



Updated amendments to the design and distribution obligations

The Design and Distribution Obligations (DDO) are intended to help consumers obtain appropriate financial products by requiring issuers of financial products to determine an appropriate target market for these products, and requiring issuers and distributors to take reasonable steps to ensure that products are distributed accordingly. The obligations require issuers and distributors to develop and maintain effective product governance arrangements across the life cycle of financial products. This will promote better provision of products to consumers that are likely to be appropriate for them.

The DDO regime extends to most financial and credit products regulated by ASIC, except where they have been carved out explicitly under the legislation. The regime provides the Minister with a broad regulation-making power to exempt or include any financial product, and ASIC with exemption and modification powers to provide relief to specific persons or financial products, or a class of persons or financial products. These provide the flexibility necessary to future-proof the DDO regime to ensure its ongoing relevance and effectiveness.

The DDO regime was recommended by the 2014 Financial System Inquiry and was further supported by the Financial Services Royal Commission, which recommended extending the regime to all financial and credit products within ASIC's regulatory responsibility. Following the passage of legislation in April 2019, the regime was due to commence in April 2021. However, ASIC deferred the commencement by a further 6 months to 5 October 2021, so industry participants could focus on immediate priorities and the needs of their customers, given the significant impact of COVID-19 on the Australian economy.

Treasury has received feedback from stakeholders as industry works towards implementing the requirements prior to the regime's commencement. In light of feedback received from stakeholders, the Government intends to make a number of amendments to achieve its intended operation of these reforms. These amendments are necessary to clarify the law, to ensure a consistent application of the law, and so that the regime remains fit-for-purpose.

The proposed changes will seek to:

- Clarify that margin lending to corporates is exempt from DDO obligations, consistent with the intention that all margin lending is to be exempt from DDO.
- Clarify employees of licensees are not subject to their own separate set of DDO obligations – this was not an intended consequence of the regime.
- Ensure 31-day term deposits fall within the DDO regime which is consistent with Government's intention to capture all basic deposit products.

- Provide consistency in the application of retail and wholesale investor definitions across the Corporations Act by ensuring it extends to the DDO regime.
- Exempt foreign cash settled immediately from the DDO regime, as the risk for consumers is relatively low.
- Exempt non-cash-payment facilities (NCPFs) from the DDO regime except for certain facilities, specifically credit and debit card facilities and stored value facilities – broadly NCPFs are not standalone services and provide a facility for consumers to make non-cash payments, posing lesser risk to them.
- Removing the requirement for distributors to report whether they have received a complaint or acquired information requested by the issuer, including where there are nil complaints or nil information. Distributors will still be required to report to issuers, complaints and other requested information that they receive, assisting issuers to assess whether their product governance arrangements are appropriate and their products are meeting the needs of consumers.
- Clarify that where a product disclosure statement (PDS) is given in the course of providing personal advice as required by law, this conduct is within the scope of excluded conduct, consistent with the original intention of excluded conduct.
- Expand the employer exemption to ensure that employers are not regulated as distributors when providing a PDS for their default fund product to employees, consistent with the original intention that employers not be subject to the DDO regime where their conduct relates to default products. These changes will have no effect on the form of the PDS.
- Exempt the Government's Cashless Debit Card and the BasicsCard from the DDO regime, as the key design and distribution features of these products are set out in legislation, consistent with the treatment of other products which are also subject to special product-specific rules under legislation and are exempt from the DDO regime, including MySuper products.

To provide certainty on the application of the DDO regime in the period prior to the Government making these amendments, ASIC, following a targeted consultation, will consider making short-term interim changes consistent with the Government's policy intentions, using its modification and exemption powers under s994L of the Corporations Act. This will allow the Government time to make these changes permanent and will avoid industry needing to implement product governance arrangements, ahead of commencement, for products that are ultimately not intended to be caught by these reforms.

Treasury will continue to engage with stakeholders leading up to the 5 October 2021 commencement and will consult with industry on the legislative amendments in due course.