



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 000

Product design and distribution obligations

December 2019

About this guide

This guide is for issuers and distributors of financial products that are required to comply with the design and distribution obligations in Pt 7.8A of the Corporations Act.

It explains our interpretation of the design and distribution obligations, our expectations for compliance, and our general approach to administering these obligations.

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In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in December 2019 and is based on legislation and regulations as at the date of issue.

References to provisions of the Corporations Act that have not commenced are to the provisions that will be inserted by Sch 1 to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Issuers and distributors of financial products must comply with the design and distribution obligations in Pt 7.8A of the *Corporations Act 2001* (Corporations Act) from 5 April 2021.

The design and distribution obligations are intended to assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to the design and distribution of products.

The design and distribution obligations are also intended to reduce:

- the number of consumers being sold financial products that do not meet their needs; and
- subsequent consumer detriment.

To meet the design and distribution obligations:

- issuers must design financial products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended (the target market); and
- distributors must take 'reasonable steps' to distribute financial products to the target market.

This guide explains our interpretation of the design and distribution obligations, our expectations for compliance, and our general approach to administering the obligations.

Purpose of the design and distribution obligations

RG 000.1 The *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* introduced design and distribution obligations to Ch 7 of the Corporations Act, which commence on 5 April 2021. A new objects clause will also be added to Ch 7, being the provision of suitable financial products to consumers of products: see s760A(aa) of the Corporations Act. To this end, the design and distribution obligations require issuers to design products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended. As a result of the obligations, issuers will no longer be able to offer an existing product if an appropriate target market cannot be identified for the product.

Note 1: See s994B of the Corporations Act.

Note 2: In this guide, references to 'financial products' or 'products' are references to products to which the design and distribution regime applies, unless indicated otherwise.

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Note 3: In this guide, the term ‘consumer’ means a ‘retail client’ for a financial product, unless otherwise specified.

Note 4: In this guide, references to sections (s), chapters (Ch), divisions (Div) and parts (Pt) are to the Corporations Act, unless otherwise specified. You can find a copy of the Corporations Act on the [Federal Register of Legislation](#).

RG 000.2 After the design and distribution obligations commence, Australia will join other jurisdictions with established product design and distribution (or ‘product governance’) regimes.

RG 000.3 The design and distribution obligations are intended to assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products. The obligations do not equate to an individual product suitability test that requires assessment based on an individual’s personal circumstances at point-of-sale. The obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance processes across the lifecycle of financial products. This will result in improved outcomes for consumers of these products.

Note 1: See paragraphs 1.5, 1.7 and 1.12 of the [Revised Explanatory Memorandum for the Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2019](#) (Revised Explanatory Memorandum).

Note 2: In this guide, references to ‘issuer’ are references to persons who are subject to the target market determination requirements in s994B (including sellers in a regulated sale situation), unless indicated otherwise.

Note 3: In this guide, references to ‘distributor’ are references to a ‘regulated person’, as defined in s994A(1). An issuer can also be a distributor.

RG 000.4 The Financial System Inquiry (FSI) stated that:
 ... firms that already invest in customer-focused business practices and procedures would not be required to change their operations significantly ... [and] costs involved in changing practices should be low ... firms would be likely to benefit from long-term savings through increased customer retention and avoid further regulatory costs.

Note: See FSI, [Financial System Inquiry: Final report](#) (FSI final report), November 2014, p. 194.

Regulation to improve the product design and distribution process

RG 000.5 The design and distribution obligations rebalance responsibility for consumer outcomes, so that responsibility is shared by both consumers and industry.

RG 000.6 The need for this rebalancing of responsibility has been evidenced in the FSI; the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission); and by ASIC.

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- RG 000.7 The FSI's recommendation for the introduction of the design and distribution obligations in 2014 was based on an acknowledgement of the limitations of the existing framework for consumer protection in financial services, which relies heavily on disclosure, financial advice and financial literacy.
- RG 000.8 In particular, the FSI concluded that 'disclosure can be ineffective for several 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.
- Note: See FSI, [Financial System Inquiry: Interim report](#) (FSI interim report), July 2014, pp. 3–57.
- RG 000.9 The Royal Commission also recognised the limitations of disclosure for consumer protection. The final report of the Royal Commission observed that while consumers can choose from an array of financial products, they are often not able to make a well-informed choice, given the 'marked imbalance of power and knowledge between those providing the product or service and those acquiring it'.
- Note: See Royal Commission, [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report](#) (Royal Commission final report), February 2019, vol. 1, p. 2.
- RG 000.10 ASIC has also, over a number of years, identified limitations to disclosure in retail financial services markets.
- Note: See ASIC [Report 632 Disclosure: Why it shouldn't be the default](#) (REP 632), ASIC, [Financial System Inquiry interim report: Submission by the Australian Securities and Investments Commission](#), August 2014, pp. 15–17; ASIC, [Financial System Inquiry: Submission by the Australian Securities and Investments Commission](#), April 2014, pp. 12, 80–1; ASIC, [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Submission of the Australian Securities and Investments Commission—Round 6: Insurance](#), October 2018; and Peter Kell, then ASIC Deputy Chairman, [ASIC and behavioural economics: Regulating for real people](#), speech, Queensland University Behavioural Economics Group symposium, 18 October 2016.
- RG 000.11 The FSI concluded that poor design and distribution practices played a significant role in contributing to consumer detriment from financial investment failures, which have affected a large number of consumers in recent times.
- RG 000.12 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 responsibility on issuers and distributors. Issuers and distributors must now:
- (a) design and distribute products that are likely to be consistent with the likely objectives, financial situation and needs of consumers; and

- (b) target products to those consumers who would benefit from them, to improve consumer outcomes.

Note: See [FSI final report](#), pp. 199–201.

Purpose of this guide

- RG 000.13 This guide is for issuers and distributors of financial products that must comply with the design and distribution obligations in Pt 7.8A of the Corporations Act. It explains our interpretation of the obligations, our expectations for compliance, and our general approach to administering the obligations, including:
- (a) our expectations on the product governance framework that issuers and distributors should introduce to help ensure that they comply with the obligations (see Section B);
 - (b) the specific obligations that apply to issuers, including the requirements to:
 - (i) make a target market determination for a financial product;
 - (ii) take reasonable steps to direct distribution of the relevant product;
 - (iii) review and monitor the target market determination (i.e. post-sales review);
 - (iv) notify ASIC of significant dealings; and
 - (v) keep records of decisions made (see Section C); and
 - (c) the specific obligations that apply to distributors, including the requirements to:
 - (i) take reasonable steps in relation to distribution of the product;
 - (ii) notify the issuer of significant dealings; and
 - (iii) keep records (see Section D).
- RG 000.14 Section E of this guide explains our administration of the design and distribution obligations, including remedies for consumers, and ASIC's power to give relief from the obligations.

Products affected by the design and distribution obligations

New, continuing and legacy products

- RG 000.15 Issuers and distributors must comply with the design and distribution obligations for financial products that are to be issued to a consumer: see s994B(1)–(2) and 994E(3). This means the obligations apply to:
- (a) products launched after commencement of the regime (new products); and

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- (b) existing products that continue to be issued to consumers after commencement of the regime (continuing products).

RG 000.16 Closed products for which no further offers or issues are being made after commencement (legacy products) are not affected by the design and distribution obligations: see s994B(2).

RG 000.17 Issuers and distributors do not have to comply with the design and distribution obligations for secondary sales of products, unless such sales are made in circumstances that could otherwise be used to avoid the obligations (regulated sale).

Note: For the definition of 'regulated sale', see s994A(1).

Products that are subject to the obligations

RG 000.18 In this guide, 'financial products' refers to products to which the design and distribution obligations apply: see s994AA and 994B(1). These products include:

- (a) products for which a Product Disclosure Statement (PDS) must be prepared under Pt 7.9 of the Corporations Act (e.g. interests in a managed investment scheme, general insurance, and interests in a superannuation fund);
- (b) securities for which a disclosure document must be prepared under Pt 6D.2 of the Corporations Act (e.g. hybrid securities), except for ordinary shares (unless the company is an investment company or intends the shares to be converted to preference shares);
- (c) products that are not regulated under Pts 6D.2 or 7.9 of the Corporations Act, but that are 'financial products' under Div 2 of Pt 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (see s994AA(1))—this includes credit contracts and consumer leases, including those regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act) (e.g. credit cards, home loans, funeral expenses policies); and
- (d) credit facilities under the ASIC Act, which is broader than credit under the National Credit Act (e.g. short-term credit exempt from the National Credit Act).

Products that are not subject to the obligations

RG 000.19 There are some financial products that are not subject to the design and distribution obligations: see s994B(3). These include:

- (a) MySuper products;

Note: For further guidance on the MySuper exemption, see RG 000.99–RG 000.100.

- (b) margin lending facilities;

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- (c) generally, fully paid ordinary shares in a company (including a foreign company); and

Note: ‘Ordinary share’ is not defined in the Corporations Act. According to the [Revised Explanatory Memorandum](#), consistent with existing practice, ‘ordinary share’ is to take its ordinary meaning having regard to the legislative context in which it is used and the purpose of the design and distribution regime. However, the use of the term ‘ordinary share’ is intended to distinguish such shares from other types of shares, particularly preference shares.

- (d) securities issued under an employee share scheme.

Note 1: See the definition of ‘employee share scheme’ in s9.

Note 2: Financial products may also be excluded from the design and distribution regime under the Corporations Regulations 2001 (Corporations Regulations).

Who the design and distribution obligations apply to

RG 000.20 The design and distribution obligations apply to issuers and distributors of financial products, as outlined in RG 000.18–RG 000.19. This includes:

- (a) for issuers:
 - (i) persons who must prepare a disclosure document under the Corporations Act (e.g. a responsible entity of a managed investment scheme, an insurer, a superannuation trustee, and an issuer of hybrid securities); and
 - (ii) persons who issue a product if they are not covered by (i) (e.g. an issuer of a funeral expenses policy); and

Note: Exempt bodies and exempt public authorities are excluded: see s994B(3).

- (b) for distributors—regulated persons, as defined in s1011B, including Australian financial services (AFS) licensees and authorised representatives.

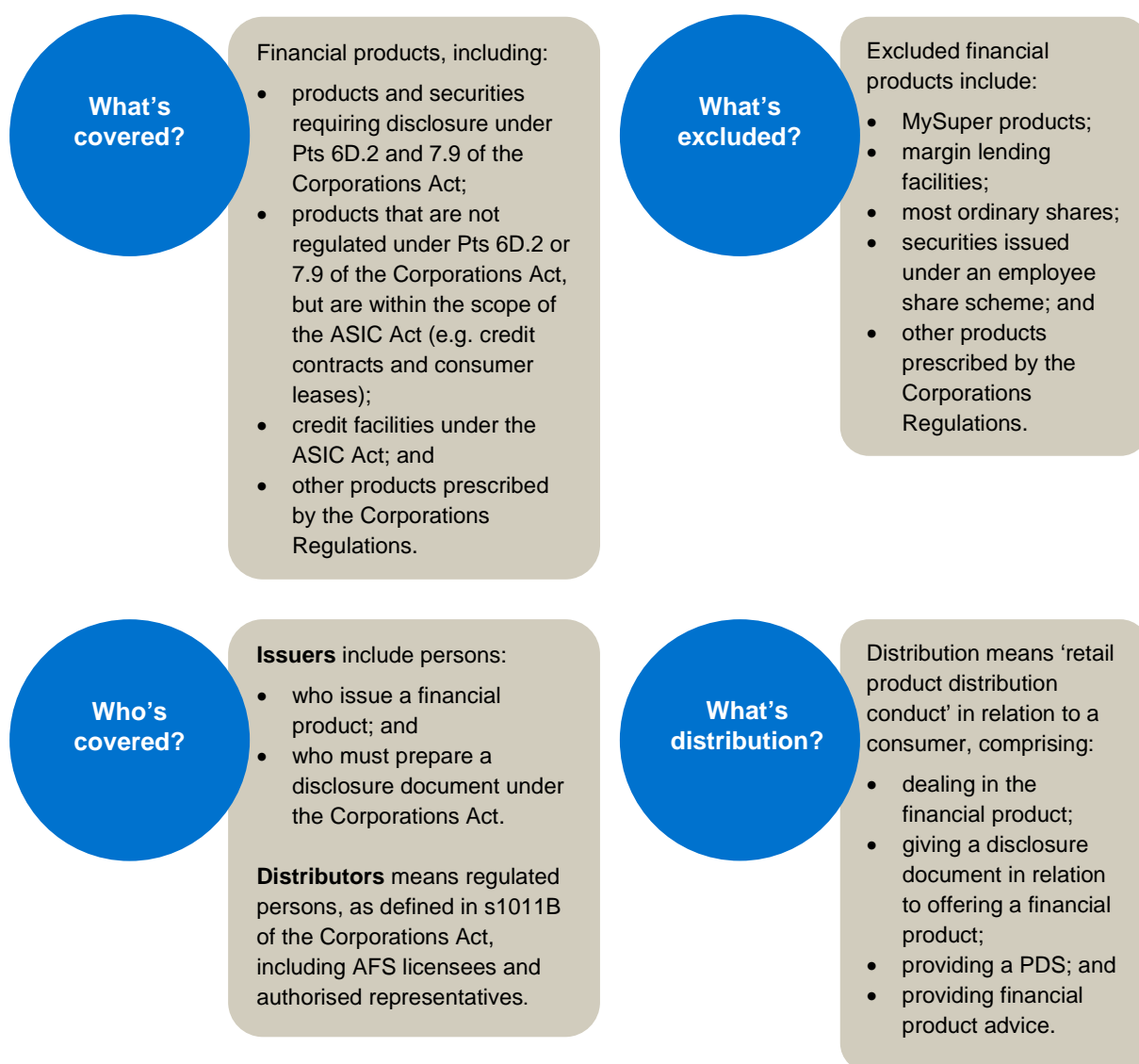
Note: The Corporations Regulations may further prescribe who the design and distribution obligations apply to.

RG 000.21 Distribution means ‘retail product distribution conduct’ in relation to a consumer, comprising:

- (a) dealing in the financial product;
- (b) giving a disclosure document in relation to offering a financial product;
- (c) providing a PDS; and
- (d) providing financial product advice (see s994A(1)).

RG 000.22 Figure 1 provides an overview of the coverage of the design and distribution obligations.

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Figure 1: Coverage of the design and distribution obligations

Note: See RG 000.18–RG 000.21 for the information in this figure (accessible version).

Obligations for issuers

- RG 000.23 An issuer must make an appropriate target market determination for each of its financial product(s): see s994B(1) and (5), and the definition of 'appropriate' in s994A(1). The target market determination must be appropriate at the time it is made. A target market determination must:
- describe the target market;
 - specify distribution conditions and restrictions; and
 - specify other information relating to ensuring that the target market determination remains appropriate (see s994B(5) and RG 000.61).

RG 000.24 The target market determination must be made publicly available free of charge: see s994B(9). It must also be reviewed by the issuer as required to ensure that it remains appropriate: see s994C.

RG 000.25 An issuer must also:

- (a) take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with its target market determination (see s994E(1)); and
- (b) notify ASIC of any ‘significant dealings’ in a financial product that are not consistent with the product’s target market determination (see s994G).

Note: For guidance on the meaning of ‘significant dealing’, see RG 000.147–RG 000.148.

RG 000.26 Table 1 summarises the design and distribution obligations for issuers described in Section C of this guide.

Table 1: Design and distribution obligations relevant to issuers

Obligation	Brief description	Guidance
Make a target market determination: see s994B	<p>An issuer must make an appropriate target market determination for its financial product. A target market determination must:</p> <ul style="list-style-type: none"> • describe the class of consumer that comprises the target market (within the ordinary meaning of the term) for the product (see s994B(5)(b)); • specify any distribution conditions and restrictions on distribution (see s994B(5)(c)); • specify review triggers (events that reasonably suggest the target market determination is no longer appropriate (see s994B(5)(d)); • specify when the first review of the target market determination must occur (see s994B(5)(e)); • specify when subsequent reviews of the target market determination must occur (see s994B(5)(f)); • specify reporting periods for when the distributor should provide complaints to the issuer (see s994B(5)(g)); and • specify what information the distributor(s) must report to the issuer (and how frequently) to enable the issuer to identify whether the target market determination needs to be reviewed (see s994B(5)(h)). 	See RG 000.60–RG 000.106.
Take reasonable steps in relation to distribution: see s994E(1)	An issuer must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the most recent target market determination.	See RG 000.107–RG 000.121.

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Obligation	Brief description	Guidance
Notify ASIC of 'significant dealings': see s994G	An issuer must notify ASIC if it becomes aware of a significant dealing in the product that is not consistent with the target market determination as soon as practicable (within 10 business days).	See RG 000.146–RG 000.150.
Review the target market determination to ensure that it remains appropriate: see s994C	An issuer must review a target market determination within 10 business days if it knows, or ought reasonably know, that a review trigger (or similar event or circumstance) has occurred. An issuer must also review the target market determination periodically as set out in the target market determination to ensure that it remains appropriate.	See RG 000.122–RG 000.145.
Keep records: see s994F(1) and (3)	An issuer must keep complete and accurate records of: <ul style="list-style-type: none"> the decisions made in relation to its target market determinations, and associated reviews, including the reasons for those decisions; and distribution information (to the extent that the issuer is also a distributor). 	See RG 000.151–RG 000.153.

Obligations for distributors

RG 000.27 Distributors generally interact directly with the end consumer. A distributor must take reasonable steps that will, or are reasonably likely to, result in its retail product distribution conduct being consistent with the target market determination: see s994E(3). In this way, a distributor plays a key role in ensuring that the target market determination is adhered to and that the objectives of the design and distribution obligations to improve consumer outcomes and promote the provision of suitable financial products to consumers are achieved.

RG 000.28 Distributors are prohibited from distributing a product unless a target market determination has been made. A distributor must also notify the issuer of a product of any significant dealings in the product that are not consistent with the target market determination: see s994F(6). These obligations are critical to reduce harm to consumers in such circumstances.

Note: For guidance on the meaning of 'significant dealing', see RG 000.147–RG 000.148.

RG 000.29 Table 2 summarises the obligations for distributors described in Section D of this guide.

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Table 2: Design and distribution obligations relevant to distributors

Obligation	Brief description	Guidance
Not to distribute unless a target market determination has been made: see s994D	A distributor must not engage in retail product distribution conduct in relation to a product unless it reasonably believes (after making all reasonable inquiries) that a target market determination has been made, or a target market determination is not required.	See RG 000.156.
Take reasonable steps in relation to distribution: see s994E(3)	A distributor must take reasonable steps that will, or are reasonably likely to, result in a distribution being consistent with the most recent target market determination.	See RG 000.154–RG 000.190.
Notify the issuer of ‘significant dealings’: see s994F(6)	A distributor must notify the issuer if it becomes aware of a significant dealing in the product that is not consistent with the target market determination as soon as practicable (within 10 business days).	See RG 000.191–RG 000.194.
Keep records: see s994F(3)	A distributor must keep complete and accurate records of distribution information, including: <ul style="list-style-type: none"> • the number of complaints received about a product; and • information specified by the issuer in the target market determination. 	See RG 000.199–RG 000.202.

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B Product governance framework

Key points

The design and distribution obligations require an issuer to identify an appropriate target market for its financial products and ensure that the identified target market informs the product design, product distribution, and monitoring and review (post-sales review) stages of the product lifecycle. This is consistent with taking a consumer-centric approach to product design and distribution.

This section explains the product governance framework that issuers and distributors should introduce to help ensure that they comply with the design and distribution obligations. Introducing and maintaining an effective product governance framework will also support the delivery of good consumer outcomes.

Introducing a product governance framework

RG 000.30 The design and distribution obligations impose requirements on the activities involved in developing and distributing a financial product (see Table 1 and Table 2). These activities include:

- (a) product design (see, for example, s994B);
- (b) product distribution (see, for example, s994E(3));
- (c) information sharing between issuers and distributors (see, for example, s994F(6));
- (d) outcomes monitoring (see, for example, s994C); and
- (e) the conduct of reviews (see, for example, s994C).

RG 000.31 The obligations provide a legislative framework for issuers and distributors to develop and maintain effective product governance processes across the lifecycle of financial products. We use the term ‘product governance framework’ in this guide to collectively refer to the systems, processes, procedures and arrangements in place to help ensure that an issuer or distributor complies with its design and distribution obligations. The framework should cover the key stages of product design, product distribution, and monitoring and review (post-sales review): see the provisions referred to at RG 000.30.

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A robust and effective product governance framework

- RG 000.32 A robust product governance framework that fulfils the objectives of the design and distribution regime will:
- (a) focus on the identified target market across the lifecycle of the financial product; and
 - (b) be designed to reduce the risk of products being sold to consumers that are not consistent with their likely objectives, financial situation and needs.

- RG 000.33 We expect a robust product governance framework will go some way towards issuers and distributors addressing the serious compliance issues in internal controls identified by the FSI and Royal Commission. The FSI highlighted that weaknesses in processes for, and controls on, product distribution to consumers have led to significant consumer losses in some cases.

Note: See [FSI final report](#), pp. 199–201, and the [Revised Explanatory Memorandum](#), paragraphs 3.1–3.25.

- RG 000.34 The Royal Commission final report noted that ‘[the] number and complexity of products, and absence of “end-to-end” accountability... are issues wholly within the control of every financial services entity’.

Note: See [Royal Commission final report](#), vol. 1, p. 115.

- RG 000.35 Many issuers and distributors will have existing compliance measures in place, from which a product governance framework can be built. To have an effective product governance framework, at a practical level, we expect issuers and distributors to:
- (a) document the framework in some form (see RG 000.38–RG 000.39);
 - (b) fully implement the framework, and monitor and report on its use (see RG 000.39–RG 000.40); and
 - (c) regularly review the effectiveness of the framework and ensure that it is up to date (see RG 000.41–RG 000.43).

- RG 000.36 If issuers and distributors do not do this, we consider it will be more difficult to comply with the design and distribution obligations, and to demonstrate compliance.

- RG 000.37 The product governance framework will be affected by the nature, scale and complexity of an issuer’s or distributor’s business. As the Royal Commission final report noted in relation to banks, ‘the more numerous and more complex [an entity’s] offerings are, the greater the care needed to ensure that the [entity] can deliver what it has promised’.

Note: See [Royal Commission final report](#), vol. 1, p. 131.

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Documenting the product governance framework

- RG 000.38 Documentation helps issuers and distributors demonstrate whether or not they are complying with the design and distribution obligations. When issuers and distributors document their product governance framework, we expect that they will include details of who is responsible, the timeframes involved, and associated record keeping and reporting.

Note: Issuers and distributors must keep records of their compliance with the design and distribution obligations: see s994F(1) and (3), RG 000.151–RG 000.153 and RG 000.199–RG 000.202.

Implementing, monitoring and reporting on the product governance framework

- RG 000.39 It is not enough just to document the product governance framework. Issuers and distributors also need to fully implement it. This means issuers and distributors need to put it into practice and integrate it into the day-to-day conduct of their business.
- RG 000.40 For a product governance framework to work effectively in practice, issuers and distributors need people at all levels of their business, including senior management, to understand it and be committed to its success. Integrating the framework into the culture of the business helps ensure that it is effective on an ongoing basis.

Note 1: We understand that some monitoring and reporting functions may already be built into issuers' and distributors' business processes. We acknowledge that the product governance framework will generally reflect the corporate group's overall approach to compliance.

Note 2: AFS licensees need to monitor and report on compliance, including reporting relevant breaches to ASIC under s912D. AFS licensees need to be able to show us how they are able to monitor compliance with the design and distribution obligations and appropriately address any compliance breaches. For guidance on meeting the general AFS licensing obligations, see [Regulatory Guide 104 Licensing: Meeting the general obligations](#) (RG 104).

Reviewing the product governance framework

- RG 000.41 Regularly reviewing the product governance framework will help to ensure that it remains effective. In some cases, it may be necessary for issuers and distributors to consider external review. When compliance issues have arisen (such as major breaches or repeated compliance failures), external review is particularly appropriate.
- RG 000.42 Issuers and distributors need to review the product governance framework when there are material changes to their obligations, business or the environment in which they operate. We expect that there will be a process for identifying changes that may impact on the effectiveness of the framework.

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RG 000.43 Introducing and maintaining an effective product governance framework is aligned with taking a consumer-centric approach to design and distribution, and will ultimately support the delivery of good consumer outcomes.

Product design, product distribution and post-sales review

RG 000.44 Figure 2 depicts the key areas of focus of the design and distribution obligations: product design, product distribution, and monitoring and review (post-sales review). At the centre of Figure 2 is the target market, which reflects the centrality of the target market to the design and distribution obligations. Figure 2 also depicts possible outcomes from the monitoring and review stage, which include:

- (a) no change to the way the product is distributed;
- (b) changing the product design, target market or distribution; or
- (c) ceasing to distribute the product.

Figure 2: Consumer-centric approach to design and distribution



Note: See RG 000.44 for the information in this figure (accessible version) and Table 1 and Table 2 for a summary of the design and distribution obligations.

Product design stage

- RG 000.45 At the product design stage, we expect the product governance framework to include a product approval system focused on financial products being designed in a way that is likely to be consistent with the likely objectives, financial situation and needs of the class of consumers for whom the products are intended. We expect this will involve:
- (a) identifying the target market of a product before or as part of the design of the product (having considered relevant quantitative criteria and qualitative factors);
 - (b) robust testing of the product, and the systems that will support it, to check it will function as intended; and
 - (c) determining how consumer outcomes will be measured and monitored when designing the product, given the obligation to carry out reviews (see s994B and 994C, and RG 000.122).
- RG 000.46 At the product design stage, an issuer should also consider how its financial product will be distributed, to enable it to meet its obligations to:
- (a) specify conditions or restrictions on distribution to ensure that it is directed towards the intended target market (see RG 000.93–RG 000.97); and
 - (b) take reasonable steps to ensure that distribution is consistent with the target market determination (see RG 000.107–RG 000.121).
- RG 000.47 At the product design stage, an issuer should consider the ‘choice architecture’ of its financial product to ensure that it is consistent with the target market, including, for instance, the impact of complexity and frictions in choices, processes and information. The design of choice architecture is relevant to the issuer’s reasonable steps obligation in s994E(1): see RG 000.117–RG 000.121.

Note: ‘Choice architecture’ refers to features in an environment, noticed and unnoticed, that influence consumer decisions and actions. These features are present at every stage of product design and distribution. Examples include product bundling, default settings, and website and sales process design.

Product distribution stage

- RG 000.48 At the product distribution stage, in order for issuers and distributors to meet their obligation to take reasonable steps that will, or are likely to, result in distribution being consistent with the target market determination, we expect the product governance framework to include processes and controls designed to reduce the risk of financial products being issued to consumers that are inconsistent with their objectives, financial situation and needs.

- RG 000.49 The product governance framework should also include a process for effective communication between those responsible for designing the financial product and those responsible for marketing and distributing the product, particularly in relation to the desired consumer outcomes associated with the product. This will enable issuers and distributors to meet their obligations to take reasonable steps in relation to distribution, as well as the obligation on distributors to notify issuers of significant dealings outside the target market: see RG 000.191–RG 000.194.

Monitoring and review stage (post-sales review)

- RG 000.50 The product governance framework should provide for an ongoing, iterative and responsive design and distribution process, whereby issuers address problems when they arise and improve products as needed. This will enable issuers to meet their obligations to carry out reviews: see RG 000.122–RG 000.126 and s994C.
- RG 000.51 We expect the product governance framework to provide for regular monitoring and review of product performance, and improvement of design and distribution, when necessary. This would involve collecting and analysing relevant and reliable consumer, product performance, value and transaction data.

Delivery of good consumer outcomes

- RG 000.52 The design and distribution obligations are intended to ensure that financial products are targeted and sold to the right consumers. These obligations ensure that issuers and distributors have a consumer-centric approach to designing, marketing and distributing products.

Note: See Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, [Second Reading Speech](#), 20 September 2018, and the [Revised Explanatory Memorandum](#), paragraph 1.7. See also s760A(aa).

- RG 000.53 This means issuers and distributors should not take advantage of behavioural biases or factors that can impede consumers from obtaining products that are consistent with their objectives, financial situation and needs (e.g. the effect of behavioural bias on consumer interaction with information). This is particularly relevant in the context of the retail financial services sector, which is characterised by products that are inherently complex and that require consumers to make decisions under uncertainty.

Note 1: See ASIC, [Productivity Commission Inquiry into competition in the Australian financial system: Submission by the Australian Securities and Investments Commission](#), September 2017.

Note 2: A behavioural bias is a systematic tendency, inclination or opinion in relation to someone or something. They are often observed as shortcuts in our decision making.

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Everyone has a set of biases. They may be conscious or unconscious because we are usually not aware when we move between our instinctive and ‘deeper’ styles of thinking. Biases are shaped by long-term effects (such as culture, previous experiences and personal tastes) and short-term effects (such as the amount of available information or even the time of day).

- RG 000.54 It is also important for issuers and distributors to consider consumer vulnerabilities, and how these vulnerabilities (which can include a consumer’s personal circumstances and the specific influence or impact of features in a product’s choice architecture) may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes.
- RG 000.55 For example, the choice architecture of both the design of add-on insurance products and their distribution in car yards has been shown to exploit existing human limits (e.g. decision fatigue), as well as increasing the vulnerability of consumers to ‘persuasion tactics’ that have led to poor outcomes: see [Report 470](#) *Buying add-on insurance in car yards: Why it can be hard to say no* (REP 470).
- RG 000.56 An issuer that fails to take a consumer-centric approach will risk being in breach of the design and distribution obligations, as well as other financial services laws. This may result in enforcement action by ASIC, and liability for remediation. Failure to take a consumer-centric approach also risks the financial product resulting in poor consumer outcomes. When a product has resulted, will result, or is likely to result in significant consumer detriment, we may use our product intervention power to order a range of interventions to the product, its features and/or its distribution.

Note: The product intervention power is contained in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act.

C Obligations for issuers

Key points

An issuer must make a target market determination when it issues a financial product. A target market determination is a written document that describes the class of consumers that comprises the target market for a product, and matters relevant to the product's distribution and review.

The target market determination must be made publicly available. However, we do not consider the target market determination to be a consumer-facing disclosure document. The purpose of the target market determination is to drive discipline in the design of financial products, to ensure that issuers design products for which an appropriate target market can be defined, or conversely to consider whether the planned target market for products under development is appropriate.

An issuer will need to critically assess that the financial product it ultimately develops is likely to be consistent with the likely objectives, financial situation and needs of its intended target market.

The issuer must review its target market determination periodically and in response to review triggers to ensure that it remains appropriate for its financial product over time.

The issuer's target market determination must set out review triggers and predetermined review dates, to assist it to meet its review obligations. The issuer must also specify information that it requires from distributors, including the reporting periods in which that information must be provided, to enable the issuer to meet its review obligations.

The issuer should set a distribution strategy that is consistent with the target market for the financial product and consider the controls that it will apply to direct distribution to the target market. The target market determination must specify conditions and restrictions on distribution of the product that are likely to direct distribution to consumers in the target market.

The issuer needs to ensure that it keeps a record of decisions relating to its design and distribution obligations, and the reasons for those decisions.

Overview of obligations for issuers

RG 000.57 The 'issuer' obligations are imposed on the person who generally is responsible for designing the financial product. This is the person responsible for preparing a disclosure document under Pt 6D.2 of the Corporations Act, a PDS under Pt 7.9 of the Corporations Act, and some issuers of financial products under Div 2 of Pt 2 of the ASIC Act. This will

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normally be the issuer of the product, or in regulated sale situations, the seller of the product.

Note: Section 1012C requires a PDS to be given in sale situations that could otherwise be used to avoid the requirement to give a PDS. Section 707 applies to sale offers for which a disclosure document is required. These situations include off-market sales where the seller controls the issuer, sales amounting to an indirect issue, and indirect off-market sales where the seller controls the issuer. The term 'regulated sale' is used to describe these sale situations in the design and distribution regime: see the definition of 'regulated sale' in s994A(1).

- RG 000.58 The design and distribution obligations for issuers are to:
- (a) make a target market determination for the financial product (see RG 000.60–RG 000.106);
 - (b) take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination (see RG 000.107–RG 000.121);
 - (c) notify ASIC of significant dealings that are not consistent with the target market determination (see RG 000.146–RG 000.150); and
 - (d) keep records of the decisions made in relation to compliance with the design and distribution obligations (see RG 000.151–RG 000.153).

Note: See s994B, 994E(1), 994G and 994F.

- RG 000.59 The target market determination must be made publicly available: see s994B(9). Promotional material in relation to products that require a PDS must describe the target market or specify where the target market determination is available: see s1018A.

Making a target market determination

- RG 000.60 An issuer must make a target market determination for each of its financial products before any person distributes the product: see s994B(2). This applies to new products the issuer offers, and existing products that continue to be offered after the design and distribution regime commences. For some financial products, the application of the target market determination obligation is not straightforward: see RG 000.98–RG 000.106.
- RG 000.61 A target market determination must:
- (a) describe the class of consumers that comprises the target market for the product (target market) (see s994B(5)(b) and RG 000.66–RG 000.92);
 - (b) specify any conditions and restrictions on distribution (distribution conditions) (see s994B(5)(c) and RG 000.93–RG 000.97);

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- (c) specify events and circumstances that would reasonably suggest the target market determination is no longer appropriate (review triggers) (see s994B(5)(d) and RG 000.127–RG 000.128);
- (d) specify reasonable maximum review periods (review periods) (see s994B(5)(e)–(f) and RG 000.131–RG 000.134);
- (e) specify when the distributor should provide the issuer with information about the number of complaints about the product (see s994B(5)(g), s994F(4) and RG 000.140– RG 000.142); and
- (f) specify the kinds of information the issuer will need to promptly determine that a target market determination may no longer be appropriate, along with:
 - (i) which distributors should provide those kinds of information; and
 - (ii) reporting periods for when that information should be provided to the issuer (see s994B(5)(h) and RG 000.135–RG 000.138).

RG 000.62 The purpose of the target market determination is to drive discipline in the design of financial products, to ensure that issuers design products for which an appropriate target market can be defined, or conversely to consider whether the planned target market for products under development is appropriate: see the [Revised Explanatory Memorandum](#), paragraph 1.48. The target market determination also serves as a reference point for distributors to comply with their distribution obligations.

RG 000.63 The [Revised Explanatory Memorandum](#), paragraph 1.49, explains that the target market determination must be made publicly available to mitigate evidential difficulties with substantiating non-compliance with the requirement to make a target market determination. The Revised Explanatory Memorandum makes it clear that this also allows consumers to refer to the target market determination should they wish to. However, we do not consider the target market determination to be a consumer-facing disclosure document.

RG 000.64 The legislation sets out a number of matters a target market determination must include: see s994B(5) and RG 000.61. We do not propose to give definitive guidance on the content and form of a target market determination and, in particular, the formulation of a target market. The range of financial products that are offered to consumers are diverse and varied. We expect an issuer to apply this guidance in the context of the products it issues.

RG 000.65 This means that what amounts to an appropriate target market determination can differ, depending on the type and particular characteristics of the financial product to be issued, the intended distribution approach and the issuer's product governance framework.

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Identifying the target market

RG 000.66 An appropriate target market for a financial product is one where the product is likely to be consistent with the likely objectives, financial situation and needs of a consumer in a given target market: see s994B(8)(b).

Note: The language of ‘objectives, financial situation and needs’ is also used in s766B(3) in the context of personal advice. The [Revised Explanatory Memorandum](#), paragraph 1.58, states that ‘this reflects that the factors that are important to providing good personal advice are also important to good product design, particularly when determining the hypothetical consumers in a product’s target market’.

RG 000.67 This involves identifying a *class* of consumers based on the common aspects of their objectives, financial situation and needs (e.g. their ability to bear loss, their age bracket, or their income level). In contrast, personal advice involves consideration of an individual consumer’s objectives, financial situation and needs (i.e. a consumer’s personal circumstances).

Note: See [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) for further guidance on providing financial product advice.

Overarching considerations in identifying the target market

RG 000.68 We recognise that there is no one-size-fits-all approach to how the target market assessment can be carried out. However, generally speaking, an issuer should identify the target market and design financial products that are likely to be consistent with the likely objectives, financial situation and needs of consumers in that target market. In this case, the target market would drive the product design process. We consider that the design and distribution obligations are directed towards issuers designing products in a way that supports the delivery of good consumer outcomes.

RG 000.69 For existing products that continue to be issued to consumers, issuers may already have a concept of a ‘target market’, in a marketing or commercial sense, for the product. In these cases, issuers should still critically assess the product (and its features) and identify the target market under the design and distribution obligations by reference to consumers for whom the product would be likely to be consistent with their likely objectives, financial situation and needs. If issuers already have processes directed towards these purposes, they should check that the processes meet the detailed requirements of the legislation. If the identified target market for the continuing product does not match the class of consumers who have historically been sold the product, the issuer should modify the design of the product, revise the distribution strategy in line with the identified target market, or cease offering the product.

RG 000.70 We expect product design to be driven by features that benefit the consumer. The design and distribution obligations mean that a product development process that does not consider consumer outcomes will not be feasible. For

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example, we expect that in complying with the obligations, some issuers will conclude that a financial product or product feature is unlikely to be consistent with the objectives, financial situation and needs of any consumers. This may be due, for example, to risk, low value, or because the product is inherently flawed.

- RG 000.71 Product design and development (including the assessment of whether a product is likely to be consistent with the likely objectives, financial situation and needs of consumers for whom it is intended) is an iterative process. After a financial product has been launched, an issuer should draw on its own data about how consumers in the target market are using its product and the actual consumer outcomes from the product: see RG 000.127–RG 000.130. When problems are identified, this should feed back into the product design as part of ongoing review processes: see s994C.
- RG 000.72 Regardless of whether a new financial product is developed for the identified target market or a target market is identified for a continuing product, in either case the issuer will need to critically assess the developed product to confirm that, if the product was offered to a consumer in that target market, the product would likely be consistent with their likely objectives, financial situation and needs: see s994B(8)(b) and RG 000.80–RG 000.85.
- RG 000.73 An issuer must then describe the class of consumers that comprises the target market for the product in its target market determination. An issuer may consider additionally describing the ‘negative target market’ (those for whom the product is clearly unsuitable): see s994B(5)(b) and RG 000.86–RG 000.92.

Identifying common objectives, financial situation and needs

- RG 000.74 In identifying the common objectives, financial situation and needs of consumers in the target market, it is important to keep in mind that objectives, financial situation and needs should be considered in totality. We expect the issuer to also take into account the relationship between objectives, financial situation and needs, since they are not mutually exclusive.
- RG 000.75 For example, common objectives for consumers seeking to acquire a credit product are likely to include smoothing spending and/or financing the purchase of an asset. However, other relevant circumstances are likely to inform the question of whether a particular product is likely to be consistent with the likely objectives, financial situation and needs of consumers: see Example 1.

Example 1: Credit cards

In [Report 580](#) *Credit card lending in Australia* (REP 580), we identified that almost 18.5% of consumers were struggling with credit card debt. We also found that 1.8 million consumers with a credit card were carrying a balance

and being charged interest on a high-interest-rate credit card, representing 43.2% of consumers who held a high-interest-rate credit card during 2016–17. These consumers were over-represented in our problematic debt indicators.

We expect issuers to consider the appropriate target market for each distinct credit product. For example, higher cost credit cards that may offer other features, such as complimentary insurance coverage and rewards programs, but have interest rates exceeding 20%, are unlikely to be suitable for those consumers who are likely to carry a substantial balance on their card over a prolonged period, or for consumers whose objective is to reduce their credit card debt over a period of time.

Issuers of credit products should also consider their responsible lending obligations, which apply in addition to the design and distribution obligations: see RG 000.184–RG 000.189 and [Regulatory Guide 209](#) *Credit licensing: Responsible lending conduct* (RG 209).

Credit card promotions

For a credit card that offers a promotion, issuers should consider whether the promotion has the effect of varying the credit card product such that the appropriate target market for the credit card would need to be adjusted. If the promotion is concessional (e.g. a reduced or nil annual fee), it is likely that the existing target market will remain appropriate (i.e. because the product was previously assessed as likely to be consistent with the likely objectives, financial situation and needs of the target market when it cost the full fee to acquire).

When the underlying financial product is not fundamentally altered by the promotion, the promotion itself will be relevant to the issuer's obligation to take reasonable steps that will, or are reasonably likely to, result in distribution of the product to be consistent with the target market determination ('reasonable steps obligation'). See RG 000.107–RG 000.121 for further guidance on the reasonable steps obligation.

For example, the issuer should consider whether the outcomes associated with the promotion are consistent with directing sales to the target market. When the promotion seeks to encourage people outside of the target market to acquire the product, the issuer may not have met its reasonable steps obligation.

Note: See [REP 580](#), pp. 27 and 34.

Example 2: Reverse mortgages

Reverse mortgages allow older Australians to borrow against the equity in their home through a loan that does not require repayment until a later time.

[Report 586](#) *Review of reverse mortgage lending in Australia* (REP 586) sets out our findings that reverse mortgages help older Australians with few other assets (such as superannuation) achieve their immediate financial objectives, such as enabling borrowers to:

- maintain their current living arrangements with less financial stress;

- obtain short-term finance;
- have a general safety net for living expenses; and
- afford a better quality of life.

However, depending on when a borrower obtains their loan, how much they borrow, and economic conditions (property prices and interest rates), they may not have enough equity remaining in the home at the time of repayment for longer term needs (e.g. aged care).

We expect that both short-term and long-term consumer needs are likely to be relevant to identifying the target market for a reverse mortgage product.

Note: See [REP 586](#), pp. 30–32 and 39–46.

RG 000.76 Similarly, while common objectives for consumers seeking to acquire an investment product are likely to include capital growth and/or income generation, these objectives must be considered with other relevant circumstances. Consumers who have a low risk tolerance and who are seeking to preserve capital are unlikely to be suitable for a high-risk investment product that is intended to tie up a consumer's invested capital for five to ten years and that puts a consumer's invested capital at risk.

RG 000.77 A broad product objective alone is unlikely to sufficiently define the target market for a financial product. For example, it is unlikely to be sufficient to suggest that a target market for an income protection insurance product is anyone seeking to protect their income in case they become sick or injured. Products—even with broad objectives—vary in their terms, features and complexities, and these factors are likely to affect whether a product is likely to be consistent with the objectives, financial situation and needs of consumers.

Diversification

RG 000.78 In some circumstances an issuer may deem it appropriate to consider consumers in the target market acquiring the product as part of a diversified portfolio. In such cases, we consider the reasonable steps obligation will require the issuer to manage the risk of the financial product being widely sold to investors who do not have a diversified portfolio.

RG 000.79 We expect that some financial products, even if acquired as part of a diversified portfolio, may still be unlikely to be consistent with the likely objectives, financial situation and needs of a consumer (e.g. because the product is inherently flawed). When that is the case, it will not be possible to identify an appropriate target market for the product, and the offer of such a product would be in breach of the design and distribution obligations.

Note: See RG 000.107–RG 000.121 on the reasonable steps obligation.

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Consumer understanding

RG 000.80 The design and distribution obligations are a deliberate rebalancing of reliance on informed consumer decision making to improve consumer outcomes. The obligations require an issuer to consider objectively whether a financial product is likely to be consistent with the likely objectives, financial situation and needs of a class of consumers. We therefore do not consider that a target market should be predominantly based on consumer understanding of a product (i.e. a target market should not be all consumers who meet a required level of understanding of how a product works). When a target market determination does refer to consumer understanding, an issuer will need to consider how consumer understanding of a particular product will be assessed as part of its reasonable steps obligation: see RG 000.107–RG 000.121. It will unlikely be sufficient for an issuer to base understanding on previous experience of the product (i.e. that they have purchased a similar product before).

Critical assessment and refinement

RG 000.81 To help ensure that it complies with the design and distribution obligations, an issuer—after it has identified a target market—will need to critically assess that the financial product it ultimately develops is likely to be consistent with the likely objectives, financial situation and needs of its intended target market. Questions that issuers could usefully consider as part of this process include:

- (a) What is the purpose of the product? Does it fulfil a well-founded need for consumers in the target market? Is it fit for purpose?
- (b) Is the product likely to deliver what is promised? Has the product or this type of product resulted in good outcomes for the target market in the past? Did it deliver what was promised?
- (c) Does the product benefit the consumers in the target market? Who has benefited from this product or this type of product in the past? Did the product meet the needs of those we distributed it to? What did our key data points show were the ongoing benefits, risks and outcomes for consumers?
- (d) How is the product likely to perform in the hands of the consumers in the target market?
- (e) Does the product include features that could be harmful or unnecessary for the target market?
- (f) Does the product need to be redesigned or changed to be suitable for the target market? Or does the target market need to be narrowed?

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Testing how the product will perform

- RG 000.82 In carrying out the critical assessment mentioned at RG 000.80, an issuer should consider the way that the financial product is likely to perform in practice in the hands of consumers of the product, and the likely outcomes for consumers.
- RG 000.83 For an investment product, for example, this should involve considering how the financial product is expected to perform under average market conditions as well as under market stress, taking into account the impact of costs and fees. It should also involve qualitative considerations, such as how the features or terms and conditions of the product are likely to operate in practice and the impact these may have on consumer outcomes. For example, if fees and costs effectively deplete the return in the hands of the consumer, this should be taken into account in identifying the target market, by considering the expected net investment return the product ultimately offers consumers.

Example 3: Cash options in superannuation

A superannuation trustee plans to introduce a new option as part of its superannuation Choice product. The option seeks to provide capital security and its return is based on interest on bank deposits. Nonetheless, the fees are such that even a minor fall in interest rates will lead to erosion of any member's capital allocated to this option.

The likely objectives, financial situation and needs of the target market for the superannuation Choice product include members who will access this option with a view to ensuring that some or all of their capital is secure and not subject to potential negative investment returns.

In preparing its target market determination for its superannuation Choice product, the superannuation trustee needs to consider how this investment option is likely to operate in practice. This would include understanding the impact of a potential fall in interest rates.

As a result of the initial design and testing, it is identified that there is a significant likelihood that the option will produce negative net returns (i.e. after the impact of fees) in the first year of operation. The superannuation trustee alters its fee structure so that the option is better able to meet the objectives and needs of members.

Note: See [Royal Commission final report](#), vol. 2, pp. 116–24.

- RG 000.84 Similarly, it will be important for insurers to consider how their products are likely to perform in practice and the likely outcomes for consumers in the target market, having regard to their circumstances in totality. For example, an insurance product that offers lower upfront costs in the form of more affordable premiums will be unsuitable for the target market of consumers the product is intended for, if the excess level is set so high that consumers in the target market are unlikely to be able to pay the excess necessary to make a claim on the product.

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- RG 000.85 Further, insurers will need to ensure that their products are likely to be consistent with the likely needs of the intended target market. Consumers who would not benefit from the product should not form part of the target market: see Example 4.

Example 4: Consumer credit insurance

Consumer credit insurance (CCI) has been marketed to consumers to meet their needs if they are unable to meet their minimum loan repayments due to unemployment, sickness or injury, or to pay the outstanding loan balance upon death. CCI is optional and has historically been sold by lenders to consumers with a credit card, personal loan or home loan.

In [Report 622](#) *Consumer credit insurance: Poor value products and harmful sales practices* (REP 622), we found that CCI had been sold to consumers who were ineligible to claim or unlikely to benefit from or need cover. Issuers should have regard to the problems identified in REP 622 when they consider their design and distribution obligations for CCI products.

Note: See [REP 622](#), pp. 13–16.

Example 5: Low-value products

We agree with the observations of Commissioner Hayne, in the [Royal Commission final report](#) (vol. 1, pp. 293–4), that the design and distribution obligations will alter ‘the kinds of, and characteristics of, products that may be sold, including low-value products’.

Funeral insurance is sold to consumers to cover the cost of funerals. It is a form of life insurance, which has ongoing premiums that are often stepped, increasing as the consumer ages.

Commissioner Hayne observed, in the 2014 financial year, the amount paid out in claims was about one-third of the value of premiums collected over the same period. In the preceding year, the proportion was one-fifth. Commissioner Hayne also observed that many funeral insurance products ‘carry the potential for consumers to pay more in premiums over the life of the policy than they will receive as a benefit when they die’.

The report noted that these statistics indicate these products are of little value to consumers. Under the design and distribution obligations, issuers must design products that are likely to be consistent with the likely objectives, financial situation and needs of consumers.

Note: See [Royal Commission final report](#), vol.1, pp. 285–6, [Report 454](#) *Funeral insurance: A snapshot* (REP 454) and the [Revised Explanatory Memorandum](#), paragraph 1.12.

Describing the target market

- RG 000.86 The issuer must describe the class of consumers that comprises the target market for the financial product in its target market determination.
- RG 000.87 The design and distribution obligations require the target market to be defined such that if the financial product were offered to a consumer in that

target market, the product is likely to be consistent with the consumer's likely objectives, financial situation and needs: see s994B(8)(b).

Accordingly, an issuer would be in breach of its obligations if it defined the target market too broadly, such that the product is not likely to be consistent with the likely objectives, financial situation and needs of some consumers in that target market, even if the issuer attempted to narrow distribution to a narrower set of consumers by use of distribution controls.

- RG 000.88 In all cases, the target market must be identified at a sufficiently granular level to avoid the inclusion of any classes of consumers for whom the financial product is not likely to be consistent with their likely objectives, financial situation and needs.
- RG 000.89 Product variation (e.g. differing terms, features, functionality or fees) occurs across most financial products, including products that have relatively few features (such as basic banking products). While product variation allows for greater tailoring to different consumer circumstances, product variation often presents trade-offs for consumers in selecting one product to acquire over another. Not all variations are likely to be consistent with the likely objectives, financial situation and needs of consumers. The design and distribution obligations require an issuer to consider its product ranges and direct its products to the appropriate target markets.

Example 6: Basic banking products

The Royal Commission case studies relating to basic banking products highlight the importance of appropriately defining the target market for a financial product, even if it has relatively fewer features. They also highlight the importance of issuers and distributors taking a consumer-centric approach and putting in place a robust product governance framework.

Transaction accounts

Banks may offer both basic and fully featured transaction accounts, with differing fee levels. Due to their objectives, financial situation and needs, a consumer may not require a fully featured transaction account. Yet if they are sold this product, they may be paying ongoing fees to retain those features.

Banks may offer basic products that offer essential banking services at a lower cost than other types of accounts. The [Royal Commission final report](#) noted that, 'those who are on a low income, especially those in receipt of certain government benefits or holding government concession cards, may find that a basic account suits their needs better than other forms of account' (vol. 1, p. 91).

In identifying a target market for transaction account products and in designing these products, issuers must take into account the differing objectives, financial situation and needs of consumers.

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Informal overdrafts

The Royal Commission also examined informal overdrafts, which attached to certain accounts unless automatic exclusionary criteria were applied to the account. The evidence showed that it was difficult for a consumer to know that an informal overdraft was available to them (it was applied at the discretion of the bank)—and some consumers knew nothing more than their request to withdraw money had been met. The fees associated with overdrawing can be significant when there is repeated overdrawing.

Commissioner Hayne noted that this conduct was ‘attributable to a culture that was insufficiently concerned with providing customers with an appropriate product’ and explained that while these overdrafts may be a useful tool for some consumers, the bank prioritised its own position over that of some of its consumers in granting an informal overdraft on an opt-out basis—including accounts held by low-income earners.

In identifying a target market for transaction products and in designing these products, issuers should take into account that the needs of some consumers will not be met by informal overdrafts.

At the distribution stage, if systems and processes are not in place to ensure that these products reach their target market, these consumers will not receive the benefits of these products and may be sold a product that is likely to be inconsistent with their likely objectives, financial situation and needs.

For example, the Royal Commission examined a case study where a consumer who lived in a remote community encountered great difficulty in switching to a basic account over a period of four months, despite asking for, being eligible for and suited to this account from the outset.

Note: See [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Interim report](#) (Royal Commission interim report), September 2018, vol. 2, ‘Case studies—remote communities’, 3. ANZ basic accounts, p. 470, and 4. ANZ (Groote Eylandt), pp. 479–87; and [Royal Commission interim report](#), vol. 1, pp. 259–61.

Considering the ‘negative target market’

- RG 000.90 We consider that in making a target market determination, it will also be useful for the issuer to consider, in addition to the target market, those for whom the financial product is clearly unsuitable (the ‘negative target market’). For example, for an insurance product, the negative target market would include persons who are excluded or ineligible to claim under the policy. Similarly, a negative target market for a high-risk investment product might include consumers with a low risk tolerance who do not have the ability to bear loss.
- RG 000.91 While the law does not require the issuer to state the negative target market in the target market determination (see s994B(5)), we expect that identification of a negative target market is likely to assist the issuer in defining the target market at a sufficiently granular level to avoid the

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inclusion of any groups of consumers whose likely objectives, financial situation and needs are not likely to be consistent with the financial product.

- RG 000.92 If the negative target market is articulated in the issuer's target market determination, it may be easier for the issuer to demonstrate the target market is appropriate under s994B(8)(b). It would also be useful for distributors as they implement their obligations to take reasonable steps.

Specifying conditions or restrictions on distribution

- RG 000.93 The design and distribution obligations recognise that consideration of the target market should be front and centre in setting a distribution strategy and selecting appropriate distribution channels.
- RG 000.94 The issuer must specify appropriate conditions and restrictions on distribution of the financial product (distribution conditions) in its target market determination. This ensures that distribution of the product is directed towards its intended target market. The issuer's distribution conditions are one component of the controls that it will need to implement to comply with its obligation to take reasonable steps in the distribution of its product. What are reasonable steps in the circumstances will also be informed by the issuer's broader approach to distribution—its distribution strategy: see RG 000.114–RG 000.116 and s994E(5).
- RG 000.95 For example, we expect that for a financial product with a narrow target market, the distribution strategy would reflect restricted distribution to minimise the risk that persons outside of the target market are sold the product. In this case, the distribution conditions would be more specific and detailed to reflect the intended distribution method. The strategy could include targeted advertising, specific content on the entity's website about the specific product, call centre and advice line scripts, selectivity regarding distributors used, and guidance for distributors.
- RG 000.96 For a financial product with a comparatively wide target market, fewer distribution conditions may be needed to ensure that the products are sold in accordance with the target market determination: see s994B(5)(c) and 994B(8)(a).
- RG 000.97 If an issuer becomes aware that its distribution conditions are inadequate (e.g. because a substantial amount of distribution is occurring outside the target market), the issuer should amend its target market determination to set out additional distribution conditions to ensure that such distribution does not occur.

Note 1: If a substantial amount of distribution is occurring outside the target market, it may amount to a significant dealing, which must be reported to ASIC: see RG 000.146–RG 000.150. A significant dealing may also set off a review trigger with consequences for whether the financial product can continue to be distributed: see RG 000.127–RG 000.130.

Note 2: See the [Revised Explanatory Memorandum](#), paragraphs 1.79–1.81, for further information on when a dealing may be significant.

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Product-specific issues

RG 000.98 For some financial products, the application of the target market determination obligation is not straightforward. The examples in RG 000.99–RG 000.106 show how the target market determination obligation applies in such circumstances.

Superannuation

RG 000.99 A superannuation trustee that issues a MySuper product does not have design and distribution obligations in respect of that product: see s994B(3)(a). When insurance is offered to members as a component of a MySuper product, this insurance is not subject to the design and distribution obligations even if members can choose to adjust the insurance.

RG 000.100 This means a superannuation trustee does not need to make a target market determination in relation to a MySuper product.

RG 000.101 However, if the trustee also issues a Choice superannuation product, the trustee has distribution obligations under s994E(1) for the product. The fact that the MySuper product may be distributed together with the Choice superannuation product does not eliminate or reduce the trustee's distribution obligations in respect of the Choice superannuation product.

Example 7: Superannuation products

A trustee of a superannuation fund is an issuer of superannuation products. A superannuation fund may have a number of financial products (e.g. pension and accumulation products). Superannuation trustees must make a target market determination for each financial product, other than a MySuper product, for which the trustee is required to prepare a PDS: see s994B(1)(b).

Within a superannuation product the trustee may elect to offer investment options. Insurance may also be provided as a component of the superannuation product. If applicable, the trustee would need to take these product features into account in making a target market determination for a Choice superannuation product.

Investment options

Making an appropriate target market determination at the product level may be more challenging for trustees if the product includes investment options. This is because there may be options that are more 'suited' to particular groups of members based on their objectives, financial situation and needs. The outcomes for members will depend on which investment option(s) have been selected for their superannuation.

If investment options are likely to be consistent with the likely objectives, financial situation and needs of different groups of members then the trustee should account for this in undertaking its target market determination for the Choice superannuation product. In practice, this is likely to involve a single target market determination for the Choice

superannuation product that describes multiple target markets for each investment option or group of investment options offered as part of the product.

Insurance component of a Choice superannuation product

When a superannuation trustee offers insurance for members as part of a Choice superannuation product, the insurance needs to be considered by the trustee in complying with its design and distribution obligations. There is no obligation on the insurer who issues the group policy to the trustee to make a target market determination. The trustee should consider the features of the insurance and the likely objectives, financial situation and needs of members for whom the insurance component of the Choice superannuation product will be suitable.

The trustee may find it necessary or appropriate in some circumstances to use information provided by the insurer in making this assessment.

In practice, the target market determination for a Choice superannuation product that includes an insurance component will need to specifically consider the class of consumers for whom the insurance will likely be consistent with likely objectives, financial situation and needs. This may result in the target market for the Choice superannuation product being different from what would have been the case in the absence of the insurance component of the product being offered.

Investor directed portfolio services

RG 000.102 In the case of an investor directed portfolio service (also known as a ‘platform’) the design and distribution obligations apply to both the issuer (or operator) of the platform and issuers of the underlying products offered on the platform.

Example 8: Investor directed portfolio services

An investor directed portfolio service (IDPS) is an unregistered managed investment scheme for holding and dealing with investments selected by investors. In broad terms, it provides custodial, transactional and reporting services where the investor makes all of the investment decisions.

For an IDPS, both the operator of the platform and each issuer of underlying investments made available on its platform must make a target market determination: see Corporations Amendment (Design and Distribution Obligations) Regulations 2019.

The operator of the IDPS must make a target market determination in relation to the platform itself, as a separate financial product to the products offered or available on its platform. This is likely to include consideration of the costs and features of the platform, as well as the types of products available on the platform.

An issuer of financial products offered or available on the platform must make a target market determination in relation to the underlying product. This is likely to include consideration of whether the selected platform is an appropriate distribution channel for the product.

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Bundled and customisable products

RG 000.103 When a single product has multiple elements that are offered as a package or bundle (e.g. an investment facility that provides exposure to both shares and debentures), the issuer must make a target market determination that considers the entire product. When multiple products are ‘packaged’ or ‘bundled’ by an issuer, a target market determination must be made for each separate product. We do not consider this prevents an issuer continuing to offer the product as a package or bundle.

Note: Due to the application of s764A(1A), single contracts of insurance that provide two or more kinds of cover are deemed to be separate products. Similarly, due to the combined application of s764(1A) and (1B), contracts of insurance that provide a kind of cover in relation to two or more kinds of asset are deemed to be separate products. Accordingly, a separate target market determination should be made for each product in these circumstances.

RG 000.104 When a financial product is customisable by the consumer at point-of-sale, including through choices or options (e.g. selecting a waiting period for an income protection insurance product), the issuer must consider these choices and options in determining the target market for the product. When there are different target markets for differing forms of the product (as a result of particular options or choices), these should be described in the target market determination.

RG 000.105 We do not expect that every choice or option will change the class of consumers for whom a product is likely to be consistent with their objectives, financial situation and needs. Some choices and options may not change the target market, but instead be available for consumers within a target market to tailor the product to their individual circumstances (e.g. making incremental changes to the excess level for an insurance product or choosing a personalised level of cover for certain contents items as part of acquiring home and contents insurance).

RG 000.106 Issuers should also consider their reasonable steps obligation in relation to distribution when designing the choice architecture for these choices and options (e.g. when an insurer asks the consumer to make a choice or select an option, the insurer should consider how the consumer could be assisted to make this decision): see RG 000.111–RG 000.119. An issuer will be able to determine whether choice architecture is appropriate over time, based on its review of consumer outcomes.

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Taking reasonable steps in relation to distribution: Issuers

RG 000.107 An issuer must take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination (reasonable steps obligation): see s994E(1). To meet this obligation, we

expect an issuer to implement the controls that are likely to direct distribution of the financial product to the target market.

- RG 000.108 As part of its controls, we expect an issuer to have appropriate systems and processes to effectively manage the risks identified in its distribution arrangements. For example, when the conduct of the distributor has been poor, this should inform the assessment of the likelihood of future poor conduct, the nature and degree of harm that might result from the distribution arrangement, and the consideration of steps that can be taken to minimise the likelihood and harm.

Note: See the [Revised Explanatory Memorandum](#), paragraphs 1.97–1.99.

- RG 000.109 An issuer must take into account all relevant factors in assessing what reasonable steps need to be taken in the circumstances. These factors include:
- (a) *risk*—the likelihood of the distribution being inconsistent with the target market determination;
 - (b) *harm*—the nature and degree of harm that might result from the financial product being issued otherwise than in accordance with the target market determination; and
 - (c) *mitigation steps*—what steps can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the target market determination and the harm that might result (see s994E(5)).

- RG 000.110 In accounting for these factors, the [Revised Explanatory Memorandum](#) states at paragraph 1.98 that:

... where a distributor's previous conduct indicates that they may be at higher risk of engaging in conduct that is not consistent with the target market determination, issuers will need to take reasonable steps to address the risk. This could include: having systems that enable distributors to be alerted to updates of target market determinations; assisting distributors to address concerns; or, in extreme cases, ceasing to distribute the product through the distributor where doing so is possible. Other relevant factors include the complexity and risk profile of the product, and the nature of any relationship between an issuer and a distributor of a product.

Conditions and restrictions

- RG 000.111 An issuer must, as part of its target market determination, specify appropriate conditions and restrictions on distribution of the financial product (distribution conditions). The distribution conditions are intended to ensure that distribution of the product is directed towards its intended target market. It is not the role of the distribution conditions to narrow or refine the target market, which must be appropriate in and of itself: see RG 000.72.

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RG 000.112 The [Revised Explanatory Memorandum](#), paragraph 1.56, states:

An issuer must consider a wide range of factors in determining whether their selected distribution conditions are appropriate. Factors may include known diligence, capabilities and the integrity of existing and prospective distribution methods. For example, an issuer may consider previous instances where a product was issued through a specific distribution method as part of its assessment to determine the appropriateness of that distribution method.

RG 000.113 The issuer's distribution conditions are one component of the controls that it will need to implement to take reasonable steps in the distribution of its financial product. What are reasonable steps in the circumstances will also be informed by the issuer's broader approach to distribution—its distribution strategy.

Distribution strategy

RG 000.114 The issuer's distribution approach, or strategy, is wider than its distribution conditions and includes consideration of all of the circumstances of the financial product's distribution, including the issuer's choice architecture, distributors, methods, channels, controls and supervision. The issuer's distribution strategy should be consistent with the target market for the product.

RG 000.115 For example, in setting the distribution strategy, we expect the issuer would consider whether the distribution method(s), through which the issuer intends the financial product to be acquired by the consumer, is consistent with the target market.

RG 000.116 As part of the distribution strategy, we also expect the issuer to select distributors whose typical consumers, and services offered, are consistent with the target market for the financial product, and consider the potential vulnerabilities of existing and prospective distribution methods.

Choice architecture

RG 000.117 Choice architecture refers to the features in an environment, noticed and unnoticed, that influence consumer decisions and actions. Examples include product bundling, default settings, and website and sales process design.

RG 000.118 We will take into account whether the choice architecture of the issuer's financial product is consistent with its target market and distribution strategy. This includes:

- (a) the design of the choice architecture at every stage of distribution; and
- (b) complexity (including unnecessary complexity) in, for example, choices, processes and information.

RG 000.119 An issuer should assess the effectiveness of its choice architecture over time, based on consumer outcomes.

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Factors relevant to our administration of the obligation

RG 000.120 We have set out some factors we expect will be relevant when considering whether an issuer has taken reasonable steps: see Table 3.

Note: The factors listed in Table 3 are not intended to be an exhaustive list of potentially relevant factors that we will consider when deciding whether steps should or could be taken in order to meet the 'reasonable steps' threshold.

Table 3: Factors relevant to our administration of the issuer's reasonable steps obligation

Factor	Explanation
Distribution conditions	<p>We will take into account whether the distribution conditions the issuer sets in the target market determination are sufficient to direct distribution towards the target market for its financial product.</p> <p>We expect that for a financial product with a narrow target market, the distribution conditions would be more specific and detailed to reflect the intended distribution strategy. For a product with a comparatively wide target market, fewer distribution conditions may be needed to ensure that the products are sold in accordance with the target market determination.</p> <p>In addition, we consider that more restrictive distribution conditions may result in fewer additional steps being required for issuers to meet the reasonable steps obligations.</p> <p>For example, if an issuer determines that the product should be distributed under a personal advice model only, owing to this control, the content of its reasonable steps obligation is likely to be reduced compared to if the issuer elects to distribute more broadly through general advice or no advice channels.</p>
Marketing and promotional materials	<p>We will take into account whether an issuer's promotional materials and marketing campaigns direct distribution towards the target market for the financial product.</p> <p>Note: Generally, in any promotional material, the issuer must describe the target market or specify where the target market determination is available: see s1018A.</p>
Selection of distributors	<p>We will consider the steps that an issuer has taken in conducting due diligence in the selection of distribution channels and distributors. We expect that reasonable steps may include making an assessment of the capacity of the distributor to comply with the distribution conditions imposed.</p> <p>We consider that relevant factors would include:</p> <ul style="list-style-type: none"> • an assessment of the distributor's resources; • requisite knowledge; and • competence to distribute the financial product. <p>An issuer should consider the likelihood of the distributor's conduct being inconsistent with the target market determination for the financial product. If the issuer has prior knowledge of conduct or resourcing concerns about a distributor, we would expect the issuer to undertake an assessment of the risk and the available steps to mitigate that risk in forming a view on what is reasonable in the circumstances.</p>

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Factor	Explanation
Supervision and monitoring	<p>We will consider whether an issuer has adequately supervised the distributor and its processes, having regard to the target market for the financial product and the potential for harm that may result from a consumer outside of the target market acquiring the product.</p> <p>For example, when significant harm would result from consumers who are not in the target market acquiring a financial product, we consider the following distribution strategies would not be appropriate:</p> <ul style="list-style-type: none"> • a strategy where there is limited oversight of the distributor; or • a strategy where the issuer does not have a direct communication with the distributor. <p>As noted in the Revised Explanatory Memorandum (note 34):</p> <p>The obligations do not require any formal relationship (for example, contract or other arrangement) to exist between an issuer and a distributor. However, the existence or non-existence of any such relationship may be relevant in determining whether or not an issuer has met its obligation to take 'reasonable steps'. In addition, it may be a 'reasonable step' for an issuer to formalise its relationship with a distributor or vary such a relationship where doing so is reasonably practicable and would promote distribution being consistent with a product's target market determination.</p> <p>We expect an issuer to review how evolving activity in the course of distribution remains consistent with (or deviates from) what was originally planned or envisaged for distribution of the financial product given the target market.</p> <p>In meeting its obligation to review the target market determination to ensure that it remains appropriate, an issuer will need to:</p> <ul style="list-style-type: none"> • collect and analyse appropriate management information at sufficient intervals to detect patterns in distribution as compared with the planned target market; and • assess the performance of the distribution channels through which its financial products are being distributed.
Conflicts of interest	<p>We will take into account whether a conflict, potential conflict or apparent conflict of interest exists (including in remuneration and incentive structures proposed for distribution), and the issuer's ability to eliminate or appropriately manage those conflicts of interest.</p> <p>In developing remuneration and incentives for the distribution of a financial product, we expect an issuer will consider the role that incentives have in influencing behaviours that could result in distribution being inconsistent with the target market determination, and the harm that could arise as a result.</p> <p>If the issuer decides it is likely that incentives will influence behaviours that result in distribution being inconsistent with the target market determination, we expect that this will be a consideration in altering distribution channels or not proceeding with that distributor.</p>

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Factor	Explanation
Information sharing with distributors	<p>We will take into account whether an issuer has provided a distributor(s) with sufficient information to assist the distributor with meeting its obligations to ensure distribution (including marketing and sale) is consistent with the target market determination.</p> <p>We expect an issuer to consider if distributors require tailored information in addition to materials prepared for an end consumer. For example, an issuer could consider (for each distribution channel or type of distributor):</p> <ul style="list-style-type: none"> • what information distributors of that type already have; • their likely level of knowledge and understanding; and • their information needs and what form or medium would best meet those needs (which could include discussions, written material or training, as appropriate).

Reasonable steps for issuers: Examples

RG 000.121 Below are some examples to illustrate our guidance on reasonable steps for issuers.

Example 9: Superannuation

Superannuation trustees may offer superannuation products in a fund through a number of distribution channels. These include through:

- direct-to-public issues through the trustee's website and member contact centre;
- adviser channels; and
- employers.

A superannuation trustee seeks to offer a Choice superannuation product that has a 'high growth' investment option.

The superannuation trustee provides members with the ability to switch into the high growth option through the fund website and also through a call to the member contact centre.

The superannuation trustee assesses that the potential risk of harm from the high growth investment option if distributed to members who are outside of the target market is high. The trustee considers the risks of distribution inconsistent with the target market determination in each of its distribution channels and specifies controls. It also commences an internal regular report to obtain information about the types of members choosing the option and the distribution channel by which the option is acquired to check that its controls are working.

Direct-to-public

The superannuation trustee has direct control over distribution of the Choice product and its investment options in its member contact centre, and the trustee implements appropriate call scripts and general advice processes to mitigate the risk of inconsistent distribution.

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In addition, the superannuation trustee considers information available about the Choice product and its investment options on the fund website. The fund website requires members to log in and they are then presented with potential investment options. To restrict the possibility of members selecting an investment option inappropriate for them, the trustee customises the options presented to members after they log in based on member characteristics information the trustee holds. When a member would like to select an option that they are likely not in the target market for, the website prompts the member to contact the fund to receive further information.

Adviser

The superannuation trustee assesses that the risk of inconsistent distribution in the advised channel is lower than for distribution through other channels. This is because the advised channel is expected to involve personal advice that requires the collection and analysis by the adviser of information relating to the member's individual objectives, financial situation and needs. The financial adviser will also have access to the target market determination of the trustee to assist the financial adviser in providing advice and meeting the adviser's best interests duty.

Employer

The superannuation trustee accepts applications from a large range of employers that nominate the MySuper product as the default product for their employees. To mitigate the risk that employees then choose to switch to the high growth investment option when it is not appropriate to their likely objectives, financial situation and needs, the trustee prepares a factsheet for employers to circulate to employees. The trustee also explains the risk of the option in periodic seminars that are offered to employees.

Example 10: Mortgage fund

A mortgage fund is a managed investment. The underlying portfolio of the fund generally comprises residential, commercial and development mortgages, with varying risk profiles.

We expect the issuer to adequately supervise the activities of distributors and take action if it has concerns about the conduct of a distributor.

For example, if the issuer is aware that a distributor uses the language of 'cash' or 'cash-like' to promote the mortgage fund, creating an inaccurate expectation that the product is low in risk and high in liquidity (which creates a risk that the product will be sold outside the target market), the issuer should take steps to address this conduct.

In these circumstances, the issuer could:

- require the distributor to immediately cease promoting the product in this way;
- review the adequacy of information it provides to distributors;
- provide training if necessary;

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- consider providing distributors with marketing materials, or vetting materials produced by distributors; and/or
- terminate the distributor, if appropriate in the circumstances.

Example 11: Listed investment companies (LICs)

Listed investment companies (LICs) issue shares that are listed on a licensed exchange such as ASX or NSX.

LICs offer exposure to a wide range of underlying assets that will suit different types of consumers (e.g. some may invest mostly in Australian shares, whereas specialist funds may invest in infrastructure or technology companies). A key feature of LICs is that they are closed-ended, meaning the investor cannot redeem their investment and the only way to exit is to sell on-market.

LICs have differing investment approaches, ranging from low to high risk. Some LICs use complex strategies through the use of short selling, derivatives and leverage that may result in significant or complete loss of capital. These strategies will not be suitable for all consumers.

In order to raise capital and list on an exchange, an LIC will need to conduct an initial offering. As part of this process, LIC issuers will often use a highly intermediated structure, with offers distributed through networks of wealth management, private banking, stockbroking and financial advisory firms (distribution network), to utilise the existing consumer bases of these firms.

In carrying out this initial offering and in selecting distributors that form part of this distribution network, an issuer of LICs should keep in mind the target market for the product, the distribution conditions it has set and the broader distribution strategy: see RG 000.93–RG 000.97 and RG 000.114–RG 000.116.

For example, the issuer may have put in place distribution conditions to require distributors to market more narrowly (e.g. by confining email marketing to those consumers whom it is aware have certain characteristics set out in the target market determination). The issuer might also have placed restrictions on the advertisements that distributors are able to use when marketing the product to ensure that the LICs and their features are fairly represented, which might include, for example, prohibiting comparisons with other products that do not share similar characteristics.

Particular considerations in selecting distributors are likely to include:

- whether the distributor provides no advice (e.g. information only), general advice or personal advice to consumers;
- the distributor's typical investor type and whether the distributor deals directly with the investor, or through other intermediaries;
- whether the distributor has arrangements in place so that its representatives have sufficient knowledge and understanding of the product to be able to give appropriate advice to investors; and
- previous consumer outcomes that resulted from using a particular distributor.

An issuer of LICs should provide the distribution network with sufficient information to assist distributors with meeting their obligations to ensure that distribution (including marketing and sale) is consistent with the target market determination. In particular, the issuer should seek to ensure that distributors are fully aware of the risks associated with the LICs, and how these might affect who is in the target market.

An issuer of LICs should also consider how any incentives available to distributors are likely to influence behaviours that could result in distribution being inconsistent with the target market determination and the harm that could arise.

In planning the supervision required for the distribution network, an issuer of LICs should keep in mind that distribution will occur in a short timeframe (often a matter of weeks), which may be an additional factor that influences the behaviour of distributors.

To ensure that distribution is consistent with the target market determination, an issuer might consider taking steps in advance of the offering, such as reviewing:

- the types of materials (in particular, non-prospectus materials) that will be presented to consumers by distributors; and
- the systems and processes that distributors in the distribution network will use.

The issuer should also be vigilant in its oversight of distribution of the product—for example, by actively seeking and responding to data from distributors and consumers that identifies sales of LICs that are inconsistent with the target market determination.

Note 1: We refer to LICs throughout this example to describe both the company and the shares that are being issued.

Note 2: While our example refers to LICs, much of the discussion also applies to listed investment trusts, which are incorporated as trusts, rather than companies.

Reviewing the target market determination

RG 000.122 The design and distribution obligations require the issuer to review the target market determination periodically and in response to review triggers to ensure that the target market determination remains appropriate for the financial product over time: see s994C.

Note: See the [Revised Explanatory Memorandum](#), paragraph 1.61–1.65, for further information on review triggers.

RG 000.123 The review process should be established as part of the issuer’s product governance framework, and controls should be put in place to ensure that meaningful reviews take place.

RG 000.124 The obligation to review the target market determination is aligned with taking a consumer-centric approach to continually monitor and assess

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whether the financial product performs in line with consumer needs on an ongoing basis. As such, while the initial target market determination can be made based on the reasonable information that the issuer has at the time, if it becomes aware of new information that would change the issuer's target market determination, this should prompt it to conduct a review.

- RG 000.125 Issuers must ensure that their systems and processes are able to identify areas of consumer harm and other factors that may indicate that a review is required. We expect issuers and distributors to improve their data capabilities to ensure that their data is timely, accurate, adequate and complete, and uses consistent definitions to meet their review obligations.
- RG 000.126 If the issuer becomes aware that an event or circumstance has occurred that would reasonably suggest that the target market determination is no longer appropriate (e.g. if a review trigger has occurred), it must stop issuing the financial product and direct its distributors to stop distributing until the issuer has reviewed the target market determination and its product: see s994C(3)–(5).

Specifying review triggers

- RG 000.127 A target market determination must specify review triggers: see s994B(5)(d). Review triggers are events and circumstances that would reasonably suggest that the target market determination is no longer appropriate. They are a prompt to stop distributing the financial product (and direct the issuer's distributors to stop distributing) until the target market determination is reviewed.

Note: See s994C(3)–(5) for circumstances when a review trigger requires an issuer to cease retail distribution conduct.

- RG 000.128 We expect that review triggers are likely to differ based on the nature of the issuer's financial product and its intended target market. The [Revised Explanatory Memorandum](#) gives the following non-exhaustive examples of review triggers (paragraph 1.62):

- (a) an event or circumstance that would materially change a factor taken into account in making the target market determination for the product;
- (b) whether the product is being distributed and purchased as envisaged by its target market determination; and
- (c) the nature and extent of any feedback received from those who distribute or acquire the product.

- RG 000.129 An issuer should consider what data is likely to be required to identify if a review trigger has occurred and, when necessary, require distributors to provide such data: see RG 000.135–RG 000.139.

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- RG 000.130 An issuer should use the data provided by distributors, along with its own data, to effectively review a target market determination for appropriateness, or redesign products when required.

Example 12: Insurance

Issuers of insurance products could consider the following data when identifying review triggers that may indicate that the target market is no longer appropriate:

- product claim ratios;
- the number, nature and magnitude of paid, denied and withdrawn claims;
- the number of policies sold, including penetration rates;
- policy lapse or cancellation rates;
- average claim times; and
- the nature and number of complaints and complaint trends.

To fully understand the implications of the data reviewed, distributors may need to segment the data by distribution channel and underwritten risk type.

Example 13: Managed fund

Interests in managed investment schemes are a common retail investment product.

An issuer of interests in a managed investment scheme could consider the following factors when identifying review triggers that may indicate that the target market is no longer appropriate or that the product should be redesigned:

- the performance of the product relative to its original targets (if any) and appropriate benchmarks (e.g. a change in expected performance in light of significant changes in market conditions such as an economic downturn);
- any losses suffered by holders and whether the product is still likely to achieve the issuer's original goals (especially if there have been a large number of withdrawals from the scheme);
- whether the product remains liquid and able to offer regular withdrawals;
- the fees of the product compared to similarly performing products;
- the taxation implications of the product compared to similar products;
- whether the product remains on approved product lists and menus for key distributors;
- a significant increase in fund outflows; and
- the nature, number and outcomes of complaints.

Specifying reasonable maximum review periods

- RG 000.131 In addition to setting review triggers, the issuer is also obliged to review the target market determination on a periodic basis. The issuer must state in its target market determination the frequency of proposed periodic reviews: see s994B(5)(e)–(f).
- RG 000.132 Setting a periodic review period will require the issuer to take a reasonable view about the risk of detriment to consumers if the target market determination is no longer appropriate, and the need to stop distributing the financial product should this occur. We expect that the issuer would consider the nature of its product and the market in which it is sold, including the way in which the product is distributed, in making this decision.
- RG 000.133 Review periods serve as a ‘backstop’ to ensure that target market determinations are reviewed with sufficient frequency, as appropriate for the issuer’s financial product. Issuers should consider if there are existing requirements for products to be reviewed and align periodic reviews of the determination into existing review practices. For example, a trustee of a superannuation fund has obligations to review each investment strategy against its investment objectives on at least an annual basis.

Note: See [Prudential Standard SPS 530](#) *Investment governance*, paragraph 117, and s52(6)(a) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

- RG 000.134 A complex and high-risk investment product with a narrow target market, which has the potential to result in consumer harm if it is sold to consumers outside the target market, would likely be reviewed more frequently than a product that has less potential to result in consumer harm.

Specifying the information the issuer needs from distributors to decide if a determination may no longer be appropriate

- RG 000.135 The issuer must specify in the target market determination any information that it considers necessary to require from distributors in order to identify promptly when a determination may no longer be appropriate, whether due to the occurrence of a review trigger or another event or circumstance that would reasonably suggest this is the case.
- RG 000.136 The issuer also needs to specify:
- (a) which distributors should provide that information; and
 - (b) reporting periods for when that information should be provided to the issuer.
- RG 000.137 As with other aspects of the design and distribution obligations, the information the issuer requires from its distributors will be product and context specific and may need to be reviewed over time. In addition to the

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complaints information required by law, we expect that the issuer will consider the question of what information will best assist in meeting its review obligations, including, for example, to determine whether a review trigger has occurred: see RG 000.143.

Note: See s994F(4) and the [Revised Explanatory Memorandum](#), paragraph 1.66.

RG 000.138 We expect that the information collected from distributors will be used for the purpose of an issuer reviewing the target market determination. In deciding what information is required, we expect the issuer to use credible and reliable data sources and consider whether the information it plans to collect is fit for purpose and unbiased. We also expect information collection to adhere to privacy laws and relevant ethical and data codes.

RG 000.139 Information from a distributor that may be necessary to enable an issuer to identify whether a target market determination should be reviewed could include:

- (a) complaints data;
- (b) consumer feedback (including on the performance of the product);
- (c) requests for information from consumers;
- (d) percentage of sales to consumers who are not in the target market;
- (e) samples of recorded sales calls;
- (f) conversion rates;
- (g) volume of sales; and
- (h) web analytics (e.g. click data and website paths).

Specifying when the distributor should provide the issuer with information about complaints

RG 000.140 The issuer must also specify in the target market determination the reporting period in relation to information the distributor must provide to the issuer about the number of complaints about the financial product.

Note: See s994B(5)(g)–(h), as well as s994F(4)–(5).

RG 000.141 For some financial products, the number of complaints may be a useful indicator that the target market determination is not being complied with or is no longer appropriate, and so care should be taken in setting a reporting period that enables the issuer to identify when this has occurred (e.g. a reporting period of five years is inappropriate).

RG 000.142 Similar to the setting of a review period, setting a reporting period for complaints will require the issuer to take a reasonable view about the risk of detriment to consumers if the target market determination is no longer

appropriate, and the need to stop distributing the financial product should this occur.

Note: See s994C(3)–(5).

Conducting a review

RG 000.143 In reviewing a target market determination, we expect that the issuer will take into account all available information on its financial product using multiple data sources. This would include:

- (a) information the issuer holds about consumer outcomes—for example:
 - (i) consumer and transaction data (e.g. claims outcomes for insurance products);
 - (ii) results of multi-method consumer testing;
 - (iii) assessment and measurement of product design and performance;
 - (iv) impact of choice architecture on consumer choice and outcomes; and
 - (v) purchase decisions and use of product;
- (b) information collected from distributors, including:
 - (i) the information that the issuer specifies in the target market determination that must be provided to the issuer (see RG 000.135–RG 000.142); and
 - (ii) general product feedback and consumer complaints;
- (c) information collected from consumers, including general product feedback and complaints, as well as the outcomes of those complaints based on complaints-handling information and internal dispute resolution information; and
- (d) information from other sources about consumer outcomes, including decisions from the Australian Financial Complaints Authority (AFCA).

Note: Consumer satisfaction is not an appropriate source of data because it is an unreliable indicator of consumer outcomes. For example, shadow shopping research ASIC conducted with real consumers who sought retirement advice identified a large gap between the technical quality of the advice (as assessed by ASIC) and the consumers' own assessment of that advice: see [Report 279 Shadow shopping study of retirement advice](#) (REP 279). While 86% of consumers considered the advice they received to be good, ASIC assessors rated only 3% of the advice reviewed as good, with the remainder rated as adequate, or poor. In an earlier shadow shop on superannuation advice, in cases where ASIC could see that the advice clearly lacked a reasonable basis, 85% of consumers still felt satisfied with the advice: see [Report 69 Shadow shopping survey on superannuation advice](#) (REP 69).

RG 000.144 When conducting a review, we expect the issuer to consider the objectives of the design and distribution regime, including to minimise the risk of financial products being sold to consumers for whom the products are not

likely to be consistent with their likely objectives, financial situation and needs. For example, when the performance of a product has varied materially, the issuer should check:

- (a) whether the product is continuing to meet the general needs of the target market that it was designed for; or
- (b) whether the product's performance is significantly different from what the issuer originally expected and communicated to the distributor or consumer at the time of the sale.

Note: When this occurs, the issuer should consider what further action may be required, such as informing its existing consumers.

RG 000.145 We expect that reviews may also prompt an issuer to reconsider the product's design, if it emerges that there are very few consumers for whom:

- (a) the product would likely be consistent with their likely objectives, financial situation and needs; or
- (b) the product could be sold without harm.

Notifying ASIC of 'significant dealings'

RG 000.146 An issuer must notify ASIC of a significant dealing (except excluded dealings) in a financial product that is not consistent with the product's target market determination. If the issuer becomes aware of such a dealing, it must notify ASIC in writing as soon as practicable, and in any case within 10 business days after becoming aware.

Note 1: See s994G and 1311(1).

Note 2: Excluded dealings consist of arranging for a consumer to apply for or acquire a product for the purpose of implementing personal advice that the person has given to a retail client: see s994A(1).

Meaning of 'significant dealing'

RG 000.147 The term 'significant dealing' is not defined in the Corporations Act. Whether or not a dealing is significant is a matter to be determined in the circumstances of each case.

RG 000.148 We expect that the following factors will be relevant to considering whether a significant dealing has occurred (these are not intended to be an exhaustive list of potentially relevant factors):

- (a) the proportion of consumers who are not in the target market acquiring the financial product;
- (b) the actual or potential harm to consumers, including the amount of any monetary loss, resulting from consumers who are not in the target market acquiring the product; and

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- (c) the nature and extent of the inconsistency of distribution with the target market determination (noting that distribution to a consumer can be either more or less consistent with a target market along a continuous spectrum).

Note: In outlining the above factors to consider when determining whether a significant dealing has occurred, we have considered the factors outlined in the law in s994E(5) and the matters set out in s1023E(1).

Content of the notification

- RG 000.149 The notification of a significant dealing can include the information in Table 4. If an issuer does not have information about specific matters in Table 4 at the date of the notification, it should include the information it does have and supplement it by providing further information as it becomes available.

Table 4: Content of a written notification of significant dealing

Date(s) of the significant dealing	Include both: <ul style="list-style-type: none"> the date that the significant dealing occurred, or date range during which dealings occurred that taken together are significant; and the date the issuer became aware of the significant dealing.
Description of the significant dealing	Describe the significant dealing, including why it is not consistent with the target market determination.
Why the dealing is significant	Describe why the issuer considered the dealing to be significant.
How the significant dealing was identified	For example, the significant dealing may have been identified through the issuer's compliance arrangements, reporting from the distributor, as a result of a consumer complaint or where a review trigger has occurred.
What steps, if any, have been taken in relation to persons affected by the significant dealing	Include details as relevant.
What steps have been, or will be, taken to ensure that the significant dealing does not occur again	Include details as relevant.

What ASIC will do with the information in the notification

- RG 000.150 The information in the notification assists ASIC in considering whether issuers and distributors are fulfilling the design and distribution obligations under Pt 7.8A, including to take reasonable steps to ensure consistency in distribution with target market determinations. We will consider this information to decide whether it is necessary or appropriate to take any further action.

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Keeping records of decisions made

RG 000.151 An issuer must keep complete and accurate records of decisions made in relation to the issuer's target market determinations and associated reviews, together with the reasons for those decisions, for up to seven years.

Note: See s994F(1) and 1101C.

RG 000.152 Keeping good records will assist issuers to meet the design and distribution obligations, particularly in relation to conducting reviews.

RG 000.153 ASIC may request these records to ensure compliance with the law. Good records are also likely to assist issuers to demonstrate that it has taken the necessary steps to comply with the obligations.

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D Obligations for distributors

Key points

Distributors generally interact directly with the end consumer. Distributors can be an intermediary between the issuer of a financial product and the consumer, or the issuer itself, when the issuer deals directly with consumers.

Like issuers, distributors must take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the target market determination for that product (reasonable steps obligation): see s994E(3).

Reasonable steps for distributors depends on the likelihood of distribution being inconsistent with the target market determination, the potential harm that might arise from inconsistent distribution, and the steps that can be taken to mitigate these harms.

In limited cases, the reasonable steps obligation will involve the distributor asking direct questions to enable it to form a reasonable view that a consumer, or group of consumers, is reasonably likely to be in the target market.

Distributors also have obligations to report certain information to issuers, including when there is a significant dealing that is not consistent with a financial product's target market determination. Distributors must also keep records of distribution information.

Note: All references to 'distribution' are to 'retail product distribution conduct', which includes, in relation to a product, dealing in relation to a consumer, providing financial product advice to a consumer, giving a disclosure document or PDS to a consumer, or arranging for the application, acquisition or issue of a financial product: see s994A(1).

Taking reasonable steps in relation to distribution

RG 000.154 Distributors generally interact directly with the end consumer. Distributors can be an intermediary between the issuer of a financial product and the consumer (e.g. a sales partner of the issuer), or the issuer itself, when the issuer deals directly with consumers.

RG 000.155 An issuer that distributes its products directly to consumers must comply with both the reasonable steps obligation under s994E(3) (described in this section of the guide) and the reasonable steps obligation under s994E(1) (described in Section C of this guide at RG 000.107–RG 000.121). For example, an IDPS platform operator must comply with:

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- (a) the issuer's reasonable steps obligation under s994E(1) in relation to interests in the IDPS issued to consumers; and
- (b) the distributor's reasonable steps obligation under s994E(3) in relation to the underlying financial products offered on the platform.

Note: See also Example 8.

RG 000.156 A distributor generally must not distribute a financial product unless a target market determination has been made for it: see s994D.

Note: A distributor may distribute a product if it reasonably believes (after making all reasonable inquiries) that a target market determination had been made, or a target market determination is not required.

RG 000.157 In addition, a distributor must take reasonable steps that will, or are reasonably likely to, result in distribution of a product being consistent with the target market determination: see s994E(3).

RG 000.158 A distributor should have a product governance framework—that is, systems, processes, procedures or arrangements—in place to help ensure that it complies with its design and distribution obligations, including the reasonable steps obligation: see Section B.

RG 000.159 Like an issuer, a distributor must take into account all relevant factors in assessing what reasonable steps need to be taken in the circumstances. These factors include:

- (a) *risk*—the likelihood of the distribution being inconsistent with the target market determination;
- (b) *harm*—the nature and degree of harm that might result from the financial product being issued otherwise than in accordance with the target market determination; and
- (c) *mitigation steps*—what steps can be taken to eliminate or minimise the likelihood of the distribution being inconsistent with the target market determination and the harm that might result (see s994E(5)).

RG 000.160 What steps a distributor may need to take to meet its reasonable steps obligation may be shaped by the issuer of the financial product and the issuer's degree of control over the distribution process through distribution conditions and any distribution agreement.

RG 000.161 In most circumstances, merely complying with the distribution conditions and any agreement with the issuer will not be sufficient to satisfy the distributor's reasonable steps obligation. The distributor will still need to consider what additional steps are reasonable for it to take in the particular circumstances.

RG 000.162 For example, an issuer may not provide direction on the channel or method through which a product should be sold, where that product could be suitable

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for sale through multiple channels. In addition to any guidance or direction given by the issuer, the distributor should consider, having regard to the stated target market and the risk of harm that could result from inconsistent distribution, what distribution channel would be appropriate and what additional steps or controls should be put in place that are reasonably likely to result in the distributor's sales of the product being consistent with the target market determination.

Factors relevant to our administration of the reasonable steps obligation

RG 000.163 We have set out factors we expect will be relevant when considering whether a distributor has met its reasonable steps obligation: see Table 5.

Note: The factors listed in Table 5 are not intended to be an exhaustive list of potentially relevant factors that we will consider when deciding whether steps should or could be taken in order to meet the 'reasonable steps' threshold.

Table 5: Factors relevant to our administration of the distributor's reasonable steps obligation

Factor	Explanation
Distribution method	<p>Examples of distribution methods include online, face-to-face, and inbound or outbound telephone sales. Some channels may not be appropriate for all financial products.</p> <p>We will take into account whether the means through which a distributor chooses to interact with the consumer (i.e. its distribution method) is reasonably likely to be consistent with the target market for the financial product.</p> <p>For example, if significant consumer harm is likely to result from a financial product being mis-sold (i.e. sold to consumers who are not in the product's target market), and the risk of mis-selling is material for a given distribution method, this method should not be used. This means that a distributor should not engage in sales of complex insurance products through a distribution method that gives rise to a risk that the product will be sold indiscriminately, including to consumers who are ineligible to claim.</p>
Compliance with distribution conditions	<p>The target market determination prepared by the issuer will specify any conditions and restrictions on retail product distribution conduct in relation to the financial product (i.e. the distribution conditions).</p> <p>We will take into account the steps that a distributor takes to comply with the distribution conditions set by the issuer. As noted at RG 000.160–RG 000.162, a distributor will also need to consider what additional steps may be required in addition to the conditions set by the issuer.</p>

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Factor	Explanation
Marketing and promotional materials	<p>We will take into account the content and medium of delivery to end consumers of promotional or advertising materials circulated by distributors. The materials and delivery should be informed by, and consistent with, the target market determination for the financial product.</p> <p>For example, we expect that a complex or high-risk investment product with a narrow target market is generally not appropriate to be marketed widely through mass market advertising or prominent online methods, such as banner advertising, unless it is sufficiently clear from the content of the advertising that the product is of limited suitability.</p> <p>Note: Generally, promotional material for a product must describe the target market or specify where the target market determination is available: see s1018A.</p>
Effectiveness of product governance framework	<p>We will consider whether a distributor's product governance framework is effective to ensure that distributors have a degree of control and oversight over their distribution process.</p> <p>An effective product governance framework should allow distributors to:</p> <ul style="list-style-type: none"> • monitor whether conduct is compliant with the law and consistent with the target market determination; and • highlight areas for improvement in conduct of sales staff, or the operation of systems or processes. <p>We expect that there will be a process for identifying changes that may impact on the effectiveness of the product governance framework. Distributors should regularly review the framework to ensure that it remains effective.</p> <p>For guidance on reviewing the product governance framework, see RG 000.41–RG 000.43.</p>
Inappropriate incentives	<p>We will take into account the steps the distributor has taken to eliminate or appropriately manage the risk that incentives for staff or contractors may influence behaviours that could result in consumer harm or distribution being inconsistent with the target market determination.</p>
Reliance on existing information about the consumer	<p>In some cases the distributor may already have information about a prospective consumer (e.g. if they are an existing consumer in the case of a renewal) prior to distribution.</p> <p>We will take into account whether the distributor has relied on the following matters appropriately:</p> <ul style="list-style-type: none"> • broader indicators about the likely circumstances of the consumer or a particular grouping of consumers; • matters that can reasonably be implied or assumed (e.g. information inferred from the postcode of the consumer's residential address); or • information that the distributor may already hold about the consumer. <p>When relying on existing information, a distributor should consider what additional steps may be required to meet the reasonable steps obligation.</p> <p>We expect that a distributor would consider the following factors in deciding whether it is appropriate to rely on existing information, and the extent to which it should rely on it:</p> <ul style="list-style-type: none"> • the likelihood of circumstances changing so that consumers are no longer in the target market for the financial product; • the harm that may result from consumers who are no longer in the target market acquiring the product; and

Factor	Explanation
Reliance on existing information about the consumer (continued)	<ul style="list-style-type: none"> the time that has elapsed since the distributor formed a reasonable view of whether a consumer is reasonably likely to be in the target market, or when the distributor last gathered relevant information. <p>We expect a distributor to have a reasonable basis for making conclusions about the above factors. For example, conclusions might be based on forecasts or predictive models, informed by ongoing data collection about the financial product.</p> <p>In addition to relying on existing information, a distributor should also consider if it is appropriate to:</p> <ul style="list-style-type: none"> seek further information from the consumer; and <p>implement controls as a means to filter out consumers who are no longer in the target market—for example, a distributor could prompt consumers to consider if they remain in the target market for the financial product. However, relying solely on warnings and disclosures to consumers is unlikely to be sufficient.</p>
Training	<p>We will take into account whether a distributor has given staff involved in distribution operations sufficient training and assessed their skills to perform the required duties.</p> <p>For example, a distributor should consider whether specific training is required for staff to understand the key product features and the target market for certain products, in addition to training about appropriate sales conduct.</p> <p>We expect that any additional training required would be able to be incorporated into existing staff training obligations, particularly when existing continuing professional development requirements apply.</p>
Assessment of whether a consumer is in the target market	<p>We will take into account how a distributor forms a reasonable view that a consumer is reasonably likely to be in the target market for a financial product. For further guidance, see RG 000.164–RG 000.169.</p>

Example 14: Renewal of general insurance policies

Many general insurance policies renew on an annual basis and consumers enter into a new contract at each renewal. These include policies covering risks of loss or damage to motor vehicles and home buildings and contents.

Each renewal will constitute a financial product issue where reasonable steps are required. What are reasonable steps at each renewal will need to be determined by the insurer based on the information it holds and its experience in practice. It may not be necessary to take the same steps at each renewal.

We expect insurers will have information on the most common events that would result in the likely objectives, financial situation and needs of groups of consumers changing such that the group would no longer be in the target market for a policy, and the likelihood of those events occurring over time since initial policy purchase.

For example, depending on the particular policy, the passage of time may result in a change to the needs of consumers to obtain comprehensive car cover (given the age of the car), such that they are no longer reasonably likely to be in the target market for the policy. At the time of renewal, an

insurer (in its role as distributor) must take reasonable steps to ensure that the renewal process results in outcomes that are consistent with the target market determination.

We expect, at the time of renewal of an insurance policy, an insurer would consider:

- the likelihood that consumers are no longer in the target market for the policy (which may be considered by reference to a class to which the consumer belongs);
- its existing data, such as information held about the class of consumers, the asset being insured and relevant claims data;
- any updates the consumer has provided; and
- whether more data should be gathered from consumers to inform its analysis.

We expect the insurer to analyse information it holds. For example, if that analysis shows that:

- the risk of consumers in a particular class no longer being in the target market increases significantly after a set period, say after the fourth or fifth renewal following initial policy purchase, we expect the controls the insurer would apply, and further steps the insurer would take at that point, to be scaled up as appropriate; or
- the risk that consumers in a particular class are no longer in the target market increases significantly from a specific date or age, the controls and further steps would be similarly scaled up for consumers who have reached that threshold.

Examples of further steps that may be appropriate in the above scenarios could include obtaining further information from the relevant consumers or informing the relevant consumers that the information held indicates the consumer may no longer be in the target market for the product and offering alternative products whose target markets the consumer would likely be in.

When an insurer assesses that it is likely a consumer is no longer in the target market for an insurance policy, we do not expect this to result in an insurer declining to offer a renewal of the policy without contacting the consumer.

Reasonable view on whether a consumer is reasonably likely to be in the target market for a product

- RG 000.164 The law provides that a distributor is not taken to have failed to take reasonable steps merely because a consumer who is not in the target market for the financial product acquires the product: see s994E(4). We interpret this to mean that the reasonable steps obligation is focused on a distributor having effective systems and processes in place to enable it to form a reasonable view on whether a consumer is reasonably likely to be in the target market for a product.

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Asking additional, specific questions

- RG 000.165 We expect that, in most cases, a distributor should have sufficient information about a consumer through its existing sales processes to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a financial product. For example, information obtained from a consumer from a credit card application will include information about the consumer's financial situation, such as their income. Together with other information obtained from the application, the distributor should be able to assess whether the consumer is likely to be in the target market for the credit card.
- RG 000.166 In some cases, to meet the reasonable steps obligation, the distributor will need to take the additional step of asking specific questions of the consumer.
- RG 000.167 In determining whether further information is required (and, as a consequence, specific question(s) should be asked), a distributor should take into account the likelihood of the consumer being outside the target market, the potential for harm, and other mitigation steps that the distributor has available. For example, if a high degree of consumer harm would result from a consumer who is not in the target market acquiring the financial product (such as a consumer being sold an add-on insurance product despite the consumer being ineligible to claim), and the risk of that occurring is not insignificant, the distributor should ask the consumer questions to determine if they are ineligible to claim before selling the product.

Distribution process

- RG 000.168 There are a number of ways a distributor's processes could assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product. These include:
- (a) the inclusion of 'knockout questions' within application processes for direct-to-consumer product sales, either through digital or other channels (e.g. if a consumer would be excluded from coverage under an insurance policy, the knockout question would operate to not allow the consumer to proceed with purchasing the cover);
 - (b) analysis of data held on the consumer or a class of consumers, which reasonably leads to the conclusion they are reasonably likely to be in the target market; and
 - (c) asking the consumer direct questions to determine whether they are reasonably likely to be in the target market.

Note 1: The law provides an exemption from the personal advice obligations for the actions of asking for information to ascertain whether a consumer is in the target market and informing them of the result: see s766B(3A) and RG 000.176–RG 000.179.

Note 2: We expect distribution processes to be consistent with the objectives of the design and distribution regime and the distributor's obligations to distribute products

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appropriately. For example, while a distributor may ask a consumer to confirm factual information about themselves, it should not require the consumer to self-certify that they are in the target market.

RG 000.169 A distributor should also not frame its processes in a way that leaves the consumer with the impression that their personal circumstances have been considered. We consider that a distributor could reduce the likelihood that a consumer will be left with the impression that their individual circumstances have been considered by:

- (a) not having a relevant provider (i.e. an individual authorised to give personal advice to consumers on relevant financial products) involved in the distribution process to ask specific questions of a consumer and communicate the view that the consumer is reasonably likely to be in the target market to the consumer, particularly when there is an existing relationship, or the consumer is aware the relevant provider is authorised to provide personal advice; and
- (b) asking specific questions of a consumer (when required) in the later stages of the sales process after the consumer has already made the decision to acquire the product.

Note: These factors are not exhaustive. The distributor should consider the relevant risks in the circumstances of its distribution process.

Consumers outside the target market

RG 000.170 We consider that the systems and processes implemented by issuers and distributors mean it should be less likely that consumers will find themselves actively seeking to acquire financial products that are not consistent with their likely objectives, financial situation and needs.

RG 000.171 When a distributor becomes aware that it is speaking or interacting with a consumer who is seeking to acquire a financial product that they are outside of the target market for, the distributor will need to have regard to its reasonable steps obligation. In determining what steps are reasonable in these circumstances, the distributor should consider:

- (a) the circumstances of the interaction, including the forum where the interaction takes place (whether online, in person, over the phone) and any information or advice provided to the consumer on the product before this interaction;
- (b) the nature and degree of harm that might result from the product being issued to the consumer (which in these circumstances can be assessed based on the circumstances of the consumer in question); and
- (c) the steps that can be taken to eliminate or minimise the likelihood of harm.

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- RG 000.172 The distributor is not prevented from ultimately selling the consumer a financial product in such circumstances, provided reasonable steps are taken: see s994E(4). However, a product that has been sold to consumers on multiple occasions when consumer harm is likely to result may raise questions about whether steps taken have been reasonable.
- RG 000.173 For example, in circumstances where the financial product would result in harm to the consumer due to the product being unsuitable (e.g. when a product only benefits those who are employed, and the distributor is aware that the consumer seeking the product is unemployed), steps should be taken to ensure that the consumer understands the product is unsuitable. In such circumstances, we consider it would be highly unusual for a sale to take place, if the consumer has been properly made aware that the product is unsuitable. Multiple instances of a sale taking place in these types of circumstances may indicate the distributor is not complying with its reasonable steps obligation.
- RG 000.174 In any case, a distributor should keep in mind that in determining what steps to take in these circumstances, we expect it to consider previous experience of what is effective to ensure that consumers are making an informed choice to acquire the product. We also expect a distributor to assess ongoing effectiveness against consumer outcomes.
- RG 000.175 We consider that it would be prudent for the distributor to keep a record of the discussion or interaction with a consumer in these circumstances. If these interactions occur on a regular basis, the distributor should contact the issuer and inform the issuer that consumers outside the target market are regularly seeking the financial product, and that, if required, a significant dealing in the product has occurred: see s994F(6) and RG 000.191–RG 000.194. The issuer can then take action to consider whether the product may be appropriate for a broader class of consumers, or, if not, consider whether better systems and controls are required to ensure that promotional material, and other means through which consumers are made aware of the product, are appropriately directed to the target market and not more broadly. The distributor should also consider its own systems and practices.

Scope of the personal advice exemption

- RG 000.176 The law provides that the act of asking for information solely to determine whether a person is in the target market for a financial product, and of informing the person of the result of that determination, do not, of themselves, constitute personal advice: see s766B(3A).
- RG 000.177 The exemption from the personal advice obligations is only provided for the actions of asking for information to ascertain whether a consumer is in the target market and informing them of the result. For example, we consider the exemption in s766B(3A) will not apply if, before asking the consumer for

information (or informing a consumer of their status in the target market), the distributor sets up the interaction in a way that gives the consumer the impression their personal circumstances are being considered, and any recommendation to buy the financial product has taken into account the consumer's individual circumstances. This conduct goes beyond asking for information solely to determine whether the person is in the target market, and of informing the person of the result of that assessment.

- RG 000.178 Further, if a distributor informs a consumer that they are in the target market for a financial product, the distributor must not suggest or imply that it has considered the consumer's personal objectives, financial situation and needs and the product is *suited* for the consumer's individual circumstances. To do so may be misleading or deceptive: see s12DA(1) of the ASIC Act.

Note: [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244) explains the differences between giving factual information, general advice and personal advice.

- RG 000.179 Conduct beyond the exception provided in s766B(3A) could constitute the provision of personal advice in breach of the law if the associated personal advice obligations are not met.

Note: Persons giving personal advice must act in the best interests of the consumer in relation to the advice (see s961B), as well as meeting a number of other obligations associated with the provision of personal advice.

Interaction with personal advice obligations

Financial advisers

- RG 000.180 If a distributor provides compliant personal advice to a consumer in relation to a financial product, its advice, and implementation of that advice, will be tailored to the consumer's personal circumstances. In these circumstances, the distributor is not required to take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the target market determination: see 994E(3) and the definition of 'excluded conduct' in s994A. Financial advisers providing personal advice are under legal obligations to take into account the consumer's personal circumstances and provide advice in their best interests.

Note: Financial advisers have other obligations under the design and distribution regime, including to provide distribution information to issuers: see RG 000.196.

- RG 000.181 However, we consider that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty.

Note: For example, we consider that a target market determination may be a factor considered under s961B(2)(e).

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RG 000.182 It may be appropriate for a financial adviser to advise a consumer outside of the target market to acquire a financial product, when acquisition would be in the best interests of the consumer. For example, when the product would ordinarily be too high risk for the class of consumers if it were a concentrated holding, it may be appropriate in the broader context of a consumer's portfolio, taking into account the consumer's relevant circumstances.

Adviser-only channels

RG 000.183 We consider that the legislative intent in substituting personal advice (when given) for the distributor's reasonable steps obligation is to address the potential duplication of regulation on personal advice providers. The regulation of personal advice provides existing consumer protections that are consistent with the objectives of the design and distribution regime.

Note: See the [Revised Explanatory Memorandum](#), paragraph 1.84.

Interaction with responsible lending obligations

RG 000.184 The responsible lending framework is intended to reduce the potential for individual consumers to suffer hardship as a result of inappropriate lending.

RG 000.185 This focus on the individual consumer and the transactional nature of responsible lending are quite different from the design and distribution obligations. The design and distribution obligations provide a legislative framework for issuers and distributors to introduce and maintain effective governance processes across the lifecycle of financial products, focused on the design and distribution of products that are likely to be consistent with the likely objectives, financial situation and needs of consumers in an identified target market.

RG 000.186 For example, the responsible lending obligations are not relevant to an issuer's decision to widely advertise a credit product with a narrow target market, on a mass-market basis. However, the design and distribution obligations are relevant to considering the marketing approach, particularly when the target market for the credit product is defined narrowly.

RG 000.187 While the responsible lending obligations and the design and distribution obligations are distinct regimes, they are complementary. As such, issuers and distributors may find efficiencies in developing compliance practices for the two regimes. In particular, we expect these would arise in relation to the responsible lending requirements to:

- (a) make reasonable inquiries about a particular consumer's financial situation and the consumer's requirements and objectives in relation to the particular credit contract or consumer lease in question; and
- (b) take reasonable steps to verify the consumer's financial situation.

Note: See [Regulatory Guide 209](#) *Credit licensing: Responsible lending conduct* (RG 209).

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- RG 000.188 We consider inquiries carried out and information gathered as part of the responsible lending obligations may assist the distributor to form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product. For example, information gathered as part of a responsible lending assessment about a consumer may inform the distributor about whether the consumer is reasonably likely to be in the target market for a particular home loan product. This information may include information on the consumer's:
- (a) assets, income, existing debt and savings;
 - (b) intended use of the product; and
 - (c) short-term and long-term needs.

- RG 000.189 We consider that the reasonable steps required by the design and distribution obligations do not require further steps to be taken by a distributor when assessing, for responsible lending purposes, whether the consumer can comply with their financial obligations under the contract. The reasonable steps obligation under the design and distribution obligations is a 'process and controls' obligation to generally distribute to consumers who are in the target market for a product.

Reasonable steps for distributors: Examples

- RG 000.190 Below are some examples to illustrate our guidance on reasonable steps for distributors.

Example 15: Tyre and rim insurance

Tyre and rim insurance products are generally sold at the time of purchase of a motor vehicle. In making a target market determination for the product, we expect the issuer to consider consumers for whom the product is clearly unsuitable. Consumers who are ineligible to claim—because they do not meet the key eligibility criteria or were unlikely to benefit from the insurance product—should not be included in the target market.

For example, in [Report 492](#) *A market that is failing consumers: The sale of add-on insurance through car dealers* (REP 492), we identified consumers being sold tyre and rim insurance when the type or use (e.g. personal use or business use) of the vehicle meant the consumer was not covered in the event of a claim.

Examples of the eligibility criteria insurers and distributors would need to consider include:

- the type or class of vehicle (e.g. if the policy does not cover vehicles over a certain age); and
- the use or purpose of the vehicle (e.g. if the vehicle is to be used as a taxi or for other similar business purposes).

The eligibility criteria in respect of the type or class of the car are objective matters that are readily ascertainable at the time of sale of these products. The distributor can therefore develop simple and effective procedures to ensure that these criteria are met.

The eligibility criteria in respect of the use or purpose of the vehicle should also be dealt with in the distributor's processes to minimise the risk of sales to consumers who are ineligible to claim.

Note: See [REP 492](#).

Example 16: Direct life insurance

Direct life insurance is sold to consumers by insurers or their sales partners, by inbound phone calls from consumers, online or face-to-face. These products are sold with general advice (meaning a consumer's individual circumstances are not considered), or with no advice (meaning only factual information is given).

In [Report 587](#) *The sale of direct life insurance* (REP 587), we found that sales practices and product design of direct life insurance was leading to poor consumer outcomes. Practices such as pressure selling, inadequate explanations of future cost and product exclusions resulted in high rates of cancellations during the cooling-off period, short-term lapse rates, and poor claims outcomes.

In such instances, we expect that the following matters would be relevant to a distributor's consideration of its reasonable steps obligation:

- the level of oversight to apply, including the provision of training and scripts to set clear professional standards for sales conduct (e.g. setting standards for how distributors behave with vulnerable consumers);
- the appropriate controls to apply, including implementation of quality assurance frameworks that monitor sales conduct, and resolve poor consumer outcomes;
- the distribution conditions;
- the choice architecture employed; and
- sufficient monitoring of consumer outcomes to ensure that the distribution processes are performing in line with expectations.

Note: See [REP 587](#), pp. 37–62.

Notifying the issuer of 'significant dealings'

- RG 000.191 A distributor of a financial product must notify the issuer of significant dealings in the product that are not consistent with the product's target market determination. If a distributor becomes aware of such a dealing, it must notify the issuer in writing as soon as practicable, and in any event within 10 business days after becoming aware: see s994F(6).

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- RG 000.192 This obligation extends to financial advisers (i.e. distributors that provide personal advice, or engage in conduct associated with such advice, in relation to the financial product).
- RG 000.193 We expect a distributor and issuer would mutually agree on the form and content of the notification.
- RG 000.194 Whether or not a dealing is significant is a matter to be determined in the circumstances of each case: see RG 000.147–RG 000.148 for guidance on the meaning of ‘significant dealing’.

Keeping records

Collecting and reporting information

- RG 000.195 All distributors, including financial advisers, serve a critical role in the product governance process given the nature of their role, which involves direct interaction with consumers. Distributors must collect information about a financial product, and ensure that this information flows back to the issuer: see s994F(2)–(6).
- RG 000.196 Distributors must comply with the information requirements set by the issuer in the target market determination to report in writing on:
- (a) whether it received complaints in relation to the product during the reporting period specified in the target market determination, and if so, the number of complaints received; and
 - (b) any further information acquired during the specified reporting period, that the issuer has specified should be collected in the target market determination.
- RG 000.197 Distributors must report the information described in RG 000.196 to the issuer within 10 business days after the end of the relevant reporting period: see s994F(4)–(5).
- RG 000.198 Being provided with this information gives the issuer greater oversight over consumer outcomes, to enable the issuer to meet its obligations to determine whether changes are required to the target market determination, or design of the product, on an ongoing basis.

Keeping records

- RG 000.199 Distributors must keep records of distribution information in relation to products that are currently being issued, for up to seven years: see s1101C.

Note: All distributors must keep records of distribution information, including those providing personal advice or engaging in conduct associated with such advice.

- RG 000.200 'Distribution information' includes the following:
- (a) the number of complaints the distributor receives in relation to the financial product;
 - (b) the steps the distributor has taken to ensure that its distribution is consistent with the target market determination (see RG 000.154–RG 000.163);
 - (c) any information that the distributor is required to report to the issuer (for the purpose of prompting a review), as specified in the target market determination;
 - (d) the dates on which the distributor reported to the issuer the following:
 - (i) the number of complaints received during a specified reporting period;
 - (ii) other information specified in the target market determination that the distributor must report; and
 - (iii) any significant dealings in the product (see RG 000.191–RG 000.194); and
 - (iv) the substance of those reports; and
 - (e) further information prescribed by the Corporations Regulations (see s994F(2)–(3) and (7)).
- RG 000.201 Keeping good records will assist the distributor in monitoring its governance processes and controls to meet its reasonable steps and other obligations.
- RG 000.202 We may request these records to ensure compliance with the law. Good records are also likely to assist a distributor in demonstrating that it has taken the necessary steps to comply with its obligations.

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E Our administration of the design and distribution obligations

Key points

We will administer the design and distribution obligations to promote the provision of suitable financial products to consumers.

When we have concerns that the design and distribution obligations have been contravened, we are able to exercise a range of administrative powers, including making a stop order.

If a consumer suffers loss or damage due to a breach of the design and distribution obligations, they can seek to recover that loss in court.

We have powers to modify and provide relief to extend or exclude the application of the design and distribution obligations. In considering whether to grant relief, we will consider the policy intention underlying the obligations and the potential impact of relief on consumers.

Our role

- RG 000.203 We will administer the design and distribution obligations to promote the objectives of Ch 7 of the Corporations Act, including to promote the provision of suitable financial products to consumers.
- RG 000.204 Under Pt 7.8A, we have the power to make a stop order to protect consumers from breaches of the design and distribution obligations: see RG 000.206–RG 000.215. In appropriate cases, we may take enforcement action to protect consumers and promote the confident and informed participation of investors and financial consumers in the financial system more generally.
- RG 000.205 We also have a product intervention power to intervene in relation to financial products when we are satisfied that the product (or class of products) has resulted, will result or is likely to result in significant detriment to consumers.

Stop order power

- RG 000.206 The stop order power under Pt 7.8A is an administrative mechanism that allows us to prohibit entities from engaging in specified conduct when we are satisfied that there has been a breach of Div 2 of Pt 7.8A or s994E of the Corporations Act. Examples of breaches include when an entity has:
- (a) failed to make, review, make public or otherwise satisfy the requirements for a target market determination;

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- (b) distributed a financial product when a target market determination has not been made for the product or is no longer appropriate; or
- (c) failed to take reasonable steps that will, or are reasonably likely to, result in distribution of the product being consistent with the target market determination.

- RG 000.207 If we have concerns that there may have been a contravention of the design and distribution obligations, we will generally notify the issuer before making a stop order.
- RG 000.208 Generally, we expect to use our stop order power to stop the issue or distribution of a financial product (e.g. when we are satisfied that the product has an inappropriate target market determination).
- RG 000.209 If we make a stop order, we will serve it on the issuer of the financial product. The issuer in turn must take all reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order: see s994J(7).

Hearings

- RG 000.210 Before we make a stop order, we are obliged to hold an administrative hearing and give a reasonable opportunity for any interested persons to make verbal or written submissions to us on whether the order should be made: see s994J(3).
- RG 000.211 [Regulatory Guide 8](#) *Hearings practice manual* (RG 8) sets out in detail the guiding principles and procedures we adopt in the conduct of administrative hearings. Issuers and distributors can also refer to [Information Sheet 1](#) *Administrative hearings* (INFO 1) for a concise summary.

Interim stop orders

- RG 000.212 ASIC has the power to make an interim stop order without a hearing if we consider that a delay would be prejudicial to the public interest. Such an interim stop order lasts for 21 days, unless revoked earlier: see s994J(4).
- RG 000.213 ASIC also has the power to make an interim stop order during a hearing. Such an interim stop order lasts until ASIC makes a stop order or the interim stop order is revoked: see s994J(5).
- RG 000.214 To make an interim stop order, consistent with making stop orders generally, ASIC must be satisfied that there has been a breach of Div 2 of Pt 7.8A or s994E: see RG 000.206.
- RG 000.215 ASIC has the power to revoke an interim stop order at any time. To revoke an interim stop order, the delegate must be satisfied that the concerns have been adequately addressed.

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Enforcing the law

- RG 000.216 The Corporations Act imposes civil and criminal liability for a contravention of each obligation under Pt 7.8A. A contravention of s994B, 994C, 994D or 994E(1) or (3) can also give rise to a private cause of action: see RG 000.225–RG 000.226.
- RG 000.217 In conjunction with using our stop order power, we may consider taking enforcement action for a breach of the design and distribution obligations.
- RG 000.218 We also have powers to make an application to the court for orders to redress, prevent or reduce loss or damage suffered by non-party consumers in relation to breaches of the design and distribution obligations: see RG 000.227–RG 000.228.
- RG 000.219 For guidance on our approach to enforcement, see [Information Sheet 151 ASIC's approach to enforcement](#) (INFO 151).

Product intervention power

- RG 000.220 The product intervention power contained in Pt 7.9 of the Corporations Act and Pt 6-7A of the National Credit Act enables ASIC to intervene in relation to a product (or class of products) when we are satisfied that the product (or class or products) has resulted, will result or is likely to result in significant consumer detriment.
- RG 000.221 The product intervention power complements the design and distribution obligations. When issuers and distributors comply with the design and distribution obligations, we expect that it will be less likely that we will be required to exercise the product intervention power.
- RG 000.222 When there is significant consumer detriment, we can use the product intervention power even in the absence of a clear contravention of the design and distribution obligations.

Remedies for consumers

- RG 000.223 Issuers, AFS licensees, Australian credit licensees and credit representatives are required by law to have a dispute resolution system that covers complaints made by consumers in relation to the financial services provided: see [Regulatory Guide 165 Licensing: Internal and external dispute resolution](#) (RG 165).
- RG 000.224 Consumers can also raise concerns directly with an issuer or distributor in relation to the services provided.

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RG 000.225 If a consumer suffers loss or damage due to an entity's breach of the design and distribution obligations set out in s994B, 994C, 994D, 994E(1) or (3), they can seek to recover that loss in court by action against the entity.

Note: An entity is not taken to have breached the reasonable steps obligations in s994E merely because a consumer who is not in the target market for the financial product acquires the product: see s994E(2) and (4).

RG 000.226 The court may award compensation for loss or damage. It also has the power to make a variety of orders when it thinks it is necessary to do justice between the parties: see s994N. As such, the court may:

- (a) make an order declaring that a contract entered into by the person who suffered loss or damage is void; and
- (b) if it makes such an order—make such other orders as it thinks are necessary or desirable because of that order (e.g. an order for the return of money paid by a person and an order for payment of an amount of interest specified in, or calculated in accordance with, the order).

RG 000.227 We can apply to the court seeking orders to redress, prevent or reduce the loss or damage suffered by non-party consumers when there has been a breach of the design and distribution obligations set out in s994B, 994C, 994D, or 994E(1) or (3) that has caused, or is likely to cause, non-party consumers to suffer loss or damage. Non-party consumers are persons who have not been a party to proceedings under the Corporations Act in relation to the contravening conduct: see s994P.

RG 000.228 In determining whether to make an application for orders under s994P, we will consider the circumstances of each individual case.

RG 000.229 When a consumer has suffered loss or damage—whether monetary or non-monetary or both—as a result of an entity's breach of the design and distribution obligations, we expect that the entity will remediate the consumer.

Note: See also [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256), which sets out our guidance on client review and remediation.

ASIC's power to give relief

RG 000.230 ASIC has a discretionary power to provide exemptions from and modifications to the requirements of Pt 7.8A. We have similar powers in relation to other parts of the Corporations Act. These powers are also known as our 'relief' powers: see s994L.

RG 000.231 Our general approach to exercising our relief powers is set out in [Regulatory Guide 51](#) *Applications for relief* (RG 51).

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- RG 000.232 When applying the general principles in RG 51 in the context of assessing applications for individual relief from provisions in Pt 7.8A, we will also take into account:
- (a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));
 - (b) the policy intention underlying the design and distribution obligations to:
 - (i) improve consumer outcomes; and
 - (ii) require financial services providers to have a consumer-centric approach to making initial offerings of products to consumers; and
 - (c) Parliament's intent (as reflected in the law) for the design and distribution obligations to apply to a broad range of financial products.
- RG 000.233 The requirement to comply with the design and distribution obligations, in some cases, flows from the requirement to provide disclosure: see, for example, s994B(1)(a) and (b). However, if we grant relief from the requirement to provide disclosure, relief from the design and distribution obligations will not automatically follow. An issuer or distributor seeking relief from disclosure requirements and the design and distribution obligations will need to specifically set out why relief should be granted in relation to each set of requirements. We will make separate decisions in relation to these requests.
- RG 000.234 Our exemption and modification powers under Pt 7.8A can be used to provide relief on both an individual basis (i.e. in relation to a person) and class basis (i.e. in relation to a class of persons).

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
CCI	Consumer credit insurance
choice architecture	Refers to features in an environment, noticed and unnoticed, that influence consumer decisions and actions. These features are present at every stage of product design and distribution. Examples include product bundling, default settings, and website and sales process design
Choice product	A superannuation product that is not a MySuper product
consumer	Means a 'retail client' for a financial product, unless otherwise specified
continuing products	Means existing products that continue to be issued to consumers after commencement of the regime
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
design and distribution obligations	Means the obligations contained in Pt 7.8A of the Corporations Act

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Term	Meaning in this document
design obligations	Has the meaning given in s994B and 994F of the Corporations Act
distribution condition	Has the meaning given in s994B(5)(c) of the Corporations Act
distribution information	Has the meaning given in s994F(2)–(3) and (7) of the Corporations Act
distributor	Means a 'regulated person', as defined in s994A(1) of the Corporations Act Note: An issuer can also be a distributor.
employee share	Has the meaning given in s9 of the Corporations Act
financial adviser	An individual who is authorised to give personal advice to consumers on relevant financial products
financial product (or product)	Has the meaning given in s994AA of the Corporations Act, and includes credit contracts and consumer leases regulated under the National Credit Act
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that is intended to, or can reasonably be regarded as being intended to, influence a client in making a decision about a particular financial product or class of product as defined in s766B of the Corporations Act
FSI	Financial System Inquiry
FSI final report	Financial System Inquiry: Final report , November 2014
FSI interim report	Financial System Inquiry: Interim report , July 2014
investor directed portfolio service (IDPS)	An unregistered managed investment scheme for holding and dealing with investments selected by investors. IDPSs are also known as 'platforms'
issuer	Means a person who is subject to the target market determination requirements in s994B (including sellers in a regulated sale situation), unless indicated otherwise
LIC	A listed investment company
MySuper product	A default superannuation product provided under Pt 2C of the SIS Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
negative target market	The group of consumers for whom a product is clearly unlikely to be consistent with their likely objectives, financial situation and needs

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Term	Meaning in this document
new products	Means products issued for the first time following the commencement of the regime
non-party consumers	Has the meaning given in s994P(1)(c) of the Corporations Act
PDS	A Product Disclosure Statement—a document that must be given to a consumer in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the person's objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters Note: This is a definition contained in s766B(3) of the Corporations Act.
product	Means a financial product or service
product governance framework	The systems, processes, procedures or arrangements in place to ensure that, as far as reasonably practicable, issuers and distributors comply with their design and distribution obligations
product intervention power	Means the power contained in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act
Product Regulation Act	<i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019</i>
Product Regulation Bill	Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019
Productivity Commission Inquiry report	Productivity Commission, Competition in the Australian financial system: Inquiry report , June 2018
Pt 7.8A (for example)	A part of the Corporations Act (in this example numbered 7.8A), unless otherwise specified
reasonable steps obligation	The obligation to take reasonable steps to ensure distribution is consistent with the target market determination, as defined in s994E(1), (3) and (4) of the Corporations Act

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Term	Meaning in this document
regulated person	Has the meaning given in s994A(1) of the Corporations Act
regulated sale	Has the meaning given in s994A(1) of the Corporations Act
REP 622 (for example)	An ASIC report (in this example numbered 622)
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
retail product distribution conduct	Has the meaning given in s994A(1) of the Corporations Act
review period	Has the meaning given in s994B(5)(e)–(f) of the Corporations Act
review triggers	Events and circumstances that would reasonably suggest that the target market determination is no longer appropriate, as defined for a target market determination in s994B(5)(d) of the Corporations Act
Revised Explanatory Memorandum	Revised Explanatory Memorandum for Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Royal Commission final report	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report , February 2019
Royal Commission interim report	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Interim report , September 2018
s994B (for example)	A section of the Corporations Act (in this example numbered 994B), unless otherwise specified
significant dealing	The term 'significant dealing' is not defined in the Corporations Act. In this guide, we have listed factors to consider when deciding if a significant dealing has occurred: see RG 000.147–RG 000.149
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
stop order power	A power under Pt 7.8A of the Corporations Act that is an administrative mechanism that allows ASIC to prevent entities engaging in specified conduct when, in ASIC's view, there has been a breach of Div 2 of Pt 7.8A or s994E of the Corporations Act

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Term	Meaning in this document
target market	For a financial product, means the class of consumers described in the target market determination for the product under s994B(5)(b) of the Corporations Act
target market determination	Has the meaning given in s994B of the Corporations Act

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Related information

Headnotes

consumer, financial product, design obligations, design and distribution obligations, distribution obligations, distributors, issuers, product governance framework, reasonable steps obligation, retail client, significant dealings, target market determination

Regulatory guides

[RG 8](#) *Hearings practice manual*

[RG 51](#) *Applications for relief*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 165](#) *Licensing: Internal and external dispute resolution*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 209](#) *Credit licensing: Responsible lending conduct*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 256](#) *Client review and remediation conducted by advice licensees*

Information sheets

[INFO 1](#) *Administrative hearings*

[INFO 151](#) *ASIC's approach to enforcement*

Consultation papers

[CP 325](#) *Product design and distribution obligations*

Reports

[REP 69](#) *Shadow shopping survey on superannuation advice*

[REP 279](#) *Shadow shopping study of retirement advice*

[REP 454](#) *Funeral insurance: A snapshot*

[REP 470](#) *Buying add-on insurance in car yards: Why it can be hard to say no*

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[REP 492](#) *A market that is failing consumers: The sale of add-on insurance through car dealers*

[REP 580](#) *Credit card lending in Australia*

[REP 586](#) *Review of reverse mortgage lending in Australia*

[REP 587](#) *The sale of direct life insurance*

[REP 622](#) *Consumer credit insurance: Poor value products and harmful sales practices*

[REP 632](#) *Disclosure: Why it shouldn't be the default*

Legislation

ASIC Act, Div 2 of Pt 2, s12DA

Corporations Act, Ch 7, Pts 6D.2, 7.8A, 7.9 and 7.9A, s9, 760A, 766B, 912D, 961B, 994A, 994AA, 994B, 994C, 994D, 994E, 994F, 994G, 994J, 994L, 994N, 994P, 1011B, 1012C, 1018A, 1023E, 1101C, 1311

Corporations Regulations

National Credit Act, Pt 6-7A

SIS Act

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2019

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