



12 November 2018

By email: ProductRegulation@treasury.gov.au

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

Dear Sir/Madam

Design and Distribution Obligations and Product Intervention Powers Regulations

Thank you for the opportunity to comment on the exposure draft *Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018* (Cth) (**the Regulations**) and explanatory materials.

The following organisations have contributed to and endorsed this submission:

- CHOICE
- Consumer Credit Legal Service WA
- Consumer Action Law Centre
- Financial Counselling Australia
- Financial Rights Legal Centre

Details about each contributing organisation are contained in **Appendix 1**.

Our comments relate to the extension of the design and distribution obligations (**DADOs**) to basic banking products, and the extension of the product intervention powers (**PIPs**) to funeral expenses insurance, extended warranties and short-term credit. We strongly support the extension of these obligations.

We reiterate our previous submissions that both DADOs and PIPs should apply to all financial products, as defined in the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). In the alternative, we strongly recommend that DADOs be further extended by regulation to consumer credit,

funeral expenses insurance, extended warranties and short-term credit to ensure the obligations appropriately mirror the PIP regime.

Our comments are detailed more fully below.

Design and distribution obligations

Basic banking products

We support the Regulations extending the DADO regime to basic banking products. As noted in our recent evidence at the Senate Economics Legislation Committee hearing on the PIP and DADO legislation, some basic banking products can attract fees that are quite significant for Australians on low-incomes.¹ This was an issue canvassed at length during Round 4 of the Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry (**the Royal Commission**).²

We note that people in receipt of Centrelink benefits are generally entitled to a fee-free basic bank account, which is often the most suitable account for their circumstances. There are at least 11 banks currently offering these accounts.³ There would be significant benefits to consumers if the DADOs regime applied to basic banking products, as it would reduce distribution of higher fee accounts to low income people who are eligible for more suitable no or low fee options.

We also provided evidence at the Senate Economics Legislation Committee hearing about the benefits of applying the DADOs to term deposit rollovers. Erin Turner from CHOICE noted:

*CHOICE has had older Australians come to us with issues with term deposit rollovers. They thought they had an opportunity to access their money. There was an automatic rollover. They missed it. They didn't understand necessarily the impact that would have, particularly when they hit a retirement phase or a different phase within their retirement.*⁴

As such, we support DADOs applying to term deposit rollovers. We should avoid a set-and-forget approach being used to keep customers in unsuitable products if there are more suitable or better value deposit products available.

As outlined above, there are distinctions between different basic banking products, which means some are more suitable for certain classes of consumers than others. In line with our preference for broad

¹ Senate Economics Legislation Committee, Proof Committee Hansard, *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*, 31 October 2018, p. 7, available at: https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/5bd43047-942a-4f53-8121-d4d9059b690b/toc_pdf/Economics%20Legislation%20Committee_2018_10_31_6730.pdf;fileType=application%2Fpdf#search=%22committees/commsen/5bd43047-942a-4f53-8121-d4d9059b690b/0000%22.

² For example, Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry, Hearing Transcript, 6 July 2018, available at: <https://financialservices.royalcommission.gov.au/public-hearings/Documents/transcripts-2018/transcript-6-july-2018.pdf>.

³ Australian Banking Association, *Affordable Banking*, access 12 November 2018, available at: <https://www.betterbanking.net.au/better-products/affordable-banking/>.

⁴ Above n. 1, p 7.

application of the DADO regime without loopholes, we consider that extension of DADOs to basic banking products is appropriate.

Other products

We maintain our position that linking the application of the new obligations to disclosure requirements in the *Corporations Act 2001* (Cth) (**Corporations Act**) unnecessarily narrows the scope of the DADOs. We recommend that the obligations apply to financial products as defined in the ASIC Act, which would include regulated and unregulated credit. This would ensure that harmful credit products and financial products that are designed to exploit regulatory loopholes would be captured.

In the alternative we recommend that the Minister use the regulation-making power to apply the DADO regime to funeral expenses insurance, extended warranties and short-term credit, which would correspond with the PIP regulations. Further, we recommend the Minister extend coverage by regulation to credit products that pose a considerable risk of harm to vulnerable Australians, such as payday loans, consumer leases, credit cards and 'buy now pay later' products.

Product intervention powers

We maintain our position that the PIPs should apply to 'financial products' as defined in the ASIC Act. However, in the alternative, we support extending PIPs by regulation to funeral insurance, short-term credit and extended warranties. As noted above, we recommend introducing corresponding regulations in relation to the DADO regime. We also support the regulations coming into effect at the same time as the relevant provisions in the revised Bill.

We have provided further details about problematic features of funeral insurance, short-term credit and extended warranties in our submission on the revised exposure draft of PIPs and DADOs legislation and explanatory materials.⁵

In relation to the proposed definition of 'extended warranty arrangement' in the Regulations,⁶ we recommend the Regulations or explanatory materials clarify that the term 'defective' includes any failure to meet the consumer guarantees set out in the Australian Consumer Law.⁷ Further we recommend that Regulation 7.9A.01(2)(b) be amended to add the circumstance where a warranty provider might enable a consumer to terminate a contract without penalty as a remedy. This would ensure all remedies available to consumers for failures to meet the consumer guarantees under the Australian Consumer Law are covered by the definition.⁸

⁵ Joint Consumer Submission, Revised Exposure Draft *Design and Distribution Obligations and Product Intervention Powers* Bill, 15 August 2018, pp. 16-19, available at: <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2018/08/180815-Joint-Submission-Revised-exposure-draft-PIP-DADO.pdf>; See also, Consumer Action Law Centre, *Submission: Inquiry into credit and financial services targeted at Australians at risk of financial hardship*, 9 November 2018, available at: <https://policy.consumeraction.org.au/2018/11/12/inquiry-targeted-australians-risk-financial-hardship/>.

⁶ *Corporations Regulations 2001* (Cth), Regulation 7.9A.01(2).

⁷ Australian Consumer Law ss 51-63.

⁸ Australian Consumer Law ss 259-270.

We also recommend clarifying the reference to 'ordinary warranties against defects' in the explanatory materials.⁹ We understand this refers to ordinary warranty against defects representations made by suppliers or manufacturers that are generally no cost. A warranty against defects is provided in addition to consumer guarantees and does not limit or replace them.¹⁰

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

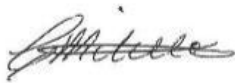
Yours Sincerely,



Katherine Temple
Acting Director Policy & Campaigns
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⁹ *Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018* (Cth) Explanatory Materials p. 12.

¹⁰ For more information, see <https://www.accc.gov.au/business/treating-customers-fairly/offering-warranties/warranties-against-defects>.

APPENDIX 1

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Consumer Credit Legal Service (WA) Inc

Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) is a not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of credit, banking and finance, and consumer law. CCLSWA also takes an active role in community legal education, law reform and policy issues affecting consumers. In the 2017 / 2018 financial year, CCLSWA provided comprehensive legal advice to 914 clients.

Financial Counselling Australia

Financial Counselling Australia (**FCA**) is the peak body for financial counsellors in Australia. Financial counsellors assist people in financial difficulty by providing information, support and advocacy. They work in non-profit, community organisations and their services are free, independent and confidential.

Financial Rights Legal Centre

Financial Rights Legal Centre is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. Financial Rights operates the National Debt Helpline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling.

Financial Rights took over 25,000 calls for advice or assistance during the 2016/2017 financial year.

