



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 20, 240 Queen Street,
Brisbane QLD 4000

Mail address for Brisbane office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075

www.asic.gov.au

Mr Andrew Hall
Executive Director and Chief Executive Officer
Insurance Council of Australia

By email only:
ahall@insurancecouncil.com.au

18 July 2023

Dear Mr Hall

ASIC review of insurance target market determinations

I write to share with the Insurance Council of Australia and its members the findings of a recent and targeted ASIC review of insurance target market determinations (TMDs).

As you are aware, the design and distribution obligations (DDO) regime in the *Corporations Act 2001* (Corporations Act) commenced on 5 October 2021. A TMD is a key requirement under the DDO regime and sets out, among other things, the class of consumers for whom the product is likely to be appropriate for their likely objectives, financial situation and needs (target market), arrangements for the product's distribution and the review of consumer outcomes and the TMD.

The design and distribution obligations require general insurers and their representatives to have a consumer-centric approach to the design of insurance products, distribute those products in a targeted manner and monitor consumer outcomes to ensure products continue to meet consumer needs.

Reducing the risk of harm to consumers caused by poor product design, distribution and marketing is one of ASIC's strategic priorities, as outlined in ASIC's [Corporate Plan 2022–26](#). This includes pursuing targeted, risk-based surveillances and taking enforcement action when appropriate.

ASIC reviewed over 100 TMDs across general and life insurance products. Each TMD was examined against the design and distribution obligations in the Corporations Act and [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274).

This initial review was a targeted, risk-based exercise, which focused on the TMDs of a sample of general and life insurance products considered by ASIC to be higher risk and/or to potentially provide low value to consumers. General insurance product TMDs reviewed by ASIC included a sample of mortgage protection, mobile phone, travel and pet insurance.

ASIC is considering follow-up action arising from this initial review and ongoing scrutiny of general insurers' compliance with the DDO regime more broadly.

Below, I set out the key findings from our review and outline how we consider TMDs need to be improved.

Defining the target market for the product (including its key attributes)

DDO obligations

- A TMD must contain certain information as set out in s994B(5) of the Corporations Act. This includes a description of the class of retail clients that comprises the target market for the product: see s994B(5)(b) of the Corporations Act.
- The target market for the product must be described in objective parameters and with sufficient granularity in order to meet the 'appropriateness requirements' in s994B(8) of the Corporations Act. An issuer would be in breach of its obligations if it described the target market too broadly: see [RG 274](#).83–RG 274.86.

Our findings

- We saw some good practices in the TMDs we reviewed. For example, some TMDs described the target market by including objective and tangible parameters, such as:
 - product eligibility requirements and other key elements of cover such as limitations and exclusions
 - details about the consumer's financial situation including their ability to pay potential costs under the policy (e.g. premiums, excesses, co-payments, upfront costs and costs above sub-limits or annual limits), and
 - clear definition of a 'negative target market' (i.e. the class of consumers for whom the product would *not* be suitable).

- Some TMDs described target markets with less detail than may be needed:
 - Some TMDs referred to consumers' objectives and needs (i.e. the objective of obtaining cover) but failed to include details of the consumers' financial situation (i.e. their ability to pay premiums and other costs that may be incurred under the policy). Insurers must consider each of the objectives, financial situation and needs of the consumers in the target market in order to meet the appropriateness requirements in s994B(8) of the Corporations Act: see [RG 274.64](#)–[RG 274.66](#) and [RG 274.72](#).
 - While TMDs described the products and their key attributes, many did not include an explanation of why the product is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market. Such a statement is generally necessary to show the insurer has critically assessed the product and met the appropriateness requirements in s994B(8) of the Corporations Act: see [RG 274.68\(c\)](#).
 - Some TMDs referred to product value. In our view, the extent to which a product provides value to consumers in the target market is an important factor in complying with the appropriateness requirement: see [RG 274.94](#) and Example 5 in [RG 274](#).
 - Some TMDs used broad statements to describe the target market. When pursuing a broader target market, the issuer has a greater responsibility to justify how the product is likely to be suitable for such a wide range of consumers. The DDO obligations are intended to reduce the risk of low value products being sold to consumers: see [RG 274.40](#). Value metrics (e.g. claims ratios) should be considered by insurers when preparing and reviewing their TMDs.

Distribution conditions

DDO obligations

- A TMD must specify any conditions and restrictions on retail product distribution conduct in relation to the product (distribution conditions): see s994B(5)(c) of the Corporations Act.
- Distribution conditions should be specified in the TMD with objective and tangible parameters so that these conditions are objectively clear: see [RG 274.97](#).

Our findings

- Some TMDs we reviewed only included broad statements about how the distribution channels and conditions would ensure that distribution of the product would be within the target market. For example, some TMDs had statements about application processes being tailored or distribution

being limited to authorised representatives without further context or explanation.

- TMDs should describe why the distribution conditions will make it likely that products will be distributed to the target market (e.g. the use of call scripts, staff training and accreditation, staff monitoring, 'knockout questions'). Without such an explanation, it is unlikely that an insurer can reasonably conclude that its distribution conditions will direct distribution of products to consumers in the target market: see [RG 274.101](#).

Review triggers

DDO obligations

- A TMD must specify events and circumstances that would reasonably suggest that the TMD is no longer appropriate (review triggers): see s994B(5)(d) of the Corporations Act.
- Review triggers are a prompt to stop distributing the product until the TMD is reviewed and, if necessary, remade: see [RG 274.102](#).
- A review trigger is an event or circumstance that reasonably suggests a TMD may no longer be appropriate.

Our findings

- A number of TMDs we reviewed included review triggers that were described too broadly. For example, review triggers associated with claims ratios, claims outcomes, product performance and complaints were usually not described objectively or with granularity (e.g. they referred to 'significant changes in the product metrics', 'the claims experience of this product' or 'unexpectedly high number of complaints').
- Insurers should identify review triggers using data such as claims ratios, number of policies sold, policy lapse and cancellation rates, average claims durations, claims denied and withdrawn, and the nature and number of complaints: see [RG 274.107](#) and Example 6 in [RG 274](#).
- Review triggers should differ based on the nature of the target market. For example, stricter review triggers may be appropriate if:
 - vulnerable consumers may be within the target market, or
 - the performance of the product may disproportionately affect particular classes of consumers.
- Insurers should also consider whether granular metrics (e.g. a specific claims ratio, specific policy lapse rate or lapse rates within the cooling-off period) should be used as part of their internal governance processes for their TMD reviews.

Distributor reporting requirements

DDO obligations

- A TMD must specify the reporting period for when the distributor must provide information to the insurer about the number of complaints about the product: see s994B(5)(g) of the Corporations Act.

Our findings

- In the TMDs we reviewed, the typical period for distributors reporting complaints data varied from one to six months.
- At least one TMD did not include a specific reporting period, but referred to reporting requirements in the insurer's contract with the distributor. Reporting timeframes for complaints should be explicitly stated in the TMD.

Review periods

DDO obligations

- A TMD must specify review triggers that would reasonably suggest that the TMD is no longer appropriate, with specific periods for initial and ongoing reviews: see s994B(5)(d), (e) and (f) of the Corporations Act.

Our findings

- Most TMDs we reviewed included:
 - initial review periods within one or two years from the date the TMD was made, and
 - ongoing review periods of two or three years after the initial review.
- When specifying review periods, insurers should consider the following:
 - An initial review period of one year for new TMDs is more likely to ensure that any problems with the TMD can be addressed quickly.
 - Ongoing review periods of no less than two years are more likely to ensure TMDs remain appropriate and insurers can apply the insights obtained from their review triggers.
 - A significant impact on the product such as a change to the TMD based on a review trigger, a significant dealing outside the target market or a change in a product's distribution channel would suggest that the TMD's next ongoing review should be within 12 months.

Going forward

ASIC initially adopted a facilitative compliance approach when the DDO regime was implemented in 2021. Our approach has shifted to closer scrutiny of design and distribution obligations with active supervision and

enforcement. ASIC has already issued its first interim stop orders for deficiencies in TMDs for insurance products: see [Media Release \(23-174MR\)](#) *ASIC issues 38 DDO stop orders for pet insurance products* (29 June 2023). We have commenced civil penalty proceedings against a distributor of an investment product and an issuer of a credit product for alleged DDO breaches. We are also considering further stop orders and have several other DDO-related investigations underway.

General insurers should consider the above findings when reviewing their TMDs. They should have well embedded DDO compliance processes, robust information flows with distributors and whole-of-product life cycle DDO governance.

Insurers should also not adopt a 'set-and-forget' approach to their TMDs. Insurers should demonstrate a consumer-first mindset through their design and distribution obligations and proactively refine their TMDs and products over time in response to any poor consumer outcomes that are identified.

We will continue to supervise the general insurance sector through a 'DDO lens' to ensure the benefits and consumer protections of the DDO regime are realised.

If you wish to discuss our TMD review or its findings, please contact Susan Conley at susan.conley@asic.gov.au or Ward Sutcliffe at ward.sutcliffe@asic.gov.au.

Yours sincerely,

Rhys Bollen
Senior Executive Leader – Credit, Banking and General Insurance
Regulation and Supervision