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Product Regulation  
Strategic Policy  
Australian Securities and Investments Commission  
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Dear Sir or Madam

## Consultation Paper 325 Product design and distribution obligations

Industry Super Australia (ISA) undertakes policy research and advocacy on behalf of over five million members of industry superannuation funds, to ensure that the policy settings for superannuation are consistent with the objective of maximising their retirement incomes.

ISA appreciates the opportunity to provide feedback on Consultation Paper 325 *Product design and distribution obligations* (CP 325) which contains ASIC proposals for guidance on the design and distribution obligations in Pt 7.8A of the *Corporations Act 2001*.

### Summary of ISA's position

ISA broadly supports ASIC's proposed guidance. Our feedback is limited to proposals in which we have a specific interest, summarised below.

ISA's key concern with the proposed guidance is that while specifically acknowledging that the member outcomes reforms and the design and distribution obligations are separate but complimentary obligations, no guidance is given on how the two regimes interact and where issuers can find synergies in developing compliance practices while retaining flexibility to design their own processes. This interaction arises in relation to the product governance framework, the processes for making a target market determination and review triggers and should be addressed in the guidance. It is important for the future success of the new co-regulatory framework in superannuation that both regulators acknowledge the interaction on their respective guidance.

## *Design*

- ▶ ISA strongly supports guidance to issuers on the need to identify a 'negative target market'. We consider this an important check to ensure that target market determinations are not so broad as to be ineffective.
- ▶ ISA considers that further guidance is needed on how trustees of choice products can make a target market determination where there are a range of investment options.
- ▶ ISA supports guidance which makes it clear that the obligations apply to both the issuer of the Investor Directed Portfolio Services (IDPS) and also issuers of underlying products. The example could be expanded to provide situations where a platform is an inappropriate distribution channel for a product and a product is inappropriate for a particular platform.
- ▶ ISA supports the guidance on bundled products however we consider that the guidance would benefit from examples beyond insurance.

## *Distribution*

- ▶ ISA supports ASIC's efforts to provide product specific guidance however we consider that Example 9: Superannuation contains some unhelpful flaws.
- ▶ ISA encourages ASIC to give guidance for employers who distribute choice superannuation products and who may be unaware that the obligation applies to them.

## Detailed position

### **Product Governance framework – Proposal B1**

ISA agrees that a robust governance framework is needed to fulfill the design and distribution obligations. We also support the issues that are identified in CP 325 which require issuers to focus on:

- ▶ The target market across the lifecycle of the product;
- ▶ Reducing the risk of products being sold to consumers for whom they are not appropriate; and
- ▶ Ensuring the framework is documented, implemented, monitored and reviewed.

We note that the framework can be built on existing compliance measures: RG 000.35. Superannuation funds have measures in place to ensure compliance with the member outcomes obligations. As noted at paragraph 87 of CP 325, these obligations are separate, but complimentary and the respective governance frameworks are likely to overlap. ISA would welcome further consultation by ASIC and APRA on the interaction between the two regimes and where guidance may be needed (see also our response to Proposals **C7** and **C9** below).

### **Considering the ‘negative target market’ – Proposal C6**

ISA strongly supports guidance on identifying the ‘negative target market’ for a product as part of a target market assessment. Consideration by issuers of who should not be sold a product is an important consumer protection and will help ensure that target market determinations are not so broad as to be ineffective. The guidance could however be stronger by replacing ‘is likely to assist’ with ‘will assist’ in RG 000.91 and indicating that an issuer’s consideration of a non-target market is a factor that ASIC will take into account when assessing whether the issuer has met the design and distribution obligations.

### **Product specific issues – proposal C7**

**C7Q1:** The Consultation Paper states that ASIC will work with APRA to consider if specific guidance on the interaction between member outcomes and the design and distribution obligations is required: paragraph 88. Our view is that guidance is likely to be required on a number of issues. For example:

- ▶ The relationship between the cohort segmentation analysis required by APRA SPS 515, and the proposed target market determination;
- ▶ The relationship between the assessment of outcomes against objective benchmarks and targets under the annual outcomes assessment, and the periodic review of target market determinations in response to review triggers to ensure that the target market determination remains appropriate;
- ▶ The relationship between the strategic objectives and business plan that each RSE must have to support achieving the outcomes it seeks for beneficiaries, and the proposed product governance framework; and
- ▶ The relationship between the annual outcomes assessment and meeting the proposed distribution obligations.

These are intended as examples of some of the issues that are likely to require guidance. ISA would welcome further consultation by ASIC on the interaction between the two regimes and where guidance may be needed.

ISA supports the explanation in Example 7: Superannuation products about how a target market determination should be approached. However, as the example acknowledges, choice products can have diverse investment options. It would be helpful for ASIC to provide an additional example demonstrating how a target market determination for a choice product can describe ‘multiple target markets for each investment option or group of investment options offered as part of the product’. This will assist trustees to determine the type and level of detail they need to include in a target market determination about investment options offered within a choice product.

Further, consistent with our point above, in describing the trustee’s considerations of insurance this example and the guidance, fails to acknowledge the trustees’ obligations under s52(7) of the SIS Act and the guidance in APRA SPS 250.

**C7Q2:** ISA also strongly supports the guidance on the application of the design and distribution obligation to IDPS in Example 8: Investor directed portfolio services. The proposed guidance for platform operators to consider the types of products available on the platform and for underlying product issuers to consider the appropriateness of the selected platform, are both important additional consumer protections. The example could be expanded to provide situations where a platform is an inappropriate distribution channel for a product and a product is inappropriate for a particular platform. We also suggest that guidance is given on the application of the design and distribution obligations to Separately Managed Accounts.

**C7Q3:** ISA supports the guidance on bundled and customisable products. We think that the bundling of financial products is a significant issue. This can occur in a variety of situations. For example, where consumers pay for additional services or features that they are unlikely to use or where consumers will only receive product benefits (such as reduced interest rates) if they purchase a second product from the same issuer. It would be helpful for ASIC to expand the guidance and give examples of product bundling beyond insurance.

#### **Taking reasonable steps in relation to distribution: Issuers – C8**

While ISA supports ASIC's efforts to provide product specific examples, we consider that Example 9: Superannuation, while only illustrative, contains unhelpful flaws.

It is suggested that a trustee customises options presented to members after they log in 'based on member characteristics the trustee holds' and then if a member selects an option for which they are outside the target market, the website prompts the member to contact the fund. Unless personal advice has been given, trustees are only likely to have limited information about fund members e.g., age, balance, perhaps occupation. It is therefore unrealistic to expect this level of customisation.

It is also unrealistic and not useful to expect employers distributing MySuper products to distribute information provided by funds about options within choice products. Firstly, employers who distribute MySuper products are exempt from the design and distribution obligation and secondly, given the known problems with disclosure, this is only likely to confuse members.

#### **Specifying review triggers and reasonable maximum review periods – proposal C9**

We refer to our comments in response to C7Q1 above in relation to the design and distribution obligations and the annual outcomes assessment. We expect review periods should be capable of aligning with the annual outcomes assessment and business performance review.

#### **Factors relevant to our administration of the reasonable steps obligation – Proposal D1**

ISA notes that the distributor obligations apply to employers who give an employee a Product Disclosure Statement for a choice product but not a MySuper product.<sup>1</sup> However paying contributions into and dealing in a choice product, and also a MySuper product, are exempt.

We encourage ASIC to provide clarity on the meaning of the Regulations and give an example of its expectations of employers in this situation given that this is a cohort who may not be aware that they are subject to these obligations.

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<sup>1</sup> Corporations Amendment (Design and Distribution Obligations) Regulations 2019, Reg 7.8A.25

If you wish to discuss this submission, please contact Ella Cebon on [REDACTED] or [REDACTED].

Kind regards

[REDACTED]

**Ella Cebon**  
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