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Australian Securities and Investments Commission
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Dear Mr. Brown

Submission on Consultation Paper 313 (CP313) from Westpac Group (Westpac)

Westpac welcomes the opportunity to make a submission to the Australian Securities and Investments Commission (ASIC) on its Consultation Paper on Product Intervention Powers (CP313).

Below is Westpac's response to the specific questions posed by ASIC in CP313. We would welcome the opportunity to discuss any matters raised in this submission in further detail with ASIC.

Should you require any further information or to respond to this submission, please feel free to contact me on mobile 0466 793 917 or via email jimzafiropoulos@westpac.com.au

Yours sincerely

Jim Zafiropoulos
Head of Regulatory Relationships

CP313 questions	WBC considerations and examples
B1Q1 - Are there any additional factors that ASIC might take into account in determining whether a product has resulted, will result or is likely to result, in significant consumer detriment?	Westpac agrees with the factors that ASIC has proposed in determining significant consumer detriment. Additionally, Westpac proposes that the determination of significant consumer detriment should include the impact of: • access to a product(s) as a result of the exercise of the product intervention power • any change in the affordability of the product for retained consumers • changes in the affordability of a class of products for retained consumers The determination of significant consumer detriment should extend to consideration of detriment or loss of benefits (financial and non-financial) to customers who themselves are not impacted by the original detrimental issue but may be impacted by an order. This is important given a wide range of consumers could experience a negative impact through the temporary or permanent withdrawal of products or services. **Hypothetical scenario of changes in affordability: insurance products** An intervention order relating to insurance products may increase the likelihood in cancellations from existing policy holders who may believe the product will cease. This may change the risk profile of remaining policy holders which may impact the pricing and affordability of the underlying product for continuing policy holders.
B2Q1 - Are there any other considerations that we should take into account in determining how we will intervene?	Westpac agrees with ASIC aiming to design an intervention that it considers appropriate, and we would suggest the intervention be designed with reference to the underlying cause of the detriment, including: • the problem/risk of the underlying product, • the sales practices of the product, and/or • the suitability of groups of consumers of the products (e.g., a distinction between customers who may be appropriate for product use, and those who were not appropriate customers of the product) • the length of time the product has been in the market • whether there are similar or replacement products available • to cure the harm, rather than banning the whole product • other applicable regulatory frameworks including competition law requirements and prudential standards (for example, a product structured to deliver a capital benefit may have an unintended consequence to the issuer)

	Additionally, Westpac submits that the proposed intervention should be in proportion to the cause of the significant consumer detriment, and it should also be tailored to achieve the desired goal of the intervention (but go no further). For example, if the detriment has been caused by a sales practice, then ASIC's intervention should address the sales practice rather than the underlying product. This is consistent with the principle that the intervention should be proportionate to the detriment, and to ensure that other consumers of the product not impacted by the sales practice are not disadvantaged. The proposed intervention should also include consideration of action by the product issuer(s) to mitigate the consumer detriment. We support ASIC's intention to consult with the prudential regulator and would suggest that ASIC articulates the extent of any consultation with the prudential regulator and the weight given to its views (where relevant). The guidance could include the prudential regulator's assessment of institutional and market stability impacts, and how this has been included in the determination of the order.
C1Q1 - Do you have any feedback on the information we propose to include in our consultation on a proposed product intervention order?	Westpac proposes that ASIC should consult with the product issuer and allow for a right of response within a specified timeframe. This would give the product issuer a fair opportunity to respond to the proposed intervention, and may also assist ASIC in: • building its underlying knowledge of the product, the distribution channels and customer segments • working through potential options available for addressing the detriment • allowing for remediation of the detriment • including consideration of steps that have already been taken, or have been identified to take, to remediate the detriment The overall intention of increased consultation would be to minimise disruption to customers, address unintended consequences and in some instances, it may lead to the product issuer taking action that leads to reduction of detriment without ASIC needing to exercise its power. However, we note that the consultation period should be timely and efficient, so suggest that ASIC create guidelines for this consultation period, for example including a fixed period for response and obtaining confirmation of ability for immediate remediation for any harm during that period.
C1Q2 - Is there any other information	In addition to the factors listed in the case studies in CP313, we suggest ASIC should also include the following information when consulting on a proposed product intervention order:

that we should include when we consult on a proposed product intervention order?	• the quantitative factors considered, including underlying assumptions or data underpinning the calculation. The underlying data and assumptions ASIC relies on for making the order should, to the extent practicable, be validated with the product issuer to ensure they are accurate
	• the qualitative factors considered, including how non-financial risks have been factored into the determination against financial risks
	• an assessment of the economic and competition impacts of the intervention order
	• the views of the prudential regulator in relation to the proposed order (where consultation with the prudential regulator has occurred)
	
	During the consultation period, we would also encourage ASIC to agree with the product issuer:
	
	• whether they have a view that existing customers will be able to continue to hold the product, and consider the impact and consequences of a decision either way
	• if there is a view that customers should not continue holding the product, what are the appropriate steps to:
	  ○ refund product costs
	  ○ terminate product and pay amounts to customer as at the date of termination
	  ○ terminate product and pay customer the original application amount
	  ○ terminate product and pay customer the original application amount plus TVM
	
	This would allow adequate time for the product issuer to consider impact of either continuing or terminating the product for existing customers.

C2Q1 – Do you have any feedback on how we intend to describe the significant consumer detriment?	Westpac supports ASIC's proposal on the way it intends to describe significant consumer detriment when it consults on making a product intervention order, in particular the intention to be transparent about how it is satisfied of significant consumer detriment for every exercise of the product intervention power.
C3Q1 - Do you agree with our proposed approach to	Westpac agrees that a case-by-case basis is a good approach, provided that where there are two or more issuers of the product(s), issuers are treated equitably with consideration of the significant consumer detriment, if there is a difference.

determining whether to delay commencement of a product intervention order? If not, why not?	When considering the approach to determining the appropriate commencement date for an order, we suggest ASIC includes a consideration of the time it will take the product issuer to comply with the intervention order. Factors to consider here include, but are not limited to: • the number of consumers attached to the product • the availability of alternate (appropriate) product options • the complexity of alternative product options • the systems and processes impacted by the order, and potential time to address changes • identification and implementation of any remediation requirement • implementing modifications to distribution channels • third party arrangements and contracts • changes to disclosure documents and notifications to customers • whether customers will need to be refunded, and • whether existing customers can continue to hold the product.
C3Q2 Do you agree with the examples of factors that we should consider when determining whether to delay commencement, and the length of any delay? If not, why not?	Westpac agrees with the factors ASIC has outlined that it will consider when determining whether to delay commencement. We believe that ASIC may benefit from working with the product issuer during the consultation period to understand the scope of work involved for compliance with an intervention order. We have considered this by reference to an example ASIC raised in the Case Studies regarding potential past use of the power. Reference to this example is not an acceptance of the need to have used an available intervention power in those instances, but rather, we refer to the examples as a proxy for factors ASIC may take into account in delaying commencement of an intervention order. **Example: Flex Commissions** Westpac recently undertook a 12-month program of work to replace the use of Flex Commissions with a different model for the provision of credit to new consumers of the Auto and Equipment Finance businesses. The length of the implementation project was due to: • Requirement to build and test a risk-based pricing model for the provision of credit to new consumers • Requirement to update documentation and renegotiate all dealer contracts (circa 1200)

	• Requirement to update dealer remuneration structure and obtain approval from all dealers for new remuneration agreements • Education and training on new structure, and • Update to underlying systems and processes to reflect changes, including in the underlying technology used, as well as risk and compliance. The changes involved an investment of approximately $10m for Westpac. The alternative to Westpac changing the underlying structure of the flex commissions would have been to immediately cease providing services altogether. However, this would have created significant detriment to consumers who would have less access to the product (car loans), potentially a higher cost to consumers due to a loss of market competition (due to exit of a market participant) and a potential impact to the to the car industry due to the a reduction of credit (loans) available for new car buyers. This illustrates the benefit of appropriate time to comply with intervention orders in circumstances where there is complexity in the changes involved, and allowing sufficient time supports improved customer outcomes in the long run.
C3Q3 - Are there any other factors that we should consider when determining whether to delay commencement, or the length of any delay?	Westpac has no further matters to raise.