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FBAA Submission to ASIC Consultation Paper 325 – Product design and distribution obligations

Background

1. The FBAA welcomes the opportunity to make a submission in relation to Consultation Paper 325.
2. We recognise the design and distribution obligations (DD obligations) are intended to strengthen the framework for product design, development, issuance and distribution by ensuring products are appropriately designed and distributed to correct target markets.
3. The framework of legislative and regulatory obligations is becoming extraordinarily complex with a layering of obligations and responsibilities. The DD obligations add a further layer to the activities of credit licensees in addition to general compliance with licensee obligations, responsible lending and the best interests duty applying to mortgage brokers.
4. It is critically important that the DD obligations are implemented and regulated with regard to the broader regulatory framework. Paragraph 000.3 of the draft guide correctly frames the scope of the DD obligations where it states that “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”. We see examples in the draft guidance where that thinking does not appear to have carried across.
5. It is also critical that the administration of this legislation is not carried out in such a way as to assert DD obligations as a measure to address individual outcomes where consumer behaviour is a factor.
6. We are concerned the implementation of these obligations will operate at a more granular level than parliament intended.
7. We do not support the emphasis on *choice architecture* or other aspects of behavioural economics. In theory we understand the intention is to ensure products are not designed or distributed in specific circumstances that result in consumers taking up manifestly inappropriate products or services however ASIC already has product intervention powers it can use for such products. Introducing behavioural economics at the DD obligations level carries a more specific inference that ASIC (and AFCA) may be inclined to attribute customer dissatisfaction post acquiring a product or service with any manner of design or distribution flaws.

8. There is already an increasing volume of complaints made through IDR and EDR arising from circumstances where consumers have become dissatisfied with the bargain struck at the time of acquiring a product or experience a change of mind and seek to void their obligations. Defending claims, even those without merit, is becoming increasingly complex and expensive because many are administered on a reverse onus basis (once the complaint is laid, the licensee must prove it did not breach). The complexity (and cost) of any defence mounted by a licensee increases in proportion to the obligations imposed on them.

Bundling

9. The guidance touches on bundled or packaged products in relation to financial products and obligations on issuers but does not mention credit products or obligations on distributors. The issue of bundling arose in consultation around the mortgage broker best interests duty. Submissions made to Government in relation to the legislation and ASIC in relation to the guidance will result in the guidance acknowledging that the best interests duty will be assessed against the predominant debt and the overall consumer outcome, and not to each product within a bundle.
10. This approach recognises that product distributors may not be able to un-bundle products. In the case of a mortgage issued together with a credit card, the issuer creates the rules around bundling. The credit assistance provider (mortgage broker) has no ability to influence product construction. The best mortgage product may come bundled with a credit card or a saving account which, if assessed as a standalone product, may not meet the best interests duty. The recommendation to the consumer to apply for this product produces the best outcome notwithstanding the addition of the ancillary product (which the consumer can choose not to use or to later cancel).
11. We submit the DD obligations guidance must also recognise this approach to remain consistent with the best interests duty obligation. It would be nonsensical to have a situation where a broker recommends a mortgage which complies with the responsible lending and best interest obligations only to have the ancillary product separately assessed against an issuer's target market determination to conclude it is outside the target market. The guidance should be clarified to make it clear that a distributor dealing with a bundled product need only focus on the target market determination of the primary product.
12. An issuer bundling a mortgage product with other products in situations where they cannot be un-bundled need only prepare a target market determination in relation to the packaged product.

Aggregators

13. The FBAA supports aggregators being relieved from the DD obligations. As intermediaries between issuers and distributors, it would serve no purpose for aggregators to have to consider target market determinations. A section should be included in the guidance to address this.

Responses to consultation questions

Proposal	Your feedback
<p>B1 We propose to give guidance that a robust product governance framework that fulfils the objectives of the design and distribution regime should:</p> <p>(a) focus on the identified target market across the lifecycle of the financial product;</p> <p>(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; and</p> <p>(c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date.</p> <p>See draft RG 000 at RG 000.30–RG 000.43.</p>	<p>B1Q1 Is our guidance on a robust product governance framework useful? What additional matters, if any, do you think are important in ensuring that a product governance framework will be effective and support compliance with the design and distribution obligations?</p>
<p>FBAA Response:</p>	<p>We make no submission to this question.</p>
<p>B2 We propose to give guidance that issuers and distributors should not take advantage of behavioural biases or factors that can impede consumer outcomes. In addition, issuers and distributors should consider consumer vulnerabilities and how these vulnerabilities may increase the risk that products sold to consumers do not meet their needs and lead to poor consumer outcomes.</p> <p>See draft RG 000 at RG 000.52–RG 000.56.</p>	<p>B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?</p> <p>B2Q2 What additional matters, if any, do you consider to be relevant?</p>
<p>FBAA Response:</p>	<p>The guidance needs to provide more detail regarding what ASIC considers to be conduct that crosses over from design and distribution of products that appeal to consumers versus conduct which would be considered to unfairly take advantage of consumers in possible breach of the DD obligations. It is not enough to suggest that industry should know the difference. If ASIC has difficulty delineating the issue then so will industry.</p> <p>Behavioural “vulnerability” as referenced in this question is frequently caused by a lack of consumer engagement with product rules and features. The Royal Commission (and ASIC since) have identified that further disclosure is not a solution – something the FBAA has referenced throughout its submissions over the years. Naturally, in clear cut cases of exploitation such as mis-selling of products to vulnerable communities, the DD obligation rules will be effective. In most situations, how a consumer uses a product will influence the benefit or detriment that follows. This legislation and the guidance that accompanies it should clearly identify that it operates to address design and distribution mischief and consumer behaviour is not a</p>

	relevant factor except where specific groups are targeted.
<p>C1 We propose to provide guidance 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. See draft RG 000 at RG 000.64–RG 000.65.</p>	<p>C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?</p>
<p>FBAA Response:</p>	<p>Broadly we agree with this. It is likely in practice that the target market for many consumer-level credit products will be extremely wide. To this end we believe ASIC should attempt to prepare a target market determination on a product with broad application. ASIC has used a credit card in Example 1 of the RG and we believe this is a good product to focus on for a practice target market determination.</p> <p>The guidance is not currently specific enough as to how detailed a target market determination must be, how deep it must drive into product features and how narrowly it should define a specific target market.</p> <p>We think it would be impractical for example to require a target market determination to stipulate that the target market for a credit card with a high interest rate was a consumer that regularly paid off the balance of their card or utilised only a low balance. This level of detail enmeshes the prospective behaviour of the consumer with the product design decisions that pre-date any particular customer’s usage. A worked example from ASIC would provide insight on some of these issues.</p>
<p>C2 We propose to provide guidance that, generally speaking: (a) for new products—issuers 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; and (b) for continuing products—issuers should still critically assess the product (and its features) and identify the target market under the design and distribution obligations by reference to the likely objectives, financial situation and needs of consumers for whom the product would likely be consistent. If issuers already have processes directed towards these purposes, they should check that the processes meet the detailed requirements of the legislation. See draft RG 000 at RG 000.62–RG 000.65.</p>	<p>C2Q1 Is our guidance on the approach to identifying the target market for new products and continuing products useful? C2Q2 What additional matters, if any, do you consider to be relevant?</p>
<p>FBAA Response:</p>	<p>We make no submission against this question.</p>

**C3 While we do not propose to give any definitive formulation of how a target market should be described in a target market determination, we propose to give guidance that explains the process and key considerations for identifying and describing the target market by reference to examples across different product sectors.
See draft RG 000 at RG 000.66–RG 000.89.**

C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?
C3Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.66–RG 000.89:
(a) Example 1: Credit cards;
(b) Example 2: Reverse mortgages;
(c) Example 3: Cash options in superannuation;
(d) Example 4: Consumer credit insurance;
(e) Example 5: Low-value products; and
(f) Example 6: Basic banking products?
C3Q3 What additional matters, if any, do you consider to be relevant?

FBAA Response:

We believe ASIC should attempt to prepare a target market determination using its own rules as a guide.

We understand that ASIC does not wish to provide a template or formulaic target market determination, however final guidance will be much more effective when informed by first-hand experience of preparing a target market determination – particularly with respect to products that have broad suitability - such as credit cards.

ASIC has produced an example responsible lending assessment and an example statement of advice and we see a target market determination as being something of equal importance. The example statement of advice and example responsible lending assessment were both prepared many years after the relevant obligations were first introduced and after a period time where the case for preparing a worked example was made because ASIC continued to find diminished levels of satisfactory compliance.

We do not agree that Example 1 at RG 000.75 is the correct application or outcome of a target market determination. The example provided crosses over from a target market determination into an individual product suitability situation created by how a particular consumer or group of consumers use a product. In this example, the only way in which a target market determination could be factored into any personal financial product advice or credit assistance would be for an adviser to make an individual assessment of the consumer’s behaviour (as opposed to their objectives). This appears to contradict the statement at RG 000.3 (which we support as being a correct interpretation of the obligations) and which says “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 current tone of the examples following RG 000.75 have a very strong downstream impact suggesting those distributing the product will be making individual product recommendations based on the target market determinations. A target market determination is intended to include/exclude a particular class of consumer but these classes should be defined by objective criteria and not individual behavioural attributes of how the product is used. The examples suggest the suitability of the product will be influenced by the target market determination whereas the suitability of a product for a particular consumer will be determined through assessments undertaken in compliance with responsible lending and, for non-bank mortgage brokers, the best interests duty.

	<p>Example 3 at RG 000.83 (using a cash product and fees) is another example that provides little meaningful guidance. It is oversimplified. It is unhelpful in that it is built around a particular set of circumstances without acknowledging the range of concurrent possibilities where the same outcome would not be supported. This highlights the difficulty of providing meaningful guidance where discussion turns away from the clearly predatory and unsuitable products and is applied to mainstream products.</p> <p>A cash product can offer capital security in a volatile market. Investors would accept no capital risk and even pay fees in order to achieve it. A significant portion of European government bonds already have negative yields. Capital security and paying fees are not mutually exclusive. Standard deposit accounts pay almost no interest and charge fees yet they have broad appeal and application. Any savings product that pays a net interest rate lower than inflation is subjecting a customer to a guaranteed loss of buying power over time, yet some exposure to cash/low rate products is typically part of a balanced strategy which is supplemented with growth assets. This however goes well beyond a target market determination and into risk evaluation, portfolio construction, client objectives, appetite for risk, investment time horizon and many other factors. All of these are individual factors that are taken into account much later than when a target market determination is prepared. A target market determination cannot be expected to pigeonhole all of the variables and will therefore need to remain broad and unspecified.</p> <p>We have similar concerns with Example 4. The factual scenario it is based around seems excessively basic and detached from reality. We recognise that an insurance policy offering a small amount of cover for low premiums with a ridiculously high excess would be unsuitable. It is something ASIC could use its product intervention power for. An issuer could not know if the excesses were “so high that consumers in the target market would be unlikely to be able to pay the excess” except in cases of sham products. For all other insurance products, whether a consumer could afford the excess would depend on their individual circumstances. It is unclear how a target market determination would address this.</p> <p>We recognise that some of the existing examples have been built around specific fact sets that relate to previous ASIC investigations or matters addressed in the Royal Commission however they do not help the majority of the intended audience for this regulatory guide. We recommend a number of the examples be recast to deal with more “typical” products and scenarios.</p>
<p>C4 We propose to give guidance that when an issuer considers it appropriate to contemplate consumers in the target market acquiring the financial product as part of a diversified portfolio, the reasonable steps obligation will require the issuer to manage the risk of the product being sold to consumers who do not have a diversified portfolio. See draft RG 000 at RG 000.78–RG 000.79.</p>	<p>C4Q1 Do you have any comments on our proposed guidance for issuers considering the role of diversification as it relates to their identification of the target market?</p>

<p>FBAA Response:</p>	<p>We do not believe this guidance is practical nor workable. As with other parts of the guidance, this focuses on individual client circumstances rather than a target market. It also assumes that advice is a linear process where a client may acquire all of their products at one time. It often takes time to build a diversified portfolio. At what point in time does the target market determination apply?</p> <p>How would a target market determination interact with a client that has strong view about a particular asset class/event and does not wish to diversify or wishes to adopt a very overweight position? Or alternately a client that is building a diversified portfolio but commences with one asset class such that their initial exposure is concentrated? Diversification is a sound general principle, however not everyone believes in it nor follows it. It is not the role of DD obligations to override a client's instructions or to impose certain investment philosophies upon advisers.</p> <p>We have concerns this aspect of the guidance is overreaching.</p>
<p>C5 We propose to give guidance that we do not consider a target market for a product should be predominantly based on consumer understanding of a product. See draft RG 000 at RG 000.80.</p>	<p>C5Q1 Do you agree that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market? If not, why not?</p>
<p>FBAA Response:</p>	<p>Some reference to consumer understanding is perhaps relevant for some products such as highly leveraged, complex products. A target market determination might address consumer understanding and require them to have certain levels of skill, experience or knowledge.</p> <p>We would not expect consumer understanding to be a critical element of a vanilla credit product. Recent feedback relating to the best interests duty guidance was aimed at removing excessive references to an expectation on mortgage brokers to educate their customers about such matters as product alternatives, markets, pricing and other aspects. We understand changes are being made/have been made to that guidance in response.</p>
<p>C6 We propose to provide guidance 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'). See draft RG 000 at RG 000.90–RG 000.92.</p>	<p>C6Q1 Do you agree that it may also be useful for an issuer to describe the negative target market for its financial product? If not, why not? C6Q2 Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.</p>
<p>FBAA Response:</p>	<p>If there is a specific negative target market then its inclusion could be helpful. Issuers will need to take care not to discriminate. Broad or self-evident negative target markets are not as helpful (for example excluding unemployed from income protection insurance etc). Requiring issuers to list those who may not be eligible could result in potentially long, exhaustive lists and imposes a large administrative burden.</p> <p>Product suitability / not unsuitable/ best interests still remains the appropriate approach for advice and credit assistance situations.</p>

<p>C7 We propose to give guidance on how the target market determination applies for certain products when the application of the obligation is not straightforward, including:</p> <ul style="list-style-type: none"> (a) to superannuation and investor directed portfolio services (also known as ‘platforms’ or ‘IDPS’); (b) when products are offered and acquired as a ‘package’ or ‘bundle’; and (c) when products are 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). <p>See draft RG 000 at RG 000.98–RG 000.106 and Examples 7–8.</p>	<p>C7Q1 In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7:</p> <ul style="list-style-type: none"> (a) Do you agree with our proposed guidance that if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product? If not, why not? (b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why? (c) Do you agree with our proposed guidance to consider insurance as part of the target market determination for a Choice product? If not, why not? (d) How should a trustee take into account insurance in making a target market determination for a Choice product? <p>C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?</p> <p>C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?</p> <p>C7Q4 Do you agree with our proposed approach to the application of the design and distribution obligations to products that can be customised at point-of-sale? If not, why not?</p> <p>C7Q5 Are there any particular options or choices, or types of options or choices, that you consider would affect the product’s suitability for a consumer if selected? Please give examples.</p>
<p>FBAA Response:</p>	<p>We have comments in relation to product bundling however will address them elsewhere in the submission as they do not relate to superannuation products.</p>
<p>C8 We propose to give guidance on the reasonable steps obligation for issuers, and set out our view on the factors that may be relevant to the obligation. These factors include:</p> <ul style="list-style-type: none"> (a) the distribution conditions that are specified in the target market determination; (b) the issuer’s marketing and promotional materials; (c) the selection of distributors; (d) the supervision and monitoring of distributors; (e) the issuer’s ability to eliminate or appropriately manage conflicts of interest; and (f) whether issuers have provided distributors with sufficient information to help them ensure that distribution is consistent with the target market determination. <p>See draft RG 000 at RG 000.107–RG 000.120, Examples 9–11 and Table 3.</p>	<p>C8Q1 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.107–RG 000.120:</p> <ul style="list-style-type: none"> (a) Example 7: Superannuation products; (b) Example 8: Investor directed portfolio services; (c) Example 9: Superannuation; (d) Example 10: Mortgage fund; and (e) Example 11: Listed investment companies? <p>C8Q2 Do you agree with the factors listed in Table 3 of draft RG 000 that we expect will be relevant when considering whether an issuer has met the reasonable steps obligation? If not, why not?</p> <p>C8Q3 What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?</p>
<p>FBAA Response:</p>	<p>Care needs to be taken with guidance around supervision and monitoring. Members can and do currently respond to situations where they become aware of potential problems with an intermediary or broker however their obligations under the credit legislation and financial services legislation are to supervise and monitor their representatives. Licensees cannot be expected to supervise and monitor the actions of separately licensed entities operating from anywhere around Australia. The DD obligations do not create additional obligations on licensees to supervise the behaviour of others and the guidance is wrong to suggest that it does.</p>

	<p>We recommend the guidance be modified. Product issuers should have some awareness of how their products are performing in their target market and should have measures in place to identify potential mis selling or misalignment however this stops well short of supervising or monitoring the entities distributing the product. The guidance should focus on what records ASIC would expect an issuer to see / have to demonstrate the issuer can monitor its products.</p>
<p>C9 We do not propose to set out in guidance standard review triggers and maximum review periods for issuers to adopt. Instead, our draft guidance sets out examples to illustrate what review triggers may be appropriate for certain types of financial products. See draft RG 000 at RG 000.127–RG 000.134 and Examples 12–13.</p>	<p>C9Q1 Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods? C9Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.127–RG 000.130: (a) Example 12: Insurance; and (b) Example 13: Managed fund?</p>
<p>FBAA Response:</p>	<p>We make no submission to this question.</p>
<p>C10 We propose to give guidance on the issuer’s obligation to specify in the target market determination: (a) any information that it considers is necessary to require from its distributors in order to promptly decide that a target market determination may no longer be appropriate; and (b) the reporting period for the information the distributor must provide to the issuer about the number of complaints about the financial product. See draft RG 000 at RG 000.135–RG 000.142.</p>	<p>C10Q1 Do you have any comments on our guidance on the issuer’s obligation to specify information it requires from its distributors? C10Q2 What existing information collected by distributors would be relevant to an issuer’s consideration of the ongoing appropriateness of its target market determination? C10Q3 In addition to the information set out at RG 000.139, are there other types of information an issuer should collect from distributors? If so, please describe the type of information you think would be relevant. C10Q4 What potential effects on competition may occur as a result of the issuer’s right to set the information the distributor must provide? C10Q5 Do you have any comments on our guidance on the issuer’s obligation to specify the reporting period in relation to the number of complaints?</p>
<p>FBAA Response:</p>	<p>ASIC’s expectations in the draft guidance effectively turn a product issuer into a quasi regulator.</p> <p>At least some of the information identified in 000.139 would not be accessible or would require substantial new infrastructure. ASIC would be well aware from its own project work that compiling information from multiple sources throws up problems with consistency and compatibility of information. Using (d) as an example, for a product issuer to obtain reliable information about the percentage of people who acquire the product who are not in the target market determination, numerous things will need to happen. Product distributors will need to keep accurate records of every time a consumer from outside of the target market acquires a product, these distributors will need to share that information with issuers in a standard format to allow the issuer to aggregate the information from potentially hundreds or thousands of product distributors and potentially some assessment or knowledge of the circumstances of the consumers who hold the product will be necessary to validate or interrogate the records.</p> <p>It is unrealistic to expect distributors to capture this information in a way that would enable them to respond to every product issuer (there can be dozens if not more) and be able to provide it to each product issuer requesting information in relation to its own target market determinations. It appears the draft guidance has been written with an expectation that a product issuer deals with a small number of product distributors and/or that a product distributor distributes a limited range</p>

	<p>of products from a small number of issuers. Aggregators and brokers can have hundreds of products on their panels from dozens of different issuers. ASIC has not contemplated the multiplier effect that such requirements would have when applied to a single product distributor that deals with multiple issuers and multiple products from each issuer.</p> <p>We recommend this receives significant further consideration extending to how such requirements could be implemented practicably.</p>
<p>C11 We propose to give guidance that, in reviewing a target market determination, we expect the issuer will take into account all available information on its financial product, using multiple data sources. See draft RG 000 at RG 000.143–RG 000.145.</p>	<p>C11Q1 Do you consider our guidance on the types of information issuers should have regard to (described at RG 000.143) to be useful? If not, why not?</p> <p>C11Q2 In addition to the data sources described in draft RG 000 at RG 000.143(a)–RG 000.143(d), are there other sources of information that you think an issuer should take into account in reviewing a target market determination?</p> <p>C11Q3 Do you have any other comments on our guidance on conducting a review of a target market determination?</p>
<p>FBAA Response:</p>	<p>Please refer to our response above.</p>
<p>C12 We propose to provide guidance that the factors an issuer should consider when determining whether there has been a significant dealing in a financial product that is not consistent with the product’s target market determination include: (a) the proportion of consumers who are not in the target market acquiring the financial product; (b) the actual or potential harm to consumers; and (c) the nature and extent of the inconsistency of distribution with the target market determination. See draft RG 000 at RG 000.147–RG 000.148.</p>	<p>C12Q1 Are there any additional factors that issuers should consider? If yes, please provide details.</p>
<p>FBAA Response:</p>	<p>We make no submission to this question.</p>
<p>D1 We propose to give high-level guidance on the reasonable steps obligation for distributors of financial products by setting out our view on factors that may be relevant to this obligation, including: (a) the distribution method(s) used; (b) compliance with distribution conditions; (c) the marketing and promotional materials circulated by the distributor; (d) the effectiveness of the distributor’s product governance framework; (e) the steps taken to eliminate or appropriately manage the risk that incentives for staff or contractors may influence behaviours that could result in distribution being inconsistent with</p>	<p>D1Q1 Do you agree with the factors listed in Table 5 of draft RG 000 that we will take into account when considering whether a distributor has met the reasonable steps obligation? If not, why not?</p> <p>D1Q2 What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?</p>

<p>the target market determination; (f) whether reliance on existing information about the consumer is appropriate; (g) whether the distributor has given staff involved in distribution operations sufficient training; and (h) how the distributor forms a reasonable view that a consumer is reasonably likely to be in the target market. See draft RG 000 at RG 000.154–RG 000.163 and Table 5.</p>	
<p>FBAA Response:</p>	<p>The references in Table 5 (and elsewhere in the guidance) to reliance on existing information about a consumer should be removed or further clarified. It is inconsistent with the objectives of this legislation and the statement at 000.3 that the objectives do not equate to an individual product suitability test that requires assessment based on an individual’s circumstances at point-of-sale. The guidance conflates the purpose of a target market determination with a suitability assessment.</p>
<p>D2 We propose to include an example to illustrate, at the time of renewal for general insurance policies, how insurers (in their role as distributor) can approach the reasonable steps obligation to ensure that the renewal process results in outcomes that are consistent with the target market determination. Our guidance suggests that, at the time of renewal, an insurer should: (a) analyse information it holds, such as: (i) information it gathered when the customer initially acquired the product; and (ii) updated details that have been provided, or through claims that have subsequently occurred; and (b) consider a number of factors, including the likelihood that a class of consumers is no longer in the target market for the policy. When an insurer assesses that it is likely that a consumer is no longer in the target market for an insurance policy, this should not result in an insurer declining to offer a renewal of the policy without contacting the consumer. See Example 14 of draft RG 000.</p>	<p>D2Q1 Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000? D2Q2 What other steps or controls, if any, do you consider would be appropriate for a distributor to consider what reasonable steps should be taken at renewal?</p>
<p>FBAA Response:</p>	<p>The FBAA has no specific position with respect to general insurance renewal however it appears that this is an example of where product</p>

	<p>design is being assessed at an individual level, post-acquisition and use by the consumer.</p> <p>Example 14 is a poor example. We do not agree that the DD obligations operate to require a product distributor to have specific knowledge of a consumer’s financial situation or the age of their vehicle etc before dealing with the consumer. This approach would remove the consumer entirely from the transaction and would require all issuers to have predictive modelling of their entire client base. The consumer is still accountable for the information they provide and must take some accountability for engaging with the product at renewal. We strongly reject any suggestion that the DD obligations should operate at this granular level to require an issuer / distributor to offer a renewal only after examining the personal circumstances of the consumer.</p> <p>It is impractical (and unrealistic) for a product issuer or distributor to be able to actively identify a consumer to whom the original product was within target market determination but for whom the product may later become less suitable because of factors specific to that one customer.</p> <p>Where a product excludes a class of consumer from eligibility or something of a similar high-level, it would be appropriate for a product issuer to attempt to identify current consumers that fall within that group such that they are not continuing to offer the product to a class that have become ineligible. If this is the intention of Example 14 there is considerable scope to redraft it more clearly.</p>
<p>D3 We propose to provide guidance:</p> <p>(a) 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;</p> <p>(b) that the 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 include:</p> <p>(i) the inclusion of ‘knockout questions’ within application processes;</p> <p>(ii) analysis of data held on the consumer or a class of consumers; and</p> <p>(iii) in some cases, asking the consumer direct questions to determine whether they are reasonably likely to be in the target market (see draft RG 000 at RG 000.168(a)–RG 000.168(c)); and</p> <p>(c) on the steps that a distributor can take to reduce the likelihood that a consumer will be left with the impression that their personal circumstances have been considered, including:</p> <p>(i) not having a relevant provider (i.e. an individual authorised to give</p>	<p>D3Q1 Do you agree that, in most cases, a distributor would 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?</p> <p>D3Q2 What data do you consider would help distributors reasonably conclude that a consumer is reasonably likely to be in the target market for a financial product?</p> <p>D3Q3 Do you consider our guidance should identify (in draft RG 000 at RG 000.168) other ways that a distributor’s sales processes can assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product? What other approaches can be taken?</p> <p>D3Q4 Do you have any comments on our proposed guidance (in draft RG 000 at RG 000.169) on how a distributor could reduce the likelihood of leaving a consumer with the impression that their personal circumstances have been considered?</p>

<p>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 in the target market to the consumer; and (ii) only 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 financial product (see draft RG 000 at RG 000.169(a)–RG 000.169(b)).</p>	
<p>FBAA Response:</p>	<p>RG 000.165 and 000.166 suggest the target market is expected to operate at an individual consumer level based on their personal circumstances at point of sale. As referenced elsewhere in this submission we do not agree that this is the purpose of the DD obligations which are aimed at ensuring products are designed and distributed to target markets for whom the products are not manifestly inappropriate and which deliver no benefit. Beyond that, the distributor’s assessment of the consumer’s requirements and objectives and financial situation will determine whether the product meets the consumer’s needs and objectives.</p>
<p>D4 We propose to provide guidance that the reasonable steps a distributor should take when selling a financial product to consumers who are outside the target market for the product depends on the circumstances of the interaction, the nature and degree of harm that might result, and the steps that can be taken to mitigate the harm. See draft RG 000 at RG 000.170–RG 000.175.</p>	<p>D4Q1 Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances? D4Q2 Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?</p>
<p>FBAA Response:</p>	<p>Record keeping obligations should be manageable provided they are aligned with existing processes and systems to capture relevant information about the consumer. In many cases the transaction itself or the responsible lending assessment will evidence that the consumer is within the target market and this should be adequate. A specific record for consideration of the target market determination should only be required for unusual products where the target market is narrow or where there are many exclusions.</p> <p>We do not support a requirement to create specific records to positively demonstrate that a distributor has met this obligation every</p>

	time. It would be unfortunate for desk-based compliance reviews to determine compliance with the obligation based on the existence of a record (as opposed to assessing the outcome of the transaction as the primary determinant).
<p>D5 We propose to provide guidance 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. See draft RG 000 at RG 000.180–RG 000.183.</p>	<p>D5Q1 Do you agree 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? If not, please explain.</p>
<p>FBAA Response:</p>	<p>Given that mortgage brokers are also to be subject to a best interest duty, this section should be expanded to acknowledge that mortgage brokers and financial advisers are not required to take further steps under s994E(3).</p>
<p>D6 We propose to provide additional guidance on aspects of the interaction between the responsible lending obligations and the design and distribution obligations, including that: (a) information gathered as part of the responsible lending obligations may help the distributor form a reasonable view on whether the consumer is reasonably likely to be in the target market for a product; and (b) the reasonable steps obligation does 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. See draft RG 000 at RG 000.184–RG 000.189.</p>	<p>D6Q1 Do you have any comments on our proposed guidance on using information gathered for the purpose of meeting responsible lending obligations in order to assist a distributor to form a reasonable view on whether a consumer is reasonably likely to be in a target market for a financial product?</p> <p>D6Q2 Are there any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.</p>
<p>FBAA Response:</p>	<p>We agree with the points made in this section. ASIC may consider either replacing Example 15 with something more current and more relevant to the broader market impacted by this guidance or alternately provide another example of a scenario relating to a more broadly applicable product. Issues surrounding tyre and rim insurance are already more than four years old. We understand that tyre and rim insurance may have been one of the case studies used to bolster the case for needing DD obligations, however the point is already clearly made in the guidance that assisting a consumer to apply for insurance they are ineligible to claim on is likely not to comply.</p>
<p>D7 We do not propose to provide specific guidance on the practical aspects of the relationship between the issuer and the distributor regarding information exchange.</p>	<p>D7Q1 Do you think it would be useful to provide guidance on the following arrangements between the issuer and the distributor:</p> <p>(a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;</p> <p>(b) the format of information exchange; and</p> <p>(c) the mode of delivery and communication of information?</p> <p>If so, what considerations are relevant to these factors?</p> <p>D7Q2 Are there other considerations that need to be taken into account in the collection and exchange of information between an issuer and a distributor?</p>
<p>FBAA Response:</p>	<p>It is likely that information exchange will need to be covered by written agreements between issuers and distributors to offer protection from unauthorised disclosure. Additional guidance from ASIC would be</p>

	<p>welcomed on this point.</p> <p>Guidance may take into consideration the privacy obligations of the parties and address the quite common situation where a distributor may have multiple issuers and multiple products under each issuer and how they might manage these obligations. We are concerned the scale of the record keeping and reporting obligations arising for all parties impacted by this legislation and guidance have been significantly underestimated.</p>
<p>E1 We propose to give guidance on the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations. These factors include:</p> <p>(a) whether the objects of Ch 7 are being promoted, including the provision of suitable financial products to consumers (see s760A(aa));</p> <p>(b) the policy intention underlying the design and distribution obligations to:</p> <p>(i) improve consumer outcomes; and</p> <p>(ii) require financial services providers to have a consumer-centric approach to making initial offerings of products to consumers; and</p> <p>(c) Parliament’s intent (as reflected in the law) for these obligations to apply to a broad range of financial products. See draft RG 000 at RG 000.232.</p>	<p>E1Q1 Do you agree with the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations? If not, why not?</p> <p>E1Q2 Are there any additional factors that you consider we should take into account?</p>
<p>FBAA Response:</p>	<p>We make no submission on this question.</p>
<p>E2 We propose to give guidance that, if we grant disclosure relief for a financial product, relief from the design and distribution obligations will not automatically follow. If requested, we will consider whether to grant relief from the design and distribution obligations as a separate matter to our consideration of the disclosure relief. See draft RG 000 at RG 000.233.</p>	<p>E2Q1 Do you agree with our proposed approach to providing relief from the design and distribution obligations when disclosure relief has been granted in relation to a financial product? If not, why not?</p>
<p>FBAA Response:</p>	<p>We make no submission on this question.</p>

End.

Yours faithfully



Peter J White AM
 MAICD
 Managing Director