



ASIC
Australian Securities &
Investments Commission

The operation of the Design and Distribution Obligations regime

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The history

- Post-Wallis regime largely based on licensing and disclosure as the core elements of the financial services regime.
- Work by ASIC and others have identified the limits of a disclosure-based consumer protection regime over many years.
 - Eg REP 632 Disclosure: Why it shouldn't be the default.
- ASIC and others raised the prospect of a product design regime in the 2014 Financial System Inquiry.
- The final report (Murray Report) recommended the introduction of product design and distribution obligations:
 - In particular, they concluded that “disclosure can be ineffective for a number of reasons” and that “disclosure alone is unlikely to correct the effect of broader market structures and conflicts that drive product development or distribution practices” that result in poor consumer outcomes;
 - They concluded that poor design and distribution practices played a significant role in contributing to consumer detriment. It is in this context that the FSI recognised the variable quality of design and distribution controls and recommended the introduction of the design and distribution obligations as a supply-side intervention that places additional responsibility for consumer outcomes on issuers and distributors.



The history (cont)

- Also raised in the Hayne Royal Commission Final Report (2019).
- The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 introduced design and distribution obligations (DDO) into Ch 7 of the Corporations Act.
- The DDO was originally due to commence April 2021, but was delayed six months in the context of the COVID pandemic.
- The overall objectives of Ch 7 of the Corporations Act was updated at the same time to include the “provision of suitable financial products to consumers of products”.



The key concepts

- The design and distribution obligations are intended to help consumers obtain appropriate financial products.
- They require issuers and distributors to have a consumer-centric approach to designing and distributing products.
- Not an individual client-level suitability requirement.
- The obligations require issuers and distributors to develop and maintain effective product governance arrangements across the life cycle of financial products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

The key concepts





Three key obligations

- Prepare a target market declaration (TMD) – setting out:
 - the target market for the product (with reasons);
 - distribution arrangements; and
 - review triggers (**TMD requirement**).
- To be a valid target market determination, it must be reasonably clear that “the product, including its key attributes, would likely be consistent with their likely objectives, financial situation and needs” of those in the target market (the **appropriateness requirement**).
- Issuers and distributors must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the TMD (**reasonable steps obligation**).



ASIC implementation activities

- Initially extended the transition period for a further six months during COVID.
- Education, guidance and industry engagement
 - RG274: Product design and distribution obligations.
- Mid 2021 – ASIC moved to more of a standard compliance approach.
- ASIC is actively reviewing TMDs across the financial services sector.
- Reducing the risk of harm to consumers caused by poor product design, distribution and marketing is one of ASIC's strategic priorities in our current corporate plan.



Insurance review

- As discussed at last year's ICA conference, ASIC's insurance team reviewed a batch of insurance TMDs in October/November 2022:
 - Life and general insurance;
 - Focus on products where we get more complaints about price, value and so on – eg sickness and accident, accidental death, funeral insurance, travel insurance, mortgage protection, pet insurance, mobile phone, add-on insurance; and
 - Reviewed the TMD and PDS together – looking at the degree of 'fit' between the product and the target market identified by the product issuer.



Insurance review (cont)

- We have written to both the ICA and FSC/CALI with our findings and feedback.
- Key issues included:
 - Some TMDs described the target market clearly and objectively;
 - Some TMDs were too general and vague in their description of their target market;
 - Some TMDs failed to deal with all three of the target market's financial situation, objectives and needs. Eg some failed to deal with ability to pay excesses, deductibles and other costs before being able to make a claim;
 - Some TMDs failed to link the product's features and attributes to the target market's financial situation, objectives and needs (eg how does this product meet those attributes of the target market); and
 - Some TMDs failed to deal with value for money issues.



Initial stop orders

- ASIC has now issued 80+ interim stop orders in the financial services sector.
- This includes:
 - Pet insurance (June 2023); and
 - Income protection insurance (July 2023).
- ASIC is considering possible stop orders in relation to travel insurance, funeral insurance and trauma (accident & illness) cover.



Ongoing work

- Product design and distribution continues to be a priority issue for ASIC.
- Sector wide work on DDO will continue in 2023/2024.
- There will be a particular focus on distribution and the reasonable steps obligation.
- Long-term we expect to see the DDO cycle being self-reinforcing and leading to better design, clearer target market and better distribution.
- ASIC also has current investigations into DDO compliance that may result in other penalties in the next 12 months.



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