

# EXPOSURE DRAFT



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## Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Stuart Robert **[DRAFT ONLY—NOT FOR SIGNATURE]**  
Assistant Treasurer

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## 1 Name

This instrument is the *Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2018</i> commences.	
3. Schedule 2	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.



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Amendments in relation to design and distribution obligations **Schedule 1**

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## Schedule 1—Amendments in relation to design and distribution obligations

### *Corporations Regulations 2001*

#### **1 After Part 7.8**

Insert:

### **Part 7.8A—Design and distribution requirements relating to financial products for retail clients**

#### **7.8A.01 Regulated persons**

- (1) This regulation is made for the purposes of paragraph (c) of the definition of *regulated person* in subsection 994A(1) of the Act.

##### *Sale amounting to indirect issue*

- (2) A person (the *offeror*) is prescribed in relation to a financial product if:
- (a) a person (the *issuer*) issues the product to the offeror; and
  - (b) the product was issued with a Product Disclosure Statement, or a document similar to a Product Disclosure Statement, being prepared; and
  - (c) the offeror offers the product to a retail client within 12 months after it was issued; and
  - (d) either:
    - (i) the issuer issued the product with the purpose mentioned in subparagraph 1012C(6)(c)(i) of the Act; or
    - (ii) the offeror acquired the product with the purpose mentioned in subparagraph 1012C(6)(c)(ii) of the Act.

Note: Subsection 1012C(7) of the Act affects whether the issuer or offeror is taken to have a particular purpose.

##### *Sale amounting to indirect off-market sale by controller*

- (3) A person (the *offeror*) is prescribed in relation to a financial product if:
- (a) the person offers the product to a retail client within 12 months after the sale of the product by a person (the *controller*) who controlled the issuer of the product at the time of the sale; and
  - (b) either:
    - (i) at the time of the sale by the controller, the product was not able to be traded on any licensed market; or
    - (ii) although the product was able to be traded on a licensed market at that time, the sale by the controller did not occur in the ordinary course of trading on a licensed market; and

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- (c) a Product Disclosure Statement, or a document similar to a Product Disclosure Statement, was prepared by, or on behalf of, the controller before the sale of the product by the controller; and
  - (d) either:
    - (i) the controller sold the product with the purpose mentioned in subparagraph 1012C(8)(d)(i) of the Act; or
    - (ii) the person to whom the controller sold the product acquired the product with the purpose mentioned in subparagraph 1012C(8)(d)(ii) of the Act.

Note: Subsection 1012C(9) of the Act affects whether the controller or the person to whom the controller sold the product is taken to have a particular purpose.

### *Product distributors*

- (4) A product distributor within the meaning of section 910A of the Act (as modified by the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682*) is prescribed in relation to the following financial products:
  - (a) a basic deposit product;
  - (b) a general insurance product;
  - (c) a bundled consumer credit insurance product (within the meaning of that instrument).

### **7.8A.02 Target market determinations for financial products**

- (1) This regulation is made for the purposes of paragraphs 994B(1)(c) and 994B(2)(b) of the Act.
- (2) For a financial product specified in column 2 of an item of the following table:
  - (a) the person specified in column 3 of the item is required to make a target market determination for the product; and
  - (b) the determination must be made before the time or event (if any) specified in column 4 of the item.

<b>Item</b>	<b>Column 2 For this financial product...</b>	<b>Column 3 this person is required to make a target market determination...</b>	<b>Column 4 before this time or event.</b>
1	a simple corporate bonds depository interest where the bonds are to be issued under a 2-part simple corporate bonds prospectus	the person required to prepare a disclosure document for the bonds.	N/A
2	a debenture of a body that is: <ul style="list-style-type: none"><li>(a) an Australian ADI; or</li><li>(b) registered under section 21 of the <i>Life Insurance Act 1995</i></li></ul>	the issuer of the product.	N/A



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Amendments in relation to design and distribution obligations **Schedule 1**

Item	Column 2 For this financial product...	Column 3 this person is required to make a target market determination...	Column 4 before this time or event.
3	a basic banking product within the meaning of section 961F of the Act	the issuer of the product.	N/A
4	rights of a retail client in connection with an IDPS to which, but for this regulation, Part 7.8A of the Act would not apply	the operator of the IDPS.	N/A
5	a financial product that includes a custodial or depository service, being a financial product to which, but for this regulation, Part 7.8A of the Act would not apply	the issuer of the product.	N/A
6	a financial product that is issued and acquired as described in subregulation 7.8A.01(2)	the issuer of the product (within the meaning of paragraph 7.8A.01(2)(a))	the product is acquired by the offeror (within the meaning of subregulation 7.8A.01(2)).
7	a financial product to which subregulation 7.8A.01(3) applies	the issuer of the product	the offer mentioned in paragraph 7.8A.01(3)(a) is made.

Note: Subparagraph 994B(2)(b)(ii) of the Act has the effect that, if there is no time or event specified in column 4 of the table for a particular financial product, the target market determination must be made before any person engages in retail product distribution conduct (as defined in subsection 994A(1) of the Act) in relation to the product.

(3) In subregulation (2):

**IDPS** and **operator**, in relation to an IDPS, have the meanings given by Part 7.6 of the Act as modified by ASIC Class Order [CO 13/763].

Note: ASIC Class Order [CO 13/763] modifies the application of Part 7.6 of the Act (other than Divisions 4 and 8) in relation to an operator of an IDPS by the insertion of section 912AD. The definitions of **IDPS** and **operator** are in subsection 912AD(42).

## 7.8A.03 Financial products for which target market determinations are not required

For the purposes of paragraph 994B(3)(f) of the Act, subsections 994B(1) and (2) of the Act (which require target market determinations for financial products) do not apply to the following:

- (a) an interest in an eligible rollover fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
- (b) a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
- (c) a medical indemnity insurance product;

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## Schedule 1 Amendments in relation to design and distribution obligations

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- (d) a depository interest in foreign fully paid ordinary shares, being shares in relation to which, if they were offered directly to retail clients, Part 7.8A of the Act would not apply.

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Amendments in relation to design and distribution obligations **Schedule 1**

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## Schedule 2—Amendments in relation to product intervention orders

### *Corporations Regulations 2001*

#### **1 Subregulation 7.1.07A(2)**

Repeal the subregulation, substitute:

- (2) For the purposes of subsection 765A(3) of the Act, an arrangement that is an extended warranty arrangement (within the meaning of subregulation 7.9A.01(2)) is not a financial product for the purposes of the provisions of Chapter 7 of the Act except Part 7.9A.
- (3) For the purposes of paragraph 765A(1)(y) of the Act, any other arrangement covered by subregulation (1) is not a financial product.

#### **2 Subregulation 7.1.07D(1)**

Repeal the subregulation, substitute:

- (1) For subsection 765A(3) of the Act, a funeral expenses policy is not a financial product for the purposes of the provisions of Chapter 7 of the Act except Part 7.9A.

#### **3 After Part 7.9**

Insert:

## **Part 7.9A—Product intervention orders**

### **7.9A.01 Financial products for which product intervention orders may be made**

- (1) For the purposes of subsection 764A(3) of the Act, each of the following is declared to be a financial product for Part 7.9A of the Act:
  - (a) a funeral expenses policy as defined in subregulation 7.1.07D(2);
  - (b) an extended warranty arrangement;
  - (c) a short term credit contract.
- (2) For paragraph (1)(b), an arrangement is an *extended warranty arrangement* if the arrangement:
  - (a) is between a person (the *warranty provider*) and a person who acquired goods or services as a consumer (within the meaning of section 3 of the Australian Consumer Law) (the *consumer*); and
  - (b) provides that the warranty provider will or may do any of the following (unconditionally or on specified conditions) if all or part of the goods or services are defective:
    - (i) repair or replace goods or part of them;
    - (ii) provide again or rectify the services or part of them;
    - (iii) wholly or partly recompense the consumer; and

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(c) is an incidental product (within the meaning of section 763E of the Act).  
To avoid doubt, a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law is not an extended warranty arrangement.

- (3) For paragraph (1)(c), a contract is a *short term credit contract* if:
- (a) credit (within the meaning of subsection 3(1) of the National Credit Code) is or may be provided under the contract; and
  - (b) the National Credit Code does not apply to the provision of credit under the contract because of subsection 6(1) of that Code.

Note: Subsection 6(1) of the National Credit Code excludes the application of the Code where, under the contract, the credit is provided for not more than 62 days and credit fees and charges, and interest charges, under the contract are less than specified amounts.

- (4) In this regulation:

*Australian Consumer Law* means Schedule 2 to the *Competition and Consumer Act 2010*.

*National Credit Code* means the National Credit Code as defined by the *National Consumer Credit Protection Act 2009*.