Australian Banking Association

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Manager
Financial System Division
Treasury
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Dear Mr Spear

No hawking of financial products and deferred sales model for add on insurance

At the release of the Final Report of the Royal Commission last year the banking industry committed to learning the lessons, fixing the problems and making things right.

One year on from the Royal Commission the banking industry has tougher rules imposed by the Government and regulators, a back to basics approach to banking which is squarely centred on the customer and a renewed focus on fixing culture.

The banking industry strongly supports the Government acting on the recommendations of the Royal Commission and is committed to working together to see recommendations 3.4 and 4.1 and 4.3 of the Royal Commission are fully and effectively implemented.

The ABA's position

Hawking

The ABA agrees with the Commissioner's general rule that 'no financial product should be 'hawked' to retail clients'. Consistent with this rule, the legislation should be changed to provide that the existing anti-hawking provisions be retained for basic deposit products and non-cash payment facilities, and the new prohibitions should apply to all other financial products.

The legislation should also be changed to ensure that, with the positive, clear and reasonably specific *consent* of a customer, banks can continue to have proactive discussions with customers about their financial situation.

These changes will ensure that banks can continue to meet their customer's banking needs.

Deferred sales model

The ABA supports introducing a deferred sales model for add-on insurance, consistent with the Royal Commission and Productivity Commission. The legislation should be changed so that the model explicitly applies to traditionally understood 'add-on insurances' that protect the principal product or service (and represent the poorest value to customers). It should also be explicit that the model does not apply to general insurances (specifically home and vehicle insurances) that do not provide cover for the principal product or service. This will ensure the model addresses the poorest value insurance products, without unduly affecting customer's access to higher value general insurance products.

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Key points

Hawking

- The ABA supports the prohibition of the hawking of superannuation (Recommendation 3.4) and insurance products (Recommendation 4.1) consistent with the findings of the Royal Commission. We believe that the new anti-hawking regime will ensure customers have greater control over which providers can contact them and the kind of products they are offered.
- The legislation should change to ensure the current anti-hawking arrangements for basic deposit products and non-cash payment facilities (e.g., customer transaction accounts, debit cards etc) are retained to ensure that banks can continue to move customers to lower cost financial products.
- For example, a customer attends a bank branch to cash a cheque, the teller notices they have significant savings sitting in a low interest transaction account. It is in the interests of the customer for the bank to be able to have a discussion with the customer about higher interest products.
- The new regime should preserve banks' ability to proactively ensure that they are meeting the needs and financial goals of their customers through ongoing discussions of the customer's entire financial situation. We suggest that a bank should be able to have these discussions based on a customer providing 'positive, clear, reasonably specific' consent.
- For example, a customer calls a call centre about refinancing a car loan and discloses that they are having trouble with repayments. It is in the interest of the customer for the bank to be able to offer a broad conversation about the customer's entire financial situation. The conversation should only proceed after the customer gives positive, clear and reasonably specific consent.
- The new regime should expressly permit offers for sale or issue of products reasonably within the scope of a customer's request, including where products have a similar purpose, fall within a similar class of products or provide cover for associated risks to the product that subject of the original request, and products that, purchased together, offer packaged discounts or other benefits. Further examples should be included in the Explanatory Memorandum (EM) to illustrate this.

Deferred sales model

- The ABA supports introducing a deferred sales model for a properly targeted scope of add-on insurance, consistent with the Royal Commission and Productivity Commission. A properly targeted scope will address consumer harms and poor value identified by the Royal Commission, without affecting the availability and accessibility of general insurances, which are demonstrated to have higher payout rates and provide better value to customers.
- The deferred sales model should apply to insurances typically understood to be 'add-on' insurances, including consumer credit insurance (CCI), guaranteed asset protection insurance (GAP insurance), insurance sold together with point of sale finance such as travel insurance and extended warranties.
- The definition of add-on insurance be clarified to ensure that it applies only to insurance that covers/insures the principal product or service, and does not capture insurance that covers/insures the relevant purchase, asset or security.

  This approach would ensure that the model applies, for example, to consumer credit insurance which protects the consumer loan (principal product) but not apply to home and contents insurance sold by financial institutions when arranging a mortgage.
- Extending the model to general insurances that do not protect the principal product (i.e., the loan) such as home and contents and vehicle insurances is not consistent with recommendations of the Royal Commission or the Productivity Commission, which focussed on

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products that generally represented poor value to customers, were not well understood, and often involved pressure selling at the point of sale of the principal product.

- The offer and sale of general insurance such as home and contents and vehicle insurances will otherwise be regulated by the new hawking provisions, the design and distribution obligations and the licensing and conduct obligations under the Corporations Act.
- Embedded credit card insurances (such as travel insurance, purchase protection and extended warranty insurance) should be out of scope of the regime. These insurances and benefits are not offered or sold to the customers (for example under s12DO(1)(a)) as they form part of the terms of the principal product (in this case a credit card) and the legislation should be refined to ensure these embedded benefits are not subject to the regime. This position should be reflected in the EM.
- Further, such embedded benefits do not provide cover for the principal card product. The insurance and benefits are activated as a result of the customer using the credit card to make purchases, and do not cover the credit facility.

Implementation

- The ABA requests the provisions for anti-hawking and the deferred sales model be implemented from 1 July 2021. It will be necessary to make significant changes across systems, training and education, third party arrangements, policies, record keeping processes and customer collateral. The ABA requests that Treasury further consult with industry on the implementation timing for smaller AFSLs (including smaller ADIs).

Breaches

- The prohibitions under ss12DQ, 12DR, 12DS should be subject to specific ‘reasonable steps’ defences.

Yours sincerely

Justin Mining
Policy Director

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership

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1. ABA response to consultation: Hawking

1.1 Current arrangements retained for basic deposit products and non-cash payment facilities

The proposed Bill repeals the current anti-hawking provisions for financial products and introduces a new general prohibition on the offer for sale, issue or transfer of financial products to retail clients arising from 'unsolicited contact' by the provider. The scope of the new prohibition goes beyond the recommendations in the Final Report, which were limited to superannuation products (recommendation 3.4) and insurance products (recommendation 4.1).

The ABA agrees with the Commissioner's general rule that 'no financial product should be 'hawked' to retail clients'. Consistent with this rule, we believe that the existing anti-hawking provisions be retained for basic deposit products and non-cash payment facilities, and the new prohibitions should apply to all other financial products.

This approach is consistent with the Commissioner's rule and acknowledges the differences between basic deposit products and non-cash payment facilities and other classes of more complex financial products. It would also preserve the industry's ability to outline options for customers to improve their financial position, such as through recommending products with lower fees or that provide higher interest returns.

The ability for banks to provide information to customers on lower cost financial products, such as basic bank accounts, and actively encourage customers to move to these options has been actively encouraged by regulators.

For example, as part of its authorisation of the ABA's Banking Code of Practice in November 2019, the Australian Competition and Consumer Commission set a number of conditions aimed at improving the Code's benefits for low income customers. This includes requiring "member banks to take reasonable steps to identify and contact existing customers who are, or may be, eligible for a basic account and who do not already hold a basic account". These new hawking provisions would significantly limit the ability of banks to take such proactive steps to improving the position of the customer unless these basic products are excluded from the new general hawking prohibition.

ABA recommendation: that the new general hawking prohibition should not apply to basic deposit products and non-cash payment facilities. The current anti-hawking arrangements for those classes of financial products should be retained.

1.2 Meeting the needs of customers

The banking industry is committed to improving customer outcomes and an important element in this is taking proactive measures to provide higher levels of customer service.

We submit that it is essential that the new hawking provisions do not limit the ability of banks to proactively conduct general discussions with customers aimed at improving their financial position. It is quite common for a discussion to take place between a bank and a customer around a particular product (e.g., home loan) and for this to trigger, with the customer's consent, a full analysis of the customer's entire financial situation. For example, in the conversation regarding their home loan, the bank may notice that a customer has funds sitting in a low interest savings account and this can lead to a discussion about products that have higher interest earnings and would improve the customer's financial position.

Further, many banks have developed very comprehensive relationship business models where customers expect a higher level of customer service with a bank proactively contacting them to discuss products and services that better align to their financial needs and goals. Often a customer will have a dedicated relationship manager whose role is to check in with the customer on a regular basis for general discussions around their financial situation through a combination of scheduled appointments and immediate points of contact. This helps to ensure customers are informed of changes to products and services which they may benefit from.

The ABA submits that banks should be able to continue to proactively ensure it is meeting the needs of customers. These conversations are increasingly important in an environment where financial planning services are increasingly unaffordable for many Australians.

The Bill and EM should expressly stipulate that these types of interactions are not prohibited under the new regime provided that before proceeding, a bank obtains positive, clear and reasonably specific *consent* from a customer that they wish to have a general discussion about their financial situation. We also suggest that in an ongoing relationship model, the bank should be able to obtain the 'positive, clear and reasonably specific' consent of the customer to regular contact on their financial situation that remains valid until a customer withdraws the consent.

ABA recommendation: that the Bill and EM expressly allow banks to conduct proactive discussions with customers about their financial situation, provided that before proceeding, the bank obtains positive, clear and reasonably specific *consent* from that customer.

1.3 'Reasonably within the scope of the consumer's request'

The ABA notes that before offers of a financial product can be made, a customer must have a 'positive, clear and reasonably specific request for contact about that product or type of product' or as per section 992A(5)(a)(ii) of the proposed Bill that a reasonable person would consider that the offer for sale or issue of that financial product was reasonably within the scope of the customer's request.

At paragraph 1.59, the EM outlines some guidance on whether or not a product is reasonably within the scope of a customer's request including where:

- *products are identified to have a similar purpose or function (e.g., managing a particular financial risk)*
- *products that are identified to fall within a similar broad class of products (e.g., life insurance in a broad class with other products such as income protection and total personal disability)*
- *related financial products that provide cover for associated risks with the product that was subject of the original customer request (e.g., home and contents insurance when a customer enters into a mortgage secured by a residential property*

ABA recommendation: We propose these criteria should also include products that, purchased together, offer packaged discounts or other benefits.

While we believe that this guidance provides some clarity for industry regarding what general insurance products are relevant to a credit contract under the proposed Bill, the ABA suggests that some further examples could be inserted into the EM, including:

- landlord insurance with an investment property loan
- car insurance with a personal loan – where the loan is taken out for the purpose of purchasing a car
- travel insurance with a Traveller Card or request for foreign currency (for the purpose of use on a trip).

ABA recommendation: the Bill or EM be amended to expressly permit relevant general insurance products to be offered to customers during discussions of a customer's financial situation.

Example: Packaged products

A mortgage customer may also purchase a supplementary package which provides various discounts and benefits on financial products (e.g., no fee on basic deposit account, and 15% off home & contents insurance) by paying an annual fee. Today, banks call their customers to remind them of discounts available to them (which they have already paid for).

This call will be prohibited under the proposed Bill, because:

- discussion of available discounts would likely amount to offer or invitation to “ask or apply for a financial product or to purchase a financial product” under s992A(1); and

- existing record of customers’ marketing references would not comply with the proposed Bill, and so banks will be prevented from contacting the customer (e.g. the bank won’t know when their customers provided consent, the relevant “scope” of the consent, and whether it was by a “positive act”).

1.4 ‘Unsolicited contact’

The proposed Bill introduces a general prohibition on the offer for sale, issue or transfer of financial products to retail clients arising from ‘unsolicited contact’ by the provider.

Form of contact

Section 992A introduces a statutory definition of ‘unsolicited contact’, which is contact that is not in response to a ‘positive, clear and informed’ consumer request, made via telephone, in a face-to-face meeting or by any other form that creates an expectation of immediate response (i.e., not solely during phone calls or meetings)’.

Paragraph 1.42 of the EM provides guidance on forms of contact that would not create an expectation of an immediate response from a customer and therefore would not be ‘unsolicited contact’. It explicitly refers the examples of ‘standard email communication’ and ‘ordinary corporate transactions such as sending investors offer documents’. The ABA suggests that this should also capture other digital forms of contact such as by SMS, in-app messaging or push notifications.

Causal nexus

Paragraph 1.36 of the EM states that the causal nexus between the unsolicited contact and an offer may be broken if:

- “the consumer obtains personal advice (and the appropriate Statement of Advice) on the product following the initial unsolicited contact”; or,
- “a significant period of time has elapsed since the initial unsolicited contact (or any other unsolicited contact with the offeror)”.

The ABA submits that the reference to the appropriate Statement of Advice (SOA) in paragraph 1.36 should be deleted as there are SOA exemptions (e.g., for basic deposit products under section 946B of the *Corporations Act*).

Further, we also suggest that further clarity needs to be provided in the EM as to what constitutes a “significant period of time” to break the causal nexus.

Safeguard conditions

Not only must a customer make this clear request for contact over a financial product but there is also an extensive list of safeguard conditions which must be met in order for a provider to not breach the general prohibition in contacting the customer. The ABA provides its comments on a number of these safeguards below.

Safeguard	ABA comment
Section 992A(5)(c) – customer request must be clear, and the customer must understand what they are requesting	This section requires a customer to not only make a 'clear' request for contact, but for the customer to 'understand' what they are requesting. The ABA submits that this provision places an unreasonable obligation on a provider. It is extremely unclear how a provider could be expected to demonstrate compliance with this obligation to ascertain whether a customer 'understands' the request. **ABA recommendation:** this provision be limited to a requirement that a customer make a clear request.
Section 992A(5)(d) – contact must only be made in the form requested by the customer	The ABA notes that this requirement appears to go beyond the Final Report's recommendations and poses significant compliance and implementation challenges for providers. **ABA recommendation:** there should be a 'reasonableness test' that requires banks to take such steps as are reasonable in the circumstances to contact the customer in that form. We propose two key limbs of the test in practice: a) where the provider is unable to contact the customer via the requested form (e.g., chatbot), the bank should be able to offer alternative forms of contact, or b) where the customer provides insufficient or invalid contact details (e.g., misspelt email address), the bank should be able to contact the customer in an alternative form and then be able to re-confirm the customer's positive consent before proceeding further.
Section 992A(5)(e) – contact request only valid for six weeks	The ABA notes that a financial product provider is prohibited from offering a financial product for issue, transfer or sale; or requesting or inviting the customer to ask, apply or purchase a financial product once a six week period ends from when the customer request is made. We submit that this is an insufficient period for many types of products. For example, for home insurance in relation to a mortgage, there is significant potential for the settlement of transaction and the need to enact appropriate insurance to extend well beyond a six week window from an initial customer contact request. Further, it is quite common in discussions between a bank and a customer for the customer to request to be contacted at a later point of time to discuss product options, which will be beyond the six week period. For example, a customer indicates to a relationship manager that he or she will be travelling in three months and would like to be contacted at that point to discuss travel insurance options. **ABA recommendation**: the ABA submits that an appropriate safeguard would be to allow a contact request to be valid for six weeks from the last time of contact with the customer related to

the original request and/or to provide an extended period where a customer has requested to be contacted at a particular time.

Section 992A(5)(f) – contact request not withdrawn by customer before contact made

The ABA understands that this means that providers must ensure that a customer's request for contact is not withdrawn before it makes contact with them. Further, the request may be withdrawn or varied at any time and by any means.

Given the immediate nature of the withdrawal of a request, the ABA notes that this may be difficult in situations where a provider outsources the requested contact to a third party. It is possible that a customer withdraws the consent after the provider has briefed the third party and there is not time to withdraw. This has significant implications given a breach of this provision is a strict liability offence.

ABA recommendation: provider be given an exemption from section 992A(5)(f) if it or the third party again confirms positive consent at the beginning of the contact.

Section 992A(2)(a) – acting in best interests of client

The ABA notes that this means that the prohibition on hawking of financial products does not apply to advice given to a customer by a person who is required to act in their best interests.

It is unclear what happens where a banker recommends a deposit account on the basis of a request for the product of the customer, but then is required to refer the customer to another banker trained to provide advice on another product (e.g., superannuation fund). We request that clarification be provided that this will not breach the general prohibition because the banker is 'offering, requesting or inviting' a customer to ask for a financial product (e.g., superannuation fund) that was not covered by the original request (e.g., deposit product).

2. Deferred sales model

2.1 Background

The recommendations of the Royal Commission and Productivity Commission focussed on the sale of traditionally understood add on insurances such as CCI, GAP insurance, insurance sold together with point of sale finance such as travel insurance and extended warranties. These types of insurance were a focus of the Royal Commission and the Productivity Commission as:

- they typically represent poorer value for customers;
- they are less understood by customers;
- customers can feel pressured at the point of sale;
- there is typically less meaningful competition for these products; and
- customer typically need time to consider such insurance, particularly since they often have not contemplated it.

The ABA fully supports the Government implementing a deferred sales model for these traditional 'add-on' insurances.

2.1.1 General insurance

Having appropriate general insurances in place helps customers manage significant financial risks and the value of these insurances to individuals and the community is brought into sharp relief in the face of widespread natural disasters.

In relation to real property, these financial risks arise either once contracts are signed for a property or from settlement (depending on state-based rules).

APRA also expects ADIs to ensure that mortgagors to have sufficient building contents insurance place.

General insurances, such as home and contents insurance and motor vehicle provide better value to customers and do not typically generate the concerns which warrant these laws for add-on insurance. For example, ASIC found that on average add-on insurance products pay out 24c in the dollar,[1] representing poor value for customers. In comparison the average payout for general insurance products between 2010 and 2019 was 63c - 75c.

Table 1: Net loss ratios, general insurance products, average 2010-2019, %

General Insurance Product	Average 2010-19
Houseowners / householders	63%
Domestic motor vehicle	74%
CTP motor vehicle	75%

Source: APRA General Insurance performance statistics, September 2019

2.2 Deferred sales period for CCI

The banking industry implemented a four-day deferred sales period for CCI for credit cards and personal loans sold in branches or over the phone from 1 July 2019, as part of the commencement of the 2019 Banking Code of Practice.

The design of the four-day deferred sales period was based on extensive consultation with consumer advocates, the insurance industry and ASIC. The deferred sales model was implemented by major banks no later than 31 December 2018 and by all ABA member banks by 1 July 2019.

The model prescribed in the Code, seeks to improve consumer protection by banning harmful point of sale sales practices while allowing customers to receive information about insurance and undertake customer-initiated transactions. The Code provides:

> Deferred sales period for CCI for credit cards and personal loans sold in branches or over the phone
>
> 67. If we offer CCI for credit cards and personal loans through a branch or over the phone, then we will not offer that product to you until at least four days after you have applied for the credit product. This is known as a ‘deferred sales period’.
>
> 68. We can still provide factual information on CCI for you to consider during the deferred sales period.

Since the Royal Commission, ABA members have largely withdrawn from the sale of CCI. No ABA member continues to sell CCI in connection with credit cards or personal loans. A small number of members provide CCI insurance for mortgages. CCI for home loans is community rated and plays an important role for customers who cannot obtain life risk insurance due to pre-existing/personal circumstances.

[1] ASIC (2019) Consumer Credit Insurance: Poor value products and harmful sales practices, https://download.asic.gov.au/media/5201456/rep622-published-11-july-2019-1.pdf

2.3 ABA position

The ABA supports introducing a deferred sales model for add-on insurance, consistent with the Royal Commission and Productivity Commission. The model should apply to traditionally understood 'add-on insurances' that protect the principal product or service (and represent the poorest value to customers) and not apply to not general insurances that do not provide cover for the principal product or service.

Embedded credit card insurances (such as travel insurance, purchase protection and extended warranty insurance) should be out of scope of the regime. These insurances and benefits are not offered or sold to the customers as they form part of the terms of the principal product (in this case a credit card) and the legislation should be refined to ensure these embedded benefits are not subject to the model.

2.4 Meaning of 'add-on insurance' (s12DO)

The current drafting of s12DO (in particular s12DO(1)(c)) could capture scenarios where a customer is obtaining credit to purchase an asset (such as a home or car) and general insurance (such as home insurance and car insurance) is offered or sold at the same time with the credit contract.

The ABA does not believe that the definition of add on insurance should apply to insurance that does not provide cover for the principal product or service but is sold at the same time as credit for the principal product or service provided. In the context of a mortgage, the loan is the principal product or service, not the house, and insurance that protects the house (as opposed to the loan) should not be cast as add-on insurance.

If the regime were to operate in this way, we believe it would be beyond the scope intended by the Royal Commission and Productivity Commission. It would also introduce potential risks and financial consequences for the customer if they are under-insured or do not hold insurance for a period of time while insurance is being arranged separately or after the 4 day deferred sales period. By extension, if these issues are widespread, they introduce and potential financial consequences for governments.

The offer and sale of general insurance will otherwise be regulated by the new hawking provisions, the Design and Distribution obligations and the licensing and conduct obligations under the *Corporations Act.*

ABA recommendation: The definition of add-on insurance be clarified to ensure that it applies only to insurance that covers/insures the principal product or service, and does not capture insurance that covers/insures the relevant purchase, asset or security.

This could be achieved by further clarifying s12DO(1)(c) so that the product must directly relate to the principal product or service.

If this recommendation is not accepted, and the current drafting of 'add-on insurance' is retained, we propose the following amendments to s12DW, to include:

- General Insurance for all types of vehicles (such as boats, caravans and trailers)
- Third-party property
- 3rd party fire and theft
- Home and contents insurance
- Landlord insurance.

However, we maintain that an appropriately scoped definition of add-on insurance that address consumer harm without affecting the availability and accessibility of general insurance is the best path to ensuring a simple regime, with minimal complexity and exemptions.

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2.5 Credit card insurances and benefits (s12DO)

Many credit cards offer embedded insurance and other benefits, including travel insurance, purchase protection, fraud insurance and extended warranties. These insurances and benefits form part of the terms of the principal product and are not, and cannot be, offered or sold to the customers separately.

ABA recommendation: The legislation should be refined to ensure products with embedded insurance and other benefits are not subject to the regime.

This could be achieved by noting in the EM, that s12DO(1)(a) would not encompass insurances and benefits that form part of the terms of the principal product.

2.6 Providing information (s12DP)

The ABA proposes that the information that may be provided under 12DP(1), include:

- an individualised quote for the insurance
- information about how the customer can apply for the insurance.

ABA recommendation: s12DP specify that these items can be provided to customers.

3. Implementation

The new provisions are currently proposed to commence on 1 July 2020, which gives industry a very limited timeframe to make a range of necessary changes to their systems, procedures and protocols, including:

- **Training and education:** conducting training and education of all customer facing staff and other representatives across call centres and branches – one major bank alone estimates that it would need to conduct training for over 6000 frontline staff members
- **Distribution model:** negotiating amended third party distribution, referral and outsourcing contracts
- **Customer service collateral:** amending scripts and manuals used by customer facing staff and other representatives across call centres and branches
- **Online tools**: developing and implementing amended operating rules for online tools increasingly being utilised by customers, such as chatbots
- **Systems changes**: any systems changes need to be designed, built, tested, piloted and rolled out across large networks as well as fitting in with a limited number of systems releases each year – our banks have indicated that this is generally a minimum of 6 months lead time needed for small to medium initiatives and much longer for larger projects
- **Record keeping**: developing and implementing amended record keeping systems to record client requests (e.g., a “positive, clear and informed request”) and withdrawn requests.

This extremely short timeframe will be particularly difficult for industry to comply with given that much of the implementation will depend on matters still to be resolved, such as the development of necessary ASIC guidance and any exemptions that are provided from the provisions. For example, it will be difficult for industry to fully train staff about recognising the withdrawal of a customer request and responding immediately without further regulatory guidance.

An ABA member bank has stated that during 2018-19, it rolled out new anti-hawking training to all distribution areas across its organisation. This took approximately six to seven months to deliver the program to thousands of staff whilst at the same time ensuring minimal customer impact by ensuring it could still be able to service customers within the expected timeframes. This also does not factor in the time spent prior to delivery where the new solutions were developed and updates made to materials.

The implementation task for ADIs (particularly smaller ADIs) will be particularly difficult given the significant resources already required across a number of major regulatory changes during 2020-21.

For example, the non-major banks will be required to implement the Consumer Data Right as part of the Open Banking regime during 2021. We ask that Treasury consider further discussions with industry on the implementation timing for smaller AFSLs (including smaller ADIs).

ABA recommendation: that the provisions commence from 1 July 2021 and that Treasury should further consult with industry on the implementation timing for smaller AFSLs (including smaller ADIs).

If embedded credit card insurances and benefits are subject to the regime, the provisions should commence in respect of those products from 1 July 2022 because of the significant changes to current product offerings and the corresponding education of customers.

4. Breaches

Australia's banks offer customers the choice to obtain information and quotes, and purchase products in multiple channels, including in branch, on the phone, in-app and online. Some banks offer these channels across multiple brands, that may use the same corporate structure and ACL/AFSL licence (person).

The industry has identified the risk that a person may comply with the prohibition at 12DQ-12DS within one channel or brand, but that the customer may self-initiate contact through another channel or brand and acquire the add-on product.

In the context of large banks and banking groups, it is impractical to develop controls, across all channels, and all brands, in real time, to prevent a self-initiated purchase by customers. The ABA notes the application of 12GI, including a reasonable mistake of fact and reasonable precautions defence, however we are concerned that these provisions would not enable a person to make out a defence in the above circumstances.

ABA recommendation: The range of defences under 12GI should be expanded to also include a 'reasonable steps' defence. For example, certain disclosure provisions in the Corporations Act (e.g., 952E(3)), provide that a person does not contravene the provision if the person took reasonable steps to ensure the disclosure document or statement would not be defective.