



9 February 2018

Manager  
Financial Services Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email (Word and PDF formats)

ProductRegulation@treasury.gov.au

Dear Colleagues

**Design and Distribution Obligations and Product Intervention Power (DDO and PIP respectively):  
Exposure draft December 2017**

ClearView Wealth Limited (ClearView) appreciates the opportunity to provide comments to Treasury in relation to the Exposure Draft and Exposure Draft Explanatory Memorandum for the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*.

ClearView is generally supportive of the measures contained in the Bill to introduce design and distribution obligations in relation to financial products. However, it is concerned that the reform package released on 21 December 2017 does not provide the same level of protection for all consumers of financial products.

The purpose of this submission is to set out ClearView's detailed views on the design and distribution obligations.

1. About ClearView

ClearView is an ASX-listed financial services company providing quality financial advice and life insurance, investment and superannuation products and services. It includes a registered life insurer, funds management business, superannuation trustee and two financial advice (AFS) licensees. ClearView advisers advise on \$8.9 billion in funds under advice and \$237 million of life insurance premiums under advice. As a product provider, ClearView has \$2.5 billion of funds under management and \$189 million of annual premiums inforce.<sup>1</sup>

Advice, Superannuation and Investment Enquiries  
T 132 977

Life Insurance Enquiries  
T 132 979

GPO Box 4232 Sydney NSW 2001

[www.clearview.com.au](http://www.clearview.com.au)

ClearView Financial Management Limited  
ABN 99 067 544 549 AFS Licence No. 227677

ClearView Life Nominees Pty Limited  
ABN 37 003 682 175 AFS Licence No. 227683 RSE Licence No. L0000802  
Trustee of the ClearView Retirement Plan RSE Registration No. R1001624

ClearView Life Assurance Limited  
ABN 12 000 021 581 AFS Licence No. 227682

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<sup>1</sup> ClearView Annual Report 2017 (as at 30 June 2017)



## 2. Assisting the Customer

ClearView supports the view that customers need assistance in making informed decisions regarding financial products.<sup>2</sup> We also believe that customers make the best financial decisions when they have the assistance of professional financial planners who have the ability to investigate, coach and advise customers throughout their life.

The Exposure Draft does not go far enough to promote financial literacy with clients before they make decisions regarding products that may purchase independently of any financial advice. To ensure customers make informed decisions regarding their financial affairs, it is recommended that customers must demonstrate some type of proficiency regarding the product they are purchasing if they have not received financial advice. This would be similar to the “know your product” rules that pertain to financial advisers before they are permitted to recommend a financial product to a client.<sup>3</sup>

Financial services provider should not merely understand the target client market but have a duty to educate the potential customer on how the product may be used in various scenarios to meet client needs and achieving their financial goals. Part of this education would involve product providers explaining how the various benefits, features and options relate to meeting the client goals and objectives through examples and strategies. More importantly, the financial education should include examples and disclosures on how particular decisions customers make impact upon both the long term and short term cashflow and performance of their investments.

Where customers have poor understanding the risks or benefits of a product, then the distribution of these products should be limited to financial advisers who can provide product recommendation in the context of holistic advice provided to the customer.

An additional issue is where individuals are placed into default products without their informed consent. While MySuper products provide competitively priced vehicles for superannuation, many members are unaware of the underlying costs associated with default life insurance cover that is held within their superannuation accounts. The members are often unaware of how this cost affects the long term performance of their retirement balance. Alternatively, many members are not aware that they may be able to make additional employer salary sacrifice contributions, personal concessional contributions, and/or personal non-concessional contributions to assist in the funding of life insurance premiums within superannuation. This would allow individuals to quarantine SG contributions for retirement funding only, allowing the additional contributions to fund extras in superannuation like life insurance. Again, financial literacy, education and informed consent are key in ensuring that customers make appropriate decisions regarding their financial affairs.

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<sup>2</sup> Exposure Draft Explanatory Memorandum Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, Paragraph 1.3

<sup>3</sup> Section 945A of the Corporations Act.

### 3. Monitoring and Reporting

ClearView supports the idea that product manufacturers (offerors and distributors) need to understand their target market prior to launching or offering products to customers.

There are 24.6 million people<sup>4</sup> living in Australia, and each of them have their own unique objectives, financial situations, and needs. The issues that arise from defining target markets is that if the market is too narrow, then offerors and distributors may exclude customers that need and may benefit from the product. Alternatively, if the target market is too generic and breadth too wide, then there will be no clarity on whether or not the product is suitable for the specific needs and objectives of hypothetical consumers.<sup>5</sup>

An additional concern is the political and legislative risk associated with target market determinations. The Explanatory Memorandum states that when review triggers occur, it is necessary to ensure the target market determination is still relevant.<sup>6</sup> This raises concerns regarding the amount of regulatory change in financial services over the past 10 years, especially in relation to superannuation. The situation may arise where the actual product terms and conditions may have remained the same, and the investment options and profiles may have been unchanged, but as the laws regarding taxation, contributions, conditions of release, lump sum benefits, and income streams have been amended by legislation. This may impact upon target markets and appropriateness of particular products to hypothetical consumers. Considering that legislation is often enacted prior to relevant regulations and interpretations being drafted, it may become difficult to define or redefine the target market determination for particular products until after regulations and interpretive decisions have been issued. We would ask that Treasury take this into consideration with the drafting of the Bill, so that where offerors and distributors make best efforts to make target market determinations, “safe harbor” provisions are available.

ClearView would support the implementation of target market determinations in relation to life insurance. This should extend to life insurance policies within MySuper products, thus reducing benefit erosion on superannuation account balances for members, and establishing the appropriate levels of automatic cover for young people and low income earners. ClearView also believes that where individual consumers need to make choices on group insurance cover, such as the exercise of an individual continuation option, target market determinations and associated obligations should still apply.

ClearView would welcome guidance from Treasury regarding the scope and breadth of the target market determinations. In particular, the specific characteristics that offerors and distributors must address regarding the hypothetical consumer in the target market for life insurance. Where multiple products exist within one PDS (ie – death cover, TPD insurance, trauma insurance, and income protection insurance), it may become difficult to make target market determinations based upon the breadth of the hypothetical consumers that may be appropriate for some life insurance. It would be helpful to understand if target market determinations should be based at the PDS level, or whether separate target market determinations are required for each underlying product. The Explanatory Memorandum lists relevant factors such as: complexity, risk profile, fees, investment needs, and ability to bear losses, which does not provide adequate guidance regarding the relevant factors associated with life insurance policies.<sup>7</sup> It is necessary to understand the factors that can be measured, monitored, reviewed and updated when making target market determinations for life insurance products.

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<sup>4</sup> 3101.0 – Australian Demographic Statistics, June 2017. Australian Bureau of Statistics.

<sup>5</sup> Exposure Draft Explanatory Memorandum Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, Paragraph 1.39.

<sup>6</sup> Exposure Draft Explanatory Memorandum Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, Paragraph 1.43 – 1.49.

<sup>7</sup> Ibid.

#### 4. Exemptions for Particular Financial Products

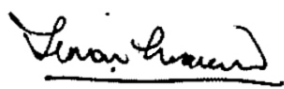
ClearView is not in favour of exemptions for financial products such as MySuper and margin lending facilities.

MySuper products were introduced on 1 July 2013 to provide default arrangements for superannuation members.<sup>8</sup> As at 30 June 2016, there were 14,911,395 MySuper members.<sup>9</sup> With superannuation being the second biggest asset in a person's lifetime, and MySuper members comprising over half of the Australian population, it is imprudent to exclude MySuper from the Design and Distribution Obligations and Product Intervention Powers. While it is acknowledged that trustee obligations regarding MySuper products are comprehensively addressed in existing legislation<sup>10</sup>, it is still necessary for trustees to understand the target market for their product so the design of the default investment mix and default insurance options remain relevant for members. In particular, it would be prudent for trustees to determine how life insurance premiums erode retirement benefits when making target market determinations.

Margin lending offerors and distributors have previously been negligent in their dealings with consumers. Actions taken by ASIC in regards to Storm Financial<sup>11</sup> and Opus Prime<sup>12</sup> demonstrate the significant risks to consumers where target market determinations have not been made. In order to protect the consumer confidence in the financial services sector, ClearView would not support the exemption for this class of financial product.

Please do not hesitate to contact the undersigned if further information is required.

Yours sincerely,



Simon Swanson  
Managing Director

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<sup>8</sup> Stronger Super – MySuper. Australian Government – The Treasury.  
[https://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/information\\_pack/mysuper.htm](https://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/information_pack/mysuper.htm)

<sup>9</sup> Annual MySuper Statistics - June 2016 edition (issued 1 February 2017). APRA.

<sup>10</sup> Superannuation Industry Supervision Act 1993. Superannuation Industry Supervision Regulations 1994. Superannuation Guarantee Administration Act 1992. Superannuation Guarantee Administration Regulations 1993.

<sup>11</sup> <http://www.storm.asic.gov.au/>

<sup>12</sup> [https://en.wikipedia.org/wiki/Opus\\_Prime](https://en.wikipedia.org/wiki/Opus_Prime)