



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

13 November 2018

Ms Elizabeth Williamson

Division Head

Consumer and Corporations Policy Division

The Treasury

Langton Crescent

PARKES ACT 2600

Via email: [ProductRegulation@treasury.gov.au](mailto:ProductRegulation@treasury.gov.au)

Dear Ms Williamson

**Submission – draft Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018**

Thank you for providing an opportunity to comment upon the draft *Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018* ('draft Regulations').

**Efficacy of the draft Regulations depends on the primary legislation**

Firstly, the efficacy of any regulation depends on whether the primary legislation will meet its intended objectives. AIST repeats our advocacy that the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* ('the Bill') will not meet its intended objectives. We briefly outline our key concerns with the Bill:

- Product 'manufacturers' should be included and come under the target market or product intervention proposals. The Financial Services Royal Commission has witnessed many examples where related parties such as investment managers have not acted in members' best interest. The Bill is also contrary to international trends in this (and indeed other) respects.
- The Bill cannot work meaningfully or effectively in an environment where there are over 40,000 products and systemic carveouts from disclosure and reporting to APRA exist. These carveouts must be fixed first. We **enclose** a summary of these key carveouts.

**The draft Regulations**

We now turn to the draft Regulations.

*Draft Regulation 7.8A.01 – regulated persons and draft Regulation 7.8A.02 – Target market determinations*

AIST disagrees with the impact of the Bill – rather than the draft Regulation which merely reflects the Bill – in that target market responsibilities are triggered only if a Product Disclosure Statement is issued.

AIST has strongly advocated that all parts of the product manufacture and distribution chain should be caught, including product manufacturers.

#### *Draft Regulation 7.8A.03 – exemptions*

AIST does not disagree with the proposed exemptions from complying with the target market determination requirements. In particular, we support the exemption for defined benefit funds, given the onerous requirements which are already applicable.

Our concern is that the Bill itself does not provide any principles for determining when an exemption should be granted. This could lead to unsubstantiated gaps in the coverage of the target market requirements.

#### **Additional matters which need clarification in ASIC Guidance**

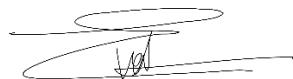
Thirdly, we outline those matters which we believe need inclusion within any forthcoming ASIC guidance. We have done this in order to highlight important matters which are currently not covered by either the Bill or the draft Regulations:

1. Greater guidance is needed regarding what factors to take into account when determining target markets.
2. Principles for guiding triggers to target market reviews.
  - a. Target market reviews should include examining product take up and consumer outcomes.
3. What are the triggers for the exercise of the Product Intervention Power.
  - a. ASIC Guidance could include the timeliness of ASIC intervention, and that an assessment of the impact on consumer rights be conducted.
  - b. Examples of 'significant' detriment based on the type of investors and consumers involved (sophisticated or otherwise) could be included.

AIST would be pleased to be involved in any consultations regarding the development of ASIC guidance.

For further information regarding our submission, please contact Karen Volpato, Senior Policy Advisor at 0419127496 or at [kvolpato@aist.asn.au](mailto:kvolpato@aist.asn.au) .

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eva Scheerlinck', is written over a horizontal line.

Eva Scheerlinck

**Chief Executive Officer**



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SUPERANNUATION TRUSTEES

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