channel and improving customer value, but this application focuses on the level of commissions paid since, in the absence of authorisation, industry agreement on that aspect would present a competition law risk that does not arise in respect of other measures.

Measures being developed include (among others):

- **Customer information and systems validation:** where applicable, insurers will implement systems to collect customer information that will identify and prevent the sale of insurance to consumers who would not on the basis of that information be eligible to make a claim, or would receive limited value from the product. General insurers have also committed, on a prospective basis, to refunds for consumers who buy policies they were unable to substantially benefit from at the time of purchase.

- **Training and monitoring:** insurers will review and strengthen dealership training on compliance and systems to ensure that appropriate conduct is clearly defined, and monitoring obligations will be clarified.

- **Product disclosure:** the general insurance industry is in the process of developing and consumer testing point of sale product information to better assist consumers to assess the value of products against their needs and circumstances. Life insurers will review the results of this process and introduce similar disclosure documents as appropriate.

- **Sales practices:** general insurers will commission independent reviews of insurer compliance and risk management procedures in addressing risks associated with the sale of add-on products, and the ICA's "Understand Insurance" website will enhance understanding about the range of general insurance products that could be offered through motor dealers.

- **Post-sale engagement:** following a purchase, insurers will contact customers to ensure they are aware of the product they have purchased and their cooling-off rights, and will implement annual reminders in the case of multi-year products.

- **Single premiums**: insurers that offer a single loan-financed premium will also offer a non-financed payment option and will be encouraged to offer a choice of payment by instalments; customers will be given clear information about payment options and their implications.

- **Product design:** general insurers will review their policy inclusions and exclusions with a view to increasing product coverage where possible for the benefit of consumers, and life insurers will review products to ensure they are sustainable, affordable and suitable to customers.

5 Scope of the Proposal

5.1 Summary of the issue

Submissions by several interested parties have queried the scope of the Proposal, in terms of both the products and the distribution channels to which the Proposal applies.

For example, the Consumer Action Law Centre submission suggests that a number of products not supplied by insurers should be covered by the Proposal.[25] Other submissions suggested that the Proposal was too broad and should not cover certain arrangements, products or channels. In particular:

- Yamaha submitted that the Proposal should not extend to insurance agents and underwriting agents;[26] and
- National Insurance Brokers Association submitted that the Proposal should not extend to Insurance brokers.[27]

Additionally, the Australian Automotive Dealer Association submitted that the Proposal should extend to other channels.[28]

5.2 Rationale for the scope of the Proposal

As noted in the Application, the Proposal was developed by the applicants in response to ASIC's concerns, as set out in the Reports 470 and 471 and reflected in Report 492,[29] as well as historical concerns relating to add-on insurance raised with the industry directly.

ASIC's concerns centred on the motor vehicle dealership distribution channel, and identified a number of characteristics, including "reverse competition", the profile of customers and the particular interactions with customers, that are unique to the motor vehicle dealership channel. The concerns expressed in those reports do not extend to other distribution channels.

However, the motor vehicle distribution channel has been defined broadly, and may include insurance brokers, agents and underwriting agents to the extent that they participate in that channel, in order to ensure that insurers and dealers cannot easily circumvent the cap by restructuring their arrangements to avoid any narrow definition. As detailed in the Application, the scope of the Proposal is intended to minimise the risk of non-compliance and circumvention,[30] and the applicants consider that it remains important to avoid this risk.

A narrower definition of the motor vehicle dealership channel would provide a clear opportunity for circumvention, which would undermine the effectiveness of the Proposal, and jeopardise the public benefits detailed in the Application.

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[25] See Consumer Action Law Centre submission, p 6;

[26] See Yamaha submission, p 4;

[27] See National Insurance Brokers Association submission, p 2-3.

[28] See Australian Automotive Dealer Association's submission, pp 4-6.

[29] ASIC Report 470, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*, February 2016; ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*, February 2016; ASIC Report 492, *A market that is failing consumers: The sale of add-on insurance through car dealers*, September 2016.

[30] See Application, p13.

5.3 Insurance brokers, insurance agents and underwriting agents

The National Insurance Brokers Association of Australia (**NIBA**) and Yamaha Corporation both submit that the scope of the Proposal may have the unintended consequence of capturing payments made to insurance agents, underwriting agents and insurance brokers.[31] Both submissions raise the situation where an underwriting agency, insurance broker or agent arranges or facilitates the distribution of add-on insurance products to motor vehicle dealerships, either by distributing an existing product or designing a new product for a group of individual clients and sourcing insurers to underwrite.[32]

Broadly, the Proposal has been drafted so that the cap on commissions would apply to payments made to motor vehicle dealerships, associated credit providers, associated brokers, and independent finance brokers (as well as any of their agents). The intention behind this scope is to capture all participants in the motor vehicle dealership channel and to address any avenue by which high commissions may lead to higher prices and reduced value to customers.

In the applicants' view, to maximise its effectiveness the cap on commissions needs to apply to any structure or arrangement that may take advantage of the characteristics of the motor vehicle dealership channel that have concerned ASIC and the ACCC. For example, if a group of dealers were able to avoid the cap on commissions by establishing a broker or underwriting agency, that entity could then demand high commissions from insurers for access to the dealers' customers, reducing the effectiveness of the cap.

As a result, in the applicants' view, limiting the cap to commissions paid in respect of the sale of products by motor vehicle dealerships to their customers, as proposed by NIBA, may significantly reduce the effectiveness of the cap on commissions in lowering premiums and increasing value for customers. However, the applicants remain open to refinements of the definitions in the Proposal to exclude arrangements that would not raise concerns around circumventing or weakening the effect of the cap.

6 Other issues

6.1 Enforcement mechanism

We note that some of the interested party submissions questioned the lack of monitoring, compliance and enforcement mechanisms in the Proposal. The Proposal incorporates a commitment to monitoring and reporting to ASIC. The applicants are in the process of developing the standardised data templates for this monitoring and reporting.

It is also intended that the Proposal will, if authorised, be implemented in the terms of a Code which will be the subject of compliance and enforcement mechanisms within the structure, or modelled on the structure, currently in place for the General Insurance Code (**GI Code**).

Currently under the GI Code, insurers sign a deed of adoption requiring Code compliance. The Code Governance Committee (**CGC**) is responsible for the monitoring, compliance and enforcement functions associated with the GI Code. The CGC consists of an independent chair, an industry representative and a consumer representative.

[31] See National Insurance Brokers Association of Australia submission, pp 2-3; Yamaha Corporation submission pp 5-6.

[32] See National Insurance Brokers Association of Australia submission, pp 2–3.

Under the GI Code, the CGC is tasked with the role of monitoring and enforcing compliance with that code.[33] In particular, the CGC has the following monitoring responsibilities:

- receive allegations about breaches of the code;
- investigate alleged breaches at its discretion in accordance with the code;
- provide an opportunity to respond to alleged breaches;
- determine whether a breach has occurred;
- agree with any corrective measure(s) proposed to be implemented by insurers and the relevant timeframe(s); and
- monitor the implementation of any corrective measures and determine if they have been implemented within the agreed timeframe.

Currently, the CGC outsources these functions to the Financial Ombudsman Service Code Compliance and Monitoring Team (**FOS Code**).[34] However, it cannot outsource its function of imposing sanctions.

If a breach has occurred and is not remedied, the CGC may make a final determination and impose one or more of the following sanctions:

- a requirement that particular rectification steps be taken within a specified timeframe;
- a requirement that a compliance audit be undertaken;
- corrective advertising; and/or
- publication of non-compliance.[35]

When determining any sanctions to be imposed, the CGC must consider:

- the principles and objectives of the GI Code;
- the appropriateness of the sanction; and
- whether the breach is a significant breach.

This compliance and enforcement mechanism has had success for the GI Code, as evidenced by the Code Governance Committee Annual Report 2015–2016, where it was noted that 32 breaches of the GI Code were identified, resolved and closed. These were identified predominantly by referrals of possible breaches, with one case of a self-reported breach.[36]

[33] See section 12 of the Code.

[34] FOS Code is a separately operated and funded business unit of the FOS, established to support independent committees to monitor compliance with codes of practice.

[35] See sections 13.11 to 13.16 of the Code.

[36] See *General Insurance Code Governance Committee Annual Report 2015–2016*, p 6.

The applicants intend that a similar framework will apply to the administration and enforcement of the Proposal. They will update the ACCC on the implementation of this framework as it progresses.

6.2 Transition period

The Australian Automotive Dealer Association argues that the transition period for the introduction of the cap will present difficulties for motor vehicle dealerships, and suggests that the three-year transition period adopted by the Trowbridge reforms is more "realistic".[37]

The applicants recognise that arrangements that existed on or before 7 September 2016 may take some time to renegotiate or reorganise. This is particularly the case given the difference in position between the applicants and the dealerships (as evidenced by the Australian Automotive Dealer Association's submission). Additionally, as the Proposal will most likely be implemented via a voluntary code (and not a change in law), there is an added level of difficulty in insurers seeking to renegotiate historical contracts to provide for the voluntary cap.

If the ACCC considers that there is greater public benefit in a somewhat longer transition period for existing arrangements – and ASIC is also comfortable with that approach – the applicants would be open to an authorisation of the Proposal upon that basis.

[37] AADA Submission, at p 8.