

18 March 2020

Manager
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

Email: FSRCconsultations@treasury.gov.au

Response: Cap on Vehicle Dealer Commissions – Exposure Draft

The Australian Automotive Dealer Association (AADA) welcomes the opportunity to provide input into the Exposure Draft for the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2020 Measures)) Bill 2020: Cap on Commissions*.

The AADA is the peak industry advocacy body exclusively representing franchised new car Dealers in Australia. There are around 1,500 new car Dealers in Australia that operate about 3,200 new vehicle outlets.

The AADA supports the Government's intention to give ASIC the legislated power to set a cap on commissions as they apply to add-on insurance products. However, we would strongly submit that ASIC needs to consult with industry representatives in advance of setting any specific cap to ensure that such cap reflects both economic reality and consumer expectations.

The AADA strongly submits that the imposition of criminal sanctions for the breach of caps on commission goes far beyond what is reasonably required to sanction any breaches of what is, in truth, a reasonably minor matter. Similarly, the introduction of a strict-liability offence, which could leave Dealership staff liable for severe penalties due to simple arithmetic errors in what can be complex contractual documentation. We strongly believe that a level of intent needs to be present before the institution of penalties.

On the issue of penalties, the AADA submits that the potential for fines of 20,000 penalty units is wildly excessive given the nature of the offence and broader community expectations. Similarly, the imposition of fines of 600 penalty units for the strict liability offence seems out of scale for what could be an inadvertent breach of the cap.

Finally, we would question the provision that allows for the consumer to recover the commission paid to the Dealer (subsection 12GFA (2)) as this payment is unrelated to payments made by the consumer.

Please feel free to contact me on E jvoortman@aada.asn.au, M +61 452 535 696 or our Policy Manager Alex Tewes on E atewes@aada.asn.au, M +61 418 425 820 if you have any questions.

Yours sincerely,



James Voortman
Chief Executive Officer