



ASIC
Australian Securities &
Investments Commission

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Consumer and Corporations Policy
Division
The Treasury
Langton Crescent
PARKES ACT 2600

13 November 2018

Dear Ms Moore

The Australian Securities & Investments Commission (**ASIC**) welcomes the opportunity to comment on the exposure draft of the Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018 (**regulations**).

The regulations would complement the operation of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 (Bill)* when enacted. We have previously outlined our support for and feedback on the design and distribution and product intervention regimes that will be introduced under this Bill.

We support the introduction of the regulations, which will enhance the design and distribution and product intervention regimes by altering the products and persons in relation to which the design and distribution regime applies and the products that may be subject to a product intervention order by ASIC. We note in this submission that the regulations could be used to give effect to two proposals set out in our submission on the revised exposure draft of the Bill¹:

- to apply the design and distribution obligations to persons who arrange for or advise on the establishment of a self-managed superannuation fund (**SMSF**); and
- to make all buy now pay later arrangements subject to the product intervention power.

¹ [ASIC submission](#), Design and distribution obligations and product intervention power: Revised exposure draft legislation, August 2018.

1. Design and distribution obligations

1.1 Additional products subject to the design and distribution obligations

We support application of the design and distribution obligations to the following financial products and persons as proposed in the regulations:

- depositary interests in simple corporate bonds;
- debentures;
- basic banking products;
- rights of a retail client in connection with an investor directed portfolio service;
- products, and offerors of products, sold in situations that amount to indirect issues and off-market sales; and
- authorised distributors of basic deposit products and risk insurance products.

1.2 Self-managed superannuation funds

We note that the regulations could be used to give effect to our proposal to apply the design and distribution obligations regime to persons (SMSF promoters) who arrange for, or advise on, the establishment of SMSFs.

Our examination of the SMSF industry has identified concerns with consumers being encouraged or advised to open an SMSF when they only have a low balance, and do not properly understand the risks and ongoing costs involved. Applying the design and distribution obligations to SMSFs could address these issues by requiring service providers of SMSFs to promote and recommend these products appropriately.

We consider that extending the design and distribution obligations to cover SMSF promoters could have the potential to improve consumer outcomes. It would be appropriate to require SMSF promoters to determine a target market for SMSFs and market, promote or otherwise engage in distribution conduct in relation to the establishment of an SMSF in accordance with that determination. Such an extension could be implemented through regulations.

2. Product intervention power

2.1 Products subject to the Product Intervention Power

As indicated in previous submissions to these reforms, we think ideally the product intervention power should extend to products regulated by the *Australian Securities and Investments Act 2001* but which are not regulated by either the *Corporations Act 2001* or the *National Consumer Credit Protection Act 2009*. This approach would align the power with the boundaries of ASIC's regulatory responsibility.

However, we are supportive of the proposal in the regulations to at least extend the scope of the product intervention power to include the following products, which are not regulated by either the *Corporations Act 2001* or the *National Consumer Credit Protection Act 2009*:

- funeral expenses insurance;

- certain extended warranties that are functionally equivalent to add-on insurance; and
- short-term credit that is currently not regulated under the National Credit Act.

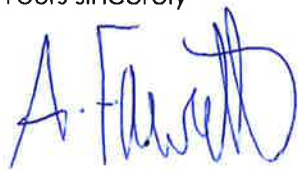
2.2 Buy now pay later arrangements

We note that the regulations could also give effect to our proposal to bring all buy now pay later arrangements into the scope of the product intervention power.

As set out in our submission on the revised exposure draft legislation², the buy now pay later sector is growing rapidly driven by consumer demand, but is lightly regulated. Despite being within ASIC's regulatory responsibility, many providers of buy now pay later arrangements are likely to fall outside the scope of the product intervention power.

The comprehensive inclusion of buy now pay later arrangements within the product intervention regime would enable ASIC to address significant consumer detriment it identifies in this sector.

Yours sincerely



Andrew Fawcett
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Australian Securities and Investments Commission

² [ASIC submission](#), Design and distribution obligations and product intervention power: Revised exposure draft legislation, August 2018, pp 28 - 29.