

13 03 2020

Product Regulation
Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

Westpac Place
Level 7, 275 Kent Street
Sydney NSW 2000
westpac.com.au

By email: product.regulation@asic.gov.au

Consultation Paper 325: Product Design and Distribution Obligations (CP 325):

Westpac Group (**Westpac**) welcomes the opportunity to provide a submission to the Australian Securities and Investments Commission (**ASIC**) on CP 325 and the draft ASIC Product Design and Distribution Obligations Regulatory Guide (**RG**).

Westpac also welcomes the opportunity to participate further in ASIC's consultation as it works towards finalising its guidance on the DDO regime.

We support the objectives which underpin the DDO regime and the focus on positive consumer outcomes, consumer centric design and robust frameworks for product monitoring and governance.

We have outlined some comments and observations below. In addition, we enclose our response to the proposals outlined by ASIC in CP 325 at Appendix A.

Westpac continues to support the implementation of a Design and Distribution Obligations (**DDO**) regime which is flexible and scalable. We consider it essential that guidance on the DDO regime remains principles-based and that it appropriately operates in conjunction with existing regimes, for example responsible lending and best interests duty, which seek to ensure that customers obtain suitable products.

We include feedback in our submission in relation to the following key areas:

- target market determination (**TMD**) on a product, and evaluation of product features;
- scalable and flexible;
- choice architecture;
- target market class and design;
- point of sale and ongoing monitoring;
- issuer / distributor linkage; and
- competition issues.

TMD on a product and evaluation of product features

The RG states that in order to identify a target market, the issuer will need to consider product variations such as features, terms and fees. The RG refers to the example of a credit card that has a high-interest rate or a rewards program and suggests that varying features of a product may result in separate financial product(s). Westpac's view is that, if a product is identified by its terms and conditions, varying features of a product should not result in separate financial product(s). Our understanding is that it is common for a product to allow for varying options to customers, such as in respect of a customer who is a card holder, the same terms and conditions may allow the customer to decide whether to pay an annual fee, and to join a rewards program.

Scalable and flexible

At RG 000,77, the RG states that a "*broad product objective is unlikely to sufficiently define the target market for a financial product*". Westpac's view is that there will be some products where it is appropriate to have a broad class of consumers with a broad target market. This is particularly the case for simple products. For example, a basic deposit product with low or no fees may be appropriate for any customer who wants a simple bank account. We understand that this is in line with the Explanatory Memorandum for the relevant legislation, which states that "the obligations are broad in nature and scalable in line with the nature of the product".

Westpac would appreciate further direction as to how such scalability will be applied, particularly for simple products.

Choice Architecture

While the term 'choice architecture' is not used in the relevant legislation, the RG indicates that ASIC means for the term to refer to features in the environment (noticed and unnoticed) that influence consumer decisions and actions. The examples given in the RG are product bundling, default settings and website and sales processes.

While Westpac is committed to taking a consumer-centric approach to the design and distribution of products, and places significant emphasis on designing products and services which provide value to our customers, it is not clear to us how unnoticed features in an environment could be taken into account. In practice, we find it is difficult to anticipate customer behaviour based on general environmental features.

Further, our interpretation of the example of unnoticed features in the RG is that they are product features and features of how the product will be sold, rather than environmental features. Given this, Westpac would welcome clarification on how product issuers may be required to assess the effect of unnoticed features of the environment.

We are also conscious that there are likely to be significant challenges in practically evidencing consideration of this across all stages of design and distribution of products.

Target market class and design

We understand that the TMD for products which are designed for broad use is required to be consistent for the 'objectives, financial situation and needs' of the class of customers for which the product is designed. The TMD should not be based on personalised consideration of individual retail client circumstances (or the issuer's estimation of these) as this is not what is required under the DDO regime.

Further, we acknowledge that where a product may be designed to be distributed primarily to a community of customers who are vulnerable, it is appropriate that vulnerabilities relevant to such a community of customers are considered in product design. Otherwise, customer vulnerability is not a specific consideration when determining a TMD. It should be an overarching consideration across all products and at all points in the product life cycle, rather than specific to a TMD for individual products.

Westpac has in place frameworks, policies and guidelines to address the needs of vulnerable customers and we are committed to provide the additional care and support that such customers need. Our support to such customers is not restricted to a single point in time such as at the point of sale, but provided to our customers when it is required.

Point of sale and ongoing monitoring

Westpac understands that the DDO regime's focus and the requirements in the legislation are on the point of sale. However, the RG appears to go further than this and suggests that the issuer is required to continually monitor the likelihood of a retail client's circumstances changing.

We welcome further clarification as to expectations for ongoing product performance monitoring by product issuers. In order to fulfil monitoring obligations as outlined in the RG, a product issuer would need access to data at a point in time well beyond the point of sale and in our view, this may pose some practical challenges.

Clarity on issuer-distributor linkage

Many wealth products do not have a clear issuer-distributor linkage where for example, Westpac may be the issuer and distributor of an investment platform product, however it may also be the distributor of investment products issued by another financial institution. This becomes additionally complex in the context of adviser-driven platforms, where a financial adviser may (through Westpac's investment platform) be the distributor of an investment platform product issued by Westpac and/or another financial institution. The broad approach in relation to distribution under the regime also means that the platform operator will not only be considered as distributing the products available in the platform but also distributing the products available on the platform.

We welcome further clarification from ASIC as to how DDO can be implemented to minimise customer confusion at product 'sale', including how chains of accountability and monitoring may be structured in relation to such products.

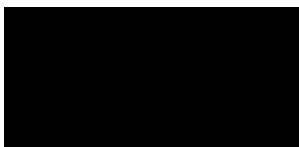
Interaction with Competition Obligations

Westpac is concerned there may be competition implications of the publication of commercially and sensitive information that may be relevant to a TMD, particularly in the context of insurance products. For example, this may be a concern where a financial institution sells insurance products which it underwrites and also sells insurance products on behalf of other insurers who may also be competitors in relation to other products. The public distribution of the TMD, the establishment of distribution considerations and the exchange of data between the issuer and distributor may result in significant amounts of competitively sensitive information being shared. Consequently, there may also be flow-on market impacts.

We look forward to receiving clarification from ASIC as to how it views these aspects of the DDO regime interacting with existing competition obligations.

Please contact Amardeep Gill on [REDACTED] should you require any further information or wish to discuss the content of our submission further.

Yours sincerely,



Jim Zafirooulos

Head of Regulatory Relationships

Appendix A: Westpac Comments on Proposals Outlined in CP 325

| ASIC Proposal/Question | Westpac Feedback |
|---|---|
| B: PROPOSED GUIDANCE ON THE PRODUCT GOVERNANCE FRAMEWORK | |
| <p>ASIC Proposal 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; (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 (c) be documented, fully implemented, monitored and reported on, and regularly reviewed to ensure that it is up to date</p> | |
| <p><i>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?</i></p> | <p>Westpac considers the guidance on the product governance framework generally useful and supports the role of end-to-end accountability and robust product governance frameworks (PGF) in reducing the risk of selling products to consumers that are inconsistent with consumer objectives and needs. We continue to support a principles-based approach to guidance.</p> <p>We consider it important that guidance on the PGF is in line with the aims of the regime to help consumers <i>obtain</i> products which are more likely to be appropriate for them. While we are committed to ongoing monitoring of our financial products, we re-iterate that not all insights obtained through this process will be relevant to determining the target market. As such it is important that financial institutions retain the necessary flexibility to determine the monitoring and reporting requirements which will go to the TMD for each product.</p> |
| <p>ASIC Proposal 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><i>B2Q1: Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?</i></p> | <p><i>Choice Architecture</i></p> <p>There are a number of references to 'choice architecture' in the RG and at RG 000.47, an instruction that issuers should consider the 'choice architecture' in the product design stage to ensure it is consistent with the target market. The term 'choice architecture' is not used in the legislation and has no generally understood meaning. The RG states that the term refers to features in the environment, noticed and unnoticed, that influence consumer decisions and actions. At RG 000.47</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|---|
| | <p>and RG 000.17, the examples given are 'product bundling, default settings and website and sales processes'. We consider that that the term may be unhelpful to issuers and distributors seeking to understand their obligations</p> <p>We query whether product issuers should be encouraged or required to speculate about the effect of unnoticed features of the environment. We also note that the examples of such features in the RG do not in fact appear to be features of the environment an appear to be product features and features of how the product will be sold.</p> <p>We think it may be more helpful if the RG confined itself to the tangible matters that a product issuer should consider in formulating a TMD.</p> <p><i>Digital self-service channels</i></p> <p>Westpac considers user experiences heavily in the design of our digital sales channels. We note however, that:</p> <ul style="list-style-type: none"> • it is unlikely that the industry will be able to effectively personalise user experiences to drive individual customers towards certain products, and that to do so raises complex issues of consent; • it will be significantly challenging to evidence that each individual aspect of service design has been designed and routinely re-tested in line with the expectations outlined in the RG; and • we welcome clarity on whether it would be sufficient for a digital sales channel to make available the TMD for customers obtaining a product online (rather than expecting customers to answer a series of elimination questions). <p>We would value further guidance on record keeping obligations generally (and, specifically, in relation to digital channels) given system changes that will be required to our digital channels that operate under a 'no advice' or 'general advice' model (in particular, to comply with record keeping obligations and to ensure we satisfy our 'reasonable steps' obligations). Currently, it is unclear as to the level of documentary evidence required to ensure that a consumer-centric approach has been taken across all facets of the DDO process.</p> |
| <p><i>B2Q2: What additional matters, if any, do you consider to be relevant?</i></p> | <p>We consider that it is important that vulnerabilities are recognised as neither singular nor at a point in time, where</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| | customers may experience life events which may result in unexpected outcomes. Whilst financial institutions must account for customer vulnerability, it may be impractical for this to happen at a point in time that a product is distributed. |
| C: PROPOSED GUIDANCE ON OBLIGATIONS FOR ISSUERS | |
| ASIC Proposal 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. | |
| <p><i>C1Q1: Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?</i></p> | <p>Westpac agrees that a TMD may be flexible, recognising that the level of detail contained in a TMD may vary significantly across product segments but the TMD continues to be fit for purpose. However, it may be challenging to implement TMDs within the parameters of the current guidance. For example, in relation to home ownership products, given the significant volumes of home loans that are obtained through third-party mortgage brokers (who may have to consider as many as 10 TMDs for each of as many as 60 lenders), there is concern on how the requirements in the RG can realistically and practically be implemented. This is also likely to be challenging in the context of wealth and superannuation products which are regularly distributed through adviser channels, where advisers regularly distribute a large number of products issued by a wide range of financial institutions.</p> <p>At RG 000.28, the RG provides that distributors are prohibited from distributing a product unless a TMD for the product has been made. Our understanding however is that a distributor may engage in retail product distribution conduct where no TMD has been made in the circumstances set out in s994D(c) and s994D(d) of the <i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019</i> (Cth) (Act). We would appreciate clarification on this statement.</p> |
| <p>ASIC Proposal C2: We propose to provide guidance that, generally speaking:</p> <p>(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</p> <p>(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.</p> | |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| <p><i>C2Q1: Is our guidance on the approach to identifying the target market for new products and continuing products useful?</i></p> | <p>It is stated at RG 000.68 that an issuer should generally speaking, identify the target market and design financial products with the 'likely objectives, financial situation and needs' of consumers in that target market, where the target market would drive the product design process.</p> <p>This suggests that issuers have an obligation to first formulate a target market, and then design a product to suit the target market. We note that the Act starts with a financial product and then requires the issuer to identify the target market for which the product is likely to be appropriate. While we consider it likely that a product issuer may start with a target market, we believe that this should not be an expectation. Issuers of existing products for which TMDs will need to be made will also be starting with the products themselves, rather than target markets.</p> <p>While the RG acknowledges in some places that either approach may be possible, RG 000.72 states that "[r]egardless of whether a new financial product is developed for the identified target market or a target market if developed for a continuing product....". We would appreciate if this could be clarified.</p> <p>RG 000.70 also states that it expects product design to be "driven by features that benefit the consumer" and RG 000.85 states that "[c]onsumers who would not benefit from the product should not form part of the target market". In our view, the suitability requirement in s994B(8) of the Act is not framed by reference to consumer benefit. Whether a consumer benefits from the product will depend both on the product design as well as the consumer's individual circumstances. In our view, the DDO regime does not require product issuers to take into account individual consumer circumstances.</p> |
| <p><i>C2Q2: What additional matters, if any, do you consider to be relevant?</i></p> | <p>In relation to continuing products, it may be valuable for TMDs to be able to cover more than one product where the products have the same identified target market.</p> <p>RG 000.89 discusses product variation (referring to differing terms, features functionality and fees) and notes that they occur across most financial products. It is not clear whether the RG is suggesting that each variation is a separate financial product that requires a separate TMD. We would suggest that a financial product may be a single financial product even if the terms and conditions give the consumer the option to select a variety of different features. The ability to select different features will be relevant to the target market and they may mean that the target market covers a broad class of consumers.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|---|
| | <p>Choice within a product does not mean that there should be separate TMDs for each variation of the product based on what a consumer selects or defaults into.</p> <p>In relation to a home loan for example, several available products are likely to have the same target market and we believe that in these circumstances a combined TMD may benefit consumer understanding and reduce possible confusion. In these circumstances, sufficient assessment would be completed which would evidence that the products would be suitable to be aggregated within the same TMD.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>C3Q1: Do you have any comments on our approach to guidance on identifying and describing the target market?</i></p> | <p>We are concerned that the RG requires target markets to be drawn more narrowly than is required by the law and that, again, the RG appears to be reversing the burden of the legal obligation by suggesting the target market will dictate the financial product.</p> <p>In Example 1 at RG 000.75, it is stated that "[w]e expect issuers to consider the appropriate market for each distinct credit product". We would appreciate further clarity on what makes a distinct credit card. There appears to be a suggestion that there is a separate credit card and financial product based on whether the credit card has a high-interest rate or a rewards program. If a financial product is identified by its terms and conditions, in our view there is no reason why this would be the case, as it is common-place for credit card terms and conditions to provide options to consumers. For example, the same terms and conditions may allow the holder to decide whether to pay an annual fee and to join a rewards program.</p> <p>RG 000.77 states that a "broad product objective is unlikely to sufficiently define the target market for a financial product". It is not clear why it would not be appropriate to have a very broad class of consumers and therefore, that there could not be a very broad target market for some products, particularly simple products. For example, a basic deposit product with low fees may in fact be appropriate for anyone who wants a simple bank account.</p> <p>While an issuer may offer a number of products of the same type (e.g. credit card or bank account) with different features, there may be significant overlap in the target markets for the products. It is possible that a number of products will be suitable for retail clients in a particular target market (in accordance with s 994B(8) of the Act), and the client may be in the</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| | <p>best position to determine which of the products best meets their individual objectives, financial situation and needs. We believe that there is no obligation under the legislation, on the issuer to ensure that a consumer obtains the product that is best for them having regard to their individual circumstances.</p> <p>RG 000.79 also states that an example of a financial product that may be unlikely to be consistent with the likely objectives, financial situation and needs of consumers is a product that is 'inherently flawed'. We would appreciate clarity on what this means and particularly if this is intended to refer to a product which is unlikely to be consistent with the likely objectives, financial situation and needs of any retail clients.</p> |
| <p><i>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:</i></p> <p><i>(a) Example 1: Credit cards;</i> <i>(b) Example 2: Reverse mortgages;</i> <i>(c) Example 3: Cash options in superannuation;</i> <i>(d) Example 4: Consumer credit insurance;</i> <i>(e) Example 5: Low-value products; and</i> <i>(f) Example 6: Basic banking products?</i></p> | <p>The example about credit card promotions at RG 000.75 says that a 'promotion' may have the effect of varying the credit card product such that the appropriate target market for the credit card would need to be adjusted. The promotion refers to a reduced or nil entry fee credit card and it is suggested that these changes would mean that there is a new and different financial product for which a new TMD would be required. However, it is also stated that 'when the underlying financial product is not fundamentally altered by the promotion, the promotion itself will be relevant to the obligation to take reasonable steps to distribute the product to the target market (and not to people who are not part of the target market)'. In our view, this contemplates that there is a new financial product when there is a 'fundamental alteration' to the product terms and conditions, although it is not clear that offering a concessional fee would be characterised as such.</p> <p>The RG provides that issuers are expected to consider the appropriate market for each distinct credit product. It is unclear based on the examples provided in the RG on what makes a distinct credit card. There appears to be a suggestion that there is a separate credit card and financial product based on whether the credit card has a high-interest rate or a rewards program however if a financial product is identified by its terms and conditions, there is no reason why this would be the case. It is commonplace for credit card terms and conditions to provide options to consumers. For example, the same terms and conditions may allow the holder to decide whether to pay an annual fee and to join a rewards program.</p> |
| <p><i>C3Q3: What additional matters, if any, do you consider to be relevant?</i></p> | <p>The examples provided in the RG relate to products which have generally been subject previously to public reporting by regulators. We would appreciate further examples including for:</p> <ul style="list-style-type: none"> • Home Ownership Products; • Financial Markets' Products (including Derivatives and Foreign Exchange products); and |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| | <ul style="list-style-type: none"> Managed Funds and Investments. <p>In respect of managed funds and investments, we note that there are there are additional complexities in relation to the links between issuers and distributors for these products. We would appreciate clarification from ASIC as to how it expects this will operate.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>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?</i></p> | <p>The guidance as reflected appears to relate to the purchase of investment products as opposed to credit obtained for an investment purpose (i.e. a home loan in relation to an investment property). We would appreciate further guidance on this.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>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?</i></p> | <p>Westpac supports the ability of customers to determine their personal objectives, financial situation and needs, and where they consider it appropriate, to seek advice in that regard. Financial institutions should take a supportive role in providing guidance to customers, however we consider it is essential that consumer choice is preserved. This is particularly relevant in relation to more complex products, where we consider that customers should be able to make informed risk judgments based on an understanding that the ultimate outcomes may be variable.</p> <p>We have observed that increasing volumes of customers are electing to obtain financial products through online and digital channels. Digital channels provide information to inform customer choice, however we note that purchase through these channels relies heavily on customers forming an opinion that the product is appropriate for their personal circumstances.</p> <p>The DDO regime requires both issuers and distributors to identify whether a customer is within the target market for a particular product and allows for a financial institution to make a customer aware where it is likely that they fall outside of the target market. We note however that a customer may still decide to obtain the product afterwards.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|--|
| ASIC Proposal 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’). | |
| <p><i>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?</i></p> | <p>Westpac agrees that it may be useful for an issuer to describe the negative market product for particular products however we believe that this is most useful when there is no expectation that the negative target market is determined for all financial products.</p> |
| <p><i>C6Q2: Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.</i></p> | <p>Westpac does not have any additional comments on the role of describing a negative target market at this time.</p> |
| ASIC Proposal 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: <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><i>C7Q1: In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7:</i></p> <p><i>(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?</i></p> <p><i>(b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why?</i></p> | <p>We note that most accumulation superannuation products now offer investment choice to members. The RG provides that some options may be ‘suited’ to particular members, and so ‘in practice this is likely to involve a single TMD 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’.</p> <p>We note that an example that relates to a product design for a ‘Choice’ superannuation product in the context of the introduction of a new cash option is provided in the RG. This example seems to suggest either a new TMD would be required or that a TMD for the financial product (the Choice superannuation products) requires consideration of who is likely to be suitable for each investment option. In our view, a cash option is not itself a financial product and so does not require its own TMD. We would appreciate clarification on this.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|--|
| <p>(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?</p> <p>(d) How should a trustee take into account insurance in making a target market determination for a Choice product?</p> | <p>We note that under the Act, a separate TMD for each investment option is not required and we do not think the Act requires a target market to be identified for each investment option offered by the product. We think the TMD for a Choice superannuation product should identify a class of consumer who wants to make investment choices based on their own knowledge or with the assistance of a financial adviser.</p> |
| <p>C7Q2: Do you agree with our guidance on the application of the target market determination obligation to IDPS?</p> | <p>We agree with the interpretation of the requirements that the DDO framework applies to both the issuer of the platform and the issuers of the underlying products. However, we would appreciate clarity on whether subsequent issues of underlying products on platforms are still subject to the DDO, for example, where a member purchases additional units in a managed fund offered under a platform.</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>The description of 'bundled' products in the RG is potentially confusing. It is possible in some circumstances for multiple financial products to be offered under a single disclosure document, including products which have different terms and conditions, and we assume this is what the guidance is referring to when referring to 'bundled' products.</p> <p>We observe that optional features (including offset, redraw and fixed interest repayment periods) are commonly sought after by customers seeking to obtain a residential home loan. These features are available in a single loan product or obtained as part of a 'package' or 'bundle' in conjunction with a credit card and or transaction account. We note that examples relating to bundled or additional feature home lending products are limited in the current draft of the guidance.</p> <p>In the context of life insurance products, bundled products such as term life insurance with a trauma rider, would require separate TMDs (one for the term life policy and one for additional trauma cover and potentially, also a separate TMD for the standalone trauma (as distinct from the trauma rider). We note that in these situations, the bundled product which allows a customer to select a total sum insured which is drawn down with each claim is often preferred. A singular TMD which covers the bundled product would minimise customer confusion and would have a greater impact in helping customers to develop a robust understanding of the product.</p> |
| <p>C7Q4: Do you agree with our proposed approach to the application of the design and distribution obligations to</p> | <p>Where complex products such as retail life insurance are wholly distributed via a personal advice model, consideration is already given to an individual's objectives, financial situation and needs under the 'best interests duty'. The RG suggests a</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| <p><i>products that can be customised at point-of-sale? If not, why not?</i></p> | <p>high level of TMD granularity given comments about waiting periods. Due to the multitude of options available with retail life insurance this will lead to multiple TMDs for each product. We believe that this places a significant burden on product issuers, when the consumer outcome does not change.</p> |
| <p><i>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.</i></p> | <p>We welcome clarity in respect of home loans with a guarantor and how and if, such arrangements are impacted by the DDO regime, specifically, we would appreciate guidance on whether we would need a separate TMD for the same product targeted at the guarantor.</p> <p>Additionally, we would appreciate clarity on how a home or investment property loan in the name of an incorporated company (i.e. family trust or non-trading company), where a personal guarantee is often required, is covered by the legislation.</p> |
| <p>ASIC Proposal 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> <p>(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> | |
| <p><i>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:</i></p> <p><i>(a) Example 7: Superannuation products;</i> <i>(b) Example 8: Investor directed portfolio services; (c) Example 9: Superannuation;</i> <i>(d) Example 10: Mortgage fund; and</i> <i>(e) Example 11: Listed investment companies?</i></p> | <p>We note that these obligations may be complex to manage in practice. For example:</p> <ul style="list-style-type: none"> • fund managers for each of the investment options on a platform would be classified as a product issuer with the platform as the distributor; and • in the context of advice distributions, the platform would be the product issuer and adviser would be the distributor. <p>In the case of a mortgage fund, it may be difficult for an issuer to monitor the role the fund might be playing in a portfolio or bundle. It may be difficult for issuers to obtain the data they require to make such assessments and depending on the correlation or combination of other assets, there may be strategies in play that an issuer does not have visibility over.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|---|
| | <p>Additionally we note that Example 9 in the RG in relation to the restriction of options within the direct to public distribution channel may be perceived as financial advice. This may raise some member equity concerns around equal access to rights and benefits.</p> |
| <p><i>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?</i></p> | <p>In relation to General Insurance products, the RG indicates that an issuer must specify review triggers in the TMD. We note that issues may arise in containing this information in publicly available TMDs, noting that the review triggers and data sources outlined (such as Example 12 at RG 000.132 and RG 000.143) will contain commercially sensitive information. To address this, we would appreciate confirmation from ASIC that a high-level review trigger description, for example, 'significant deviation from expected claims ratio' would suffice for inclusion in a TMD.</p> <p>Under the DDO regime, a person who makes a TMD for a financial product must take reasonable steps that will, or is likely to result in retail product distribution consistent with the TMD determination (s994E(1) of the Act).</p> <p>RG 000.114 states that the issuer's distribution strategy should be 'consistent with the target market for the product'. This part of the guide suggests that a product may only be marketed to the target market. For example, in table 3 of RG 000.120, it is stated that "[w]e 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>In our view, this is not an accurate reflection of s994E of the Act, or any other provision in the Act. We interpret s994E of the Act as not placing restrictions on a marketing campaign, provided that the ability for consumers to acquire the financial product being marketed is not restricted. For example, the Act does not say that an issuer should restrict its advertising so that it is only likely to be seen by people in the target markets. While s1018A of the Act as amended provides that, where a TMD is required to be made for a product, any advertisement or promotional statement about the product must describe the target market for the product or specify where the determination is available, this does not require that only those consumers who are within the target market should see the advertising or statement.</p> |
| <p><i>C8Q3: What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?</i></p> | <p>It may be useful to receive direction on how financial institutions should consider the RG in relation to other regulatory obligations and guidance as well as prudential standards such as SPS 231.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| ASIC Proposal 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. | |
| <i>C9Q1: Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?</i> | We refer to our comments in C8Q2 in respect of commercially sensitive information. |
| <i>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?</i> | Westpac does not have any comments on Examples 12-13 at this time. |
| ASIC Proposal 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. | |
| <i>C10Q1: Do you have any comments on our guidance on the issuer’s obligation to specify information it requires from its distributors?</i> | Westpac is generally supportive of the approach outlined at Proposal C10, subject to the competition challenges outlined in our response at C10Q4. We support that this proposed approach is principles-based in nature and recognises that the information an issuer may require from its distributors will be product and context specific and likely to evolve over time. |
| <i>C10Q2: What existing information collected by distributors would be relevant to an issuer’s consideration of the ongoing appropriateness of its target market determination?</i> | We refer to our response to C10Q1. |
| <i>C10Q3: In addition to the information set out at RG 000.139, are there other types of information an issuer</i> | We refer to our response to C10Q1. |

| ASIC Proposal/Question | Westpac Feedback |
|---|---|
| <p><i>should collect from distributors? If so, please describe the type of information you think would be relevant.</i></p> | |
| <p><i>C10Q4: What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?</i></p> | <p>There may be an impact on competition in contexts where a financial institution distributes products on behalf of a third party, where that party is also a competitor in the market. Where information sought amounts to a request for comparative information on the performance of a particular product, this information is likely to be commercially sensitive.</p> <p>In particular, in the insurance market there exist situations where two companies in competition may have an arrangement for one to act as an issuer and another as the distributor in relation to a particular product. For example, a general insurer who issues its own home and contents insurance product may also distribute the motor insurance product of another general insurer, who also offers home and contents insurance.</p> <p>Complex issues of competition law may arise in an exchange of data required to meet the DDO requirements and these may restrict the types of data which are able to be shared. It may be necessary for the guidance to outline how institutions should consider the proposed guidance in conjunction with their existing competition requirements. In our view, the combination of a publicly available TMD with issuer-directed data flows from the distributor to the issuer, may provide significant insight into the operations of the distributor and have adverse impacts on competition.</p> |
| <p><i>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?</i></p> | <p>We would appreciate clarification on the implications for our reporting obligations, of not being able to obtain required data, particularly where we are reliant on a third party for such data.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>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?</i></p> | <p>The examples provided in the RG are useful however, we are of the view that not all insights available through product monitoring will go to the determination of the target market for a financial product.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|--|
| <p><i>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?</i></p> | <p>We refer to our response to C11Q1.</p> |
| <p><i>C11Q3: Do you have any other comments on our guidance on conducting a review of a target market determination?</i></p> | <p>The RG suggests that a product issuer is required to review the performance of the product and consumer outcomes and then adjust the products as a result, where it is noted at RG 000.71 that "product design and development... is an iterative process. ... When problems are identified, this should feed back into the product design as part of ongoing review processes."</p> <p>We assume that the source of these obligations are sections 994C and 994B(8) of the Act. In our view, these provisions do not seem to require a product that has been issued to be varied or redesigned. Section 994(8)(b) of the Act requires the issuer to form a view about whether it is likely the product will be consistent with the likely objectives, financial situation and needs of the client in the target market for the product and s994C of the Act requires a product issuer to take steps to cease the distribution of a product in certain circumstances. We do not consider that either of these require an existing financial product (i.e. a product that has already been issued to a consumer) to be varied.</p> |
| <p>ASIC Proposal 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:</p> <p>(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.</p> | |
| <p><i>C12Q1: Are there any additional factors that issuers should consider? If yes, please provide details.</i></p> | <p>The obligation to notify under s994G(b) of the Act applies in relation to 'a significant dealing in the product in relation to a retail client'. This suggests significance is tested in relation to each individual customer (rather than the number of customers in relation to a dealing). The RG however appears to suggest that insignificant dealings in relation to a significant proportion of clients may be a 'significant dealing', which seems to be in contradiction to how the legislation operates, We would appreciate clarification on this in the RG.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| D: PROPOSED GUIDANCE ON OBLIGATIONS FOR DISTRIBUTORS | |
| <p>ASIC Proposal 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:</p> <ul style="list-style-type: none"> (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 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. | |
| <p><i>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?</i></p> | <p>The DDO regime’s focus is on the point of sale however the RG suggests that the product issuer is required to continually monitor the likelihood of a retail client’s circumstances changing.</p> <p>In our view, the provisions in the Act requires an issuer to make a TMD for a financial product broadly before it offers, issues or sells a financial product and the issuer must take reasonable steps that will or is reasonably likely to, result in distribution being consistent with the determination. The Act does not require a product issuer to continually monitor and assess that the retail client continues to likely be in the target market and that the product continues to be likely consistent with the likely objectives, financial situation and needs of the retail client.</p> <p>The guidance as proposed is unclear in relation to the reasonable steps that should be taken by a distributor in relation to online or digital product sales. Where a financial institution holds existing information about a customer, the guidance suggests that such information may be used to appropriately prevent distribution outside of the target market. The use of such data for this purpose under existing privacy obligations, would require consent from the customer. This is especially challenging when considering customer vulnerability, which in many circumstances may only be able to be determined by holding sensitive information.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|--|
| | <p>It is unclear from the RG as to how this requirement to prevent distribution outside of the target market using existing data, operates in conjunction with existing privacy obligations. Further, where a customer is not an existing customer and existing data is not available, or where an existing customer has not consented to the use of their data for personalisation, it is unclear how financial institutions should prevent distribution outside of the target market.</p> <p>In relation to training, we observe that guidance from ASIC would be valuable as to what it deems as 'sufficient', especially where service is provided under a no advice model and staff may not be accredited to provide personal advice.</p> |
| <p><i>D1Q2: What additional factors, if any, do you consider should be included in Table 5 of draft RG 000</i></p> | <p>We refer to our response to D1Q1.</p> |
| <p>ASIC Proposal 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:</p> <p>(a) analyse information it holds, such as:</p> <p>(i) information it gathered when the customer initially acquired the product; and</p> <p>(ii) updated details that have been provided, or through claims that have subsequently occurred; and</p> <p>(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.</p> | |
| <p><i>D2Q1: Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000?</i></p> | <p>We would appreciate more clarity in relation to how an insurer should approach this obligation in relation to key insurance products, such as home and contents insurance.</p> <p>It is currently unclear in the context of home and contents insurance as to how an insurer would re-assess whether a customer remains in the target market. We note that for many insurance products, there is substantial complexity in continuously monitoring customer data to support renewal (e.g. when automatically renewed). In addition, at the time of renewal, available information may not be enough to determine likely changes in customer circumstances, including whether they continue to be within the target market. Where outbound contact is required to be provided to policyholders</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|---|
| | <p>and is based on data-driven analysis of the information held by the insurer in relation to that policyholder, there is a significant risk that the policyholder will be left with the impression they have been provided with a recommendation.</p> <p>Further, we believe that clarity would also be valuable as to the proposed approach in relation to the treatment of renewals for individuals who have opted to purchase an insurance product, while being aware that they are outside of the target market.</p> |
| <p><i>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?</i></p> | <p>We refer to our response to D2Q1.</p> |
| <p>ASIC Proposal D3: We propose to provide guidance: (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> <ul style="list-style-type: none"> (i) the inclusion of 'knockout questions' within application processes; (ii) analysis of data held on the consumer or a class of consumers; and (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>(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> <ul style="list-style-type: none"> (i) 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 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 | |
| <p><i>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</i></p> | <p>We would appreciate guidance on how a reasonable view should be formed where customers are seeking to obtain jointly held products. Where customers have materially different financial circumstances, it may be complex to identify from existing data whether both customers are within the target market for a particular product.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|---|
| <p><i>reasonably likely to be in the target market for a financial product?</i></p> | <p>For investment managers providing investment options on a platform, we interpret the RG as indicating that the investment manager is the product issuer and the IDPS operator is the distributor. We would appreciate further clarity as to whether an IDPS operator will then require visibility of customer data, including for advised products.</p> <p>RG 000.161 states that "[i]n 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". While distributors may need to consider whether any additional steps are required in order to meet their 'reasonable steps' obligations under s994E of the Act, we believe that in many cases the steps required by the distribution conditions and the agreement with the issuer may be sufficient.</p> <p>RG 000.175 states that "it would be prudent for the distributor to keep a record of the discussion or interaction with a consumer" in circumstances where the consumer is outside the target market. We note that in many cases, this may be impracticable, depending upon the product and the method of distribution.</p> |
| <p><i>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?</i></p> | <p>This will be largely dependent on the content of the TMD and will likely vary significantly between classes of financial products. Data points which reflect the other products held by the customer may assist with this conclusion. For example, where a customer holds a product with a narrowly defined target market, this may inform preliminary insights as to whether the customer may be within the target market for certain products.</p> |
| <p><i>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?</i></p> | <p>It may be useful for ASIC to provide additional guidance on ways that a distributor's sales processes can assist to form a reasonable view that the consumer is reasonably likely to be in the target market for a financial product. This includes examples on the type of data that ASIC believes should be considered when completing such assessment, across various classes of Product including Financial Market and Transaction Banking products.</p> |
| <p><i>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?</i></p> | <p>The RG states that the obligations in the DDO regime are not obligations to provide personal advice. However, there are a number of examples in the RG which demonstrate the difficulty in maintaining distinction in practice, and in ensuring that consumers understand the distinction. We expect that this may be particularly challenging where financial institutions are providing products under a no advice model.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|--|
| | <p>For example, in the RG an example is provided about a customer's financial situation where certain information is obtained as part of that customer's credit card application. It is difficult to see how in the process of forming a reasonable view that the customer is in the target market for the credit card (including by consideration of the customer's objectives, financial situation and needs), that this will not constitute the giving of personal advice by the distributor of the financial product (subject to the limited exception provided in s766B(3A) of the Act).</p> <p>The RG suggests that staff that are authorised to provide personal advice should be excluded from interacting with clients and obtaining necessary information. The RG also recommends that staff should only ask specific questions to determine whether a customer is within the target market after the customer has already made a decision to acquire the product. In our experience, such steps are likely to result in poor customer experiences and we believe that customers who are not within the target market should be identified earlier rather than later in the process.</p> <p>It is in our opinion difficult to implement in practice the recommendation in RG 000.169, that a distributor not frame its processes in a way that leaves the consumer with the impression that their personal circumstances have been considered.</p> <p>To exclude staff that are authorised to provide personal advice from interacting with clients and obtaining necessary information is also likely to be unhelpful. In our experience, assisting a customer to make a decision to acquire a product without confirming whether they are eligible for it will result in more, rather than less, customer confusion.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>D4Q1: Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances?</i></p> | <p>It would be helpful to have more examples of what constitutes reasonable steps for a distributor and further clarity as to how a distributor should ensure a customer understands that they are outside of the target market, and the implications of this determination. Noting that the concept of alignment to a target market is technical, it is currently unclear as to how a distributor may assist a customer in building this understanding in order to mitigate any potential harm to the customer, without giving rise to an impression that personal advice has been provided.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|---|
| <p><i>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?</i></p> | <p>In relation to digital origination of products and self-service channels where there is no direct engagement between the consumer and staff of the financial institution, it would be valuable to receive further clarification on whether the inclusion of disclosures will be sufficient to meet this requirement.</p> <p>In respect to the sale of home ownership products, it is common for customers to be introduced to a lender through an accredited referrer. It is likely in these situations that the initial contact and screening will be undertaken by the referrer. We would appreciate further clarity on whether in these circumstances, this will be considered as part of the distributor's reasonable steps and what action the loan writer should take if it determines the customer is likely outside of the target market upon review of a referrer loan.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>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.</i></p> | <p>We note that financial advisers are already subject to obligations to a 'best interests duty', which is considered in relation to the customer's personal objectives, financial situation and needs. As such, we consider it may not be valuable for financial advisers to be required to also consider the TMD in providing their advice.</p> |
| <p>ASIC Proposal 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:</p> <p>(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</p> <p>(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.</p> | |
| <p><i>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?</i></p> | <p>We note that clarity would be valuable as to how this will interact with existing privacy obligations of financial institutions, with particular regard to whether express consent will need to be obtained from customers to obtain data for this purpose. This may be particularly difficult in respect of third-party home loans. For example, in our RAMS business, Loan Writers (as distributors) package a loan application, which is submitted to a lender (who is generally also the issuer) for full assessment and settlement. It may not be possible in this case for the distributor to form a reasonable view as required by the RG.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|--|--|
| | <p>We would also appreciate further clarity on RG 000.189, as we note that the information required to confirm whether a consumer is within the target market for a credit-facility may not be the same information collected to comply with reasonable enquiries and verification obligations under the responsible lending regime, or to confirm whether a loan is not unsuitable.</p> |
| <p><i>D6Q2: Are there are any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.</i></p> | <p>When a lending conversation is undertaken for a packaged home loan product which may include the home loan and related products (such as Home and Contents Insurance, Credit Cards and Savings products), it is common practice for the home loan to be the first product applied for. Where the relevant information has been collected for the home loan, we note that it may be difficult for a no advice conversation to then take place in relation to the other products acquired as part of that package.</p> |
| <p>ASIC Proposal 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><i>D7Q1: Do you think it would be useful to provide guidance on the following arrangements between the issuer and the distributor:(a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;</i></p> <p><i>(b) the format of information exchange; and</i></p> <p><i>(c) the mode of delivery and communication of information? If so, what considerations are relevant to these factors?</i></p> | <p>We note that the implementation of the required technology for information exchange considered in the guidance is already likely to require significant expenditure from industry. We would appreciate some guidance in situations where the distributor sells on behalf of multiple issuers and will need to exchange information with each issuer.</p> |
| <p><i>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?</i></p> | <p>As per our response at C10Q4, we note that there may be significant competition issues which may arise here and further clarification in this regard would be valuable.</p> <p>We also note that the relationship between the parties and the type of distribution model will impact the viability of information exchange. In many cases where loans are sold on behalf of a third party, a financial institution may only originate this product and full responsibility for assessment and settlement will be assumed by the lender (who is the issuer of the product). In such circumstances it is likely that the meaningful exchange of information may be quite limited.</p> |

| ASIC Proposal/Question | Westpac Feedback |
|---|---|
| E: PROPOSED GUIDANCE ON OUR ADMINISTRATION OF THE DESIGN AND DISTRIBUTION OBLIGATIONS | |
| <p>ASIC Proposal 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)); (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 these obligations to apply to a broad range of financial products.</p> | |
| <p><i>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?</i></p> | <p>Westpac agrees with the factors that will be taken into account as noted in the RG, however we would appreciate further clarity on procedures to be followed when an exemption is sought by a financial institution.</p> |
| <p><i>E1Q2: Are there any additional factors that you consider we should take into account?</i></p> | <p>Westpac does not have any comments on additional factors at this time.</p> |
| <p>ASIC Proposal 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.</p> | |
| <p><i>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?</i></p> | <p>Westpac acknowledges that the onus is on an applicant to apply for relief. It would be helpful however, if further specific examples could be provided of the circumstances where relief may be considered.</p> |