

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017**

**No.     , 2017**

*(Treasury)*

**A Bill for an Act to amend the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009* to improve consumer protection in relation to financial products, and for related purposes**

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1 **A Bill for an Act to amend the *Corporations Act***  
2 ***2001* and the *National Consumer Credit Protection***  
3 ***Act 2009* to improve consumer protection in**  
4 **relation to financial products, and for related**  
5 **purposes**

6 The Parliament of Australia enacts:

7 **1 Short title**

8 This Act is the *Treasury Laws Amendment (Design and*  
9 *Distribution Obligations and Product Intervention Powers) Act*  
10 *2017*.

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No. , 2017 *Treasury Laws Amendment (Design and Distribution Obligations and* 1  
*Product Intervention Powers) Bill 2017*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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### Commencement information

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 2	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Amendments relating to design and distribution of financial products **Schedule 1**

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1 **Schedule 1—Amendments relating to design**  
2 **and distribution of financial products**  
3

4 *Corporations Act 2001*

5 **1 After paragraph 760A(a)**

6 Insert:

7 (aa) the provision of suitable financial products to consumers of  
8 financial products; and

9 **2 Section 760B (after table item 8)**

10 Insert:

8A 7.8A design and distribution requirements relating  
to financial products

11 **3 After Part 7.8**

12 Insert:

13 **Part 7.8A—Design and distribution requirements**  
14 **in relation to financial products, and**  
15 **related ASIC powers**

16 **Division 1—Preliminary**

17 **993DA Definitions**

18 (1) In this Part:

19 *appropriate*: a target market determination for a financial product  
20 is *appropriate* if it satisfies the requirements of  
21 subsection 993DB(10).

22 *dealing* in a financial product has the meaning given by  
23 section 766C, subject to the following:

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## Schedule 1 Amendments relating to design and distribution of financial products

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1 (a) subsection 766C(3) does not apply if the dealing is a sale that  
2 takes place in circumstances described in subsection 707(2),  
3 (3) or (5) or subsection 1012C(5), (6) or (8);

4 (b) paragraphs 766C(4)(c) and (d) do not apply if the dealing is  
5 an offer of securities that needs disclosure to investors under  
6 Part 6D.2.

7 **distribution condition** has the meaning given by  
8 paragraph 993DB(9)(b).

9 **distribution information** has the meaning given by  
10 subsection 993DF(2).

11 **MySuper product** has the same meaning as in the *Superannuation*  
12 *Industry (Supervision) Act 1993*.

13 **regulated person** has the same meaning as in section 1011B,  
14 subject to the following:

15 (a) the references to financial product include references to  
16 securities;

17 (b) regulated person, in relation to a financial product, includes:

18 (i) a seller of the product if the sale takes place in  
19 circumstances described in subsection 707(2), (3) or (5)  
20 (secondary sales that require a disclosure document);  
21 and

22 (ii) an offeror (within the meaning of Chapter 8) of the  
23 product.

24 **responsible person** has the same meaning as in  
25 subsection 1013A(3).

26 **review period** has the meaning given by paragraph 993DB(12)(b).

27 **review trigger** has the meaning given by paragraph 993DB(12)(a).

28 **target market**, in relation to a financial product, means a market  
29 specified in a target market determination for the product.

30 **target market determination** means a determination made as  
31 provided by section 993DB, or by section 993DC.

32 (2) Section 1010C applies for the purposes of this Part.

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Amendments relating to design and distribution of financial products **Schedule 1**

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1 Note: Section 1010C makes special provision about the meaning of *sale* and  
2 *offer*.

## 3 **Division 2—Target market determinations for financial** 4 **products**

### 5 **993DB Target market determinations for financial products**

#### 6 *Application*

- 7 (1) This section applies to a financial product if:
- 8 (a) an offer of the product would need disclosure to investors  
9 under Part 6D.2 (see subsection (4)); or
  - 10 (b) under Part 7.9, a Product Disclosure Statement must be  
11 prepared or given for the product (see subsection (5)); or
  - 12 (c) a recognised offer is proposed to be made in relation to the  
13 product (see subsection (6)); or
  - 14 (d) the product is of a kind prescribed by regulations made for  
15 the purposes of subsection (7) (see subsection (7)).
- 16 (2) This section does not apply to:
- 17 (a) a MySuper product; or
  - 18 (b) a margin lending facility; or
  - 19 (c) a security to which an employee share scheme applies; or
  - 20 (d) an ordinary share in a company; or
  - 21 (e) a financial product of a kind prescribed by regulations made  
22 for the purposes of this paragraph.
- 23 (3) Paragraph (2)(d) does not apply to an ordinary share in a company  
24 if:
- 25 (a) the company's constitution provides that ordinary shares may  
26 be converted into preference shares; or
  - 27 (b) the company:
    - 28 (i) carries on a business of investment in financial  
29 products, interests in land or other investments; and
    - 30 (ii) in the course of carrying on that business, invests funds  
31 subscribed, whether directly or indirectly, after an offer  
32 or invitation to the public (within the meaning of

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## Schedule 1 Amendments relating to design and distribution of financial products

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1 section 82) made on terms that the funds subscribed  
2 would be invested.

### 3 *Target market determinations*

4 (4) If, under Part 6D.2, a person must prepare a disclosure document  
5 for an offer of a financial product, the person must make a target  
6 market determination for the product before a person deals in the  
7 product or provides financial product advice in relation to the  
8 product.

9 Note 1: Failure to comply with this subsection is an offence (see  
10 subsection 1311(1)).

11 Note 2: This subsection is a civil penalty provision (see section 1317E). For  
12 relief from liability to a civil penalty relating to this subsection, see  
13 section 1317S.

14 (5) If, under Part 7.9, a Product Disclosure Statement must be prepared  
15 or given for a financial product, the responsible person must make  
16 a target market determination for the product before a person deals  
17 in the product or provides financial product advice in relation to  
18 the product.

19 Note 1: Failure to comply with this subsection is an offence (see  
20 subsection 1311(1)).

21 Note 2: This subsection is a civil penalty provision (see section 1317E). For  
22 relief from liability to a civil penalty relating to this subsection, see  
23 section 1317S.

24 (6) A person must make a target market determination for a financial  
25 product before making a recognised offer and before a person  
26 provides financial product advice in relation to that product.

27 Note 1: Failure to comply with this subsection is an offence (see  
28 subsection 1311(1)).

29 Note 2: This subsection is a civil penalty provision (see section 1317E). For  
30 relief from liability to a civil penalty relating to this subsection, see  
31 section 1317S.

32 (7) If:  
33 (a) a financial product is of a kind prescribed by regulations  
34 made for the purposes of this subsection; and

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Amendments relating to design and distribution of financial products **Schedule 1**

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1 (b) the circumstances specified in those regulations in relation to  
2 the product exist;

3 then:

4 (c) the person specified in those regulations; or

5 (d) if no person is so specified—the issuer of the product;

6 must make a target market determination for the product before the  
7 time or event specified in those regulations.

8 Note 1: Failure to comply with this subsection is an offence (see  
9 subsection 1311(1)).

10 Note 2: This subsection is a civil penalty provision (see section 1317E). For  
11 relief from liability to a civil penalty relating to this subsection, see  
12 section 1317S.

13 (8) A target market determination must be in writing.

14 (9) A target market determination for a financial product must:

15 (a) describe the class of persons who comprise the target market  
16 for the product; and

17 (b) set out any conditions and restrictions on dealings in, or  
18 providing financial product advice in relation to, the product,  
19 other than a condition or restriction imposed by or under this  
20 Act (*distribution conditions*).

21 Note: Examples of distribution conditions for a financial product are:

22 (a) a condition that the financial product not be issued to a person  
23 unless the person has received personal advice; and

24 (b) restrictions limiting the distribution of the product to specified  
25 distribution channels.

26 *Target market determinations to be appropriate*

27 (10) A target market determination for a financial product must be such  
28 that it would be reasonable to conclude that, if the product were  
29 issued or sold to persons in the target market in accordance with  
30 the distribution conditions, the product would generally meet the  
31 likely objectives, financial situations and needs of the persons in  
32 the target market.

33 (11) In subsection (10), ***sold*** means sold in circumstances described in  
34 subsection 707(2), (3) or (5) or subsection 1012C(5), (6) or (8).

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## Schedule 1 Amendments relating to design and distribution of financial products

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### *Review triggers and review periods*

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(12) A person who makes a target market determination must at the same time:

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(a) identify events and circumstances (*review triggers*) that would reasonably suggest that the target market determination is no longer appropriate; and

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(b) determine the maximum period between reviews of the target market determination (*review period*).

8

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Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

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Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

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Note 3: This requirement also applies when a new target market determination is made under section 993DC.

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(13) A maximum period determined under paragraph (12)(b) must be a period that is reasonable in the circumstances.

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## **993DC Target market determinations to be reviewed**

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### *Review of target market determinations*

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(1) A person who makes a target market determination may review the determination, and may make a new target market determination in accordance with section 993DB, at any time.

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(2) A person contravenes this subsection if:

24

(a) the person makes a target market determination; and

25

(b) the determination is not reviewed during a review period for the determination.

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Note 1: Contravention of this subsection is an offence (see subsection 1311(1)).

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Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

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Amendments relating to design and distribution of financial products **Schedule 1**

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1                                    *Where target market determinations may no longer be appropriate*

2                                    (3) Subsections (4) and (5) apply if:

3                                    (a) a person makes a target market determination for a financial  
4                                    product; and

5                                    (b) the person knows, or reasonably ought to know, that:

6                                    (i) an event or circumstance has occurred that would  
7                                    reasonably suggest that the target market determination  
8                                    is no longer appropriate; or

9                                    (ii) a review trigger has occurred.

10                                   (4) The person must not deal in, or provide financial product advice in  
11                                   relation to, the product until the person has reviewed the  
12                                   determination and, if the determination is not appropriate, made a  
13                                   new determination in accordance with section 993DB.

14                                   Note 1:    Failure to comply with this subsection is an offence (see  
15                                   subsection 1311(1)).

16                                   Note 2:    This subsection is also a civil penalty provision (see section 1317E).  
17                                   For relief from liability to a civil penalty relating to this subsection,  
18                                   see section 1317S.

19                                   (5) The person must, as soon as practicable but no later than 10  
20                                   business days after this subsection starts to apply, take reasonable  
21                                   steps to ensure that a regulated person who deals in or provides  
22                                   financial product advice in relation to the financial product (or is  
23                                   expected to do either of those things) is given a direction:

24                                   (a) not to distribute a disclosure document, a Product Disclosure  
25                                   Statement for the product or an offer document for the  
26                                   recognised offer; and

27                                   (b) not to deal in, or provide financial product advice in relation  
28                                   to, the product;

29                                   unless the person has notified the regulated person that the  
30                                   determination has been reviewed and, if a new determination has  
31                                   been made, of the new determination.

32                                   Note 1:    Failure to comply with this subsection is an offence (see  
33                                   subsection 1311(1)).

34                                   Note 2:    This subsection is also a civil penalty provision (see section 1317E).  
35                                   For relief from liability to a civil penalty relating to this subsection,  
36                                   see section 1317S.

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## Schedule 1 Amendments relating to design and distribution of financial products

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- 1 (6) A regulated person contravenes this subsection if:  
2 (a) the person is given a direction referred to in subsection (5);  
3 and  
4 (b) the person does not comply with the direction.
- 5 Note 1: Failure to comply with this subsection is an offence (see  
6 subsection 1311(1)).
- 7 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
8 For relief from liability to a civil penalty relating to this subsection,  
9 see section 1317S.

### 10 **993DD Prohibition on dealing and providing financial product** 11 **advice unless target market determination made**

- 12 (1) If section 993DB or 993DC requires a person to make a target  
13 market determination in relation to a financial product, a regulated  
14 person must not deal in, or provide financial product advice in  
15 relation to, the product unless a target market determination for the  
16 financial product has been made.
- 17 Note 1: Failure to comply with this subsection is an offence (see  
18 subsection 1311(1)).
- 19 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
20 For relief from liability to a civil penalty relating to this subsection,  
21 see section 1317S.
- 22 (2) In any proceedings against a person (not being a person required to  
23 make the target market determination) for an offence based on  
24 subsection (1), it is a defence if:  
25 (a) the person who is required to make the target market  
26 determination notified the regulated person with that it had  
27 made a target market determination; and  
28 (b) the regulated person's failure to comply with subsection (1)  
29 occurred because the regulated person was acting on reliance  
30 on that notice; and  
31 (c) the regulated person's reliance on that notice was reasonable.
- 32 Note: A defendant bears an evidential burden in relation to the matters in  
33 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

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Amendments relating to design and distribution of financial products **Schedule 1**

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1 (3) A regulated person must give written notice to ASIC, as soon as  
2 practicable, and in any case within 10 business days, if the person  
3 becomes aware that the person has contravened subsection (1).

4 Note 1: Failure to comply with this subsection is an offence (see  
5 subsection 1311(1)).

6 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
7 For relief from liability to a civil penalty relating to this subsection,  
8 see section 1317S.

## 9 **Division 3—Distribution of financial products**

### 10 **993DE Reasonable steps to ensure target market determinations** 11 **given effect to**

#### 12 *Obligations*

13 (1) A person who makes a target market determination for a financial  
14 product must take reasonable steps to ensure that dealings in, and  
15 financial product advice provided in relation to, the product are  
16 consistent with the most recent determination.

17 Note 1: Failure to comply with this subsection is an offence (see  
18 subsection 1311(1)).

19 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
20 For relief from liability to a civil penalty relating to this subsection,  
21 see section 1317S.

22 (2) A regulated person who deals in, or provides financial product  
23 advice in relation to, a financial product for which a target market  
24 determination has been made must take reasonable steps to ensure  
25 that the dealing or advice is consistent with the most recent  
26 determination.

27 Note 1: Failure to comply with this subsection is an offence (see  
28 subsection 1311(1)).

29 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
30 For relief from liability to a civil penalty relating to this subsection,  
31 see section 1317S.

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## Schedule 1 Amendments relating to design and distribution of financial products

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1

*What are reasonable steps*

2

(3) In subsections (1) and (2), **reasonable steps** means steps that are, in the circumstances, reasonably able to be taken in relation to ensuring that any dealing in, and financial product advice in relation to, the financial product is in accordance with the target market determination, taking into account all relevant matters including:

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(a) the likelihood of dealings in the financial product, or of financial product advice being given that recommends that a person acquire the financial product, otherwise than in accordance with the target market determination; and

(b) the nature and degree of harm that might result from the financial product being issued or sold:

(i) to persons who are not in the target market; or

(ii) otherwise than in accordance with the target market determination; and

(c) what the person knows, or ought reasonably to know, about:

(i) the matters referred to in paragraphs (a) and (b); and

(ii) ways of eliminating or minimising the likelihood and the harm; and

(d) the availability and suitability of ways to eliminate or minimise the likelihood and the harm.

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(4) In subsection (3), **sold** means sold in circumstances described in subsection 707(2), (3) or (5) or subsection 1012C(5), (6) or (8).

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### **993DF Record keeping and notification obligations**

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*Record keeping*

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(1) A person who makes, or who is required by this Part to make, a target market determination for a financial product must keep records of:

(a) the person's decisions in relation to:

(i) the determination; and

(ii) the review triggers; and

(iii) the review period; and

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Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017 No. , 2017

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Amendments relating to design and distribution of financial products **Schedule 1**

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1 (b) the reasons for those decisions.

2 Note 1: Failure to comply with this subsection is an offence (see  
3 subsection 1311(1)).

4 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
5 For relief from liability to a civil penalty relating to this subsection,  
6 see section 1317S.

7 *Distribution information*

8 (2) If:

9 (a) a person makes, or is required by this Part to make, a target  
10 market determination for a financial product; or

11 (b) a regulated person deals in, or provides financial advice in  
12 relation to, a financial product for which a target market  
13 determination has been made;

14 the person or the regulated person must collect, and keep records of  
15 the following information (*distribution information*):

16 (c) the number of issues and sales of the product that the person  
17 makes; and

18 (d) the dollar value of the issues and sales of the product that the  
19 person makes; and

20 (e) the proportion of the number of issues and sales of the  
21 product that the person makes that were consistent with the  
22 determination; and

23 (f) the ways in which the person's dealings in, or the person's  
24 providing financial advice in relation to, the financial product  
25 occurred; and

26 (g) the steps taken as required by section 933DE.

27 Note 1: Failure to comply with this subsection is an offence (see  
28 subsection 1311(1)).

29 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
30 For relief from liability to a civil penalty relating to this subsection,  
31 see section 1317S.

32 Note 3: There are further requirements about records in sections 1101C,  
33 1101E and 1101E.

34 (3) In subsection (2), *sale* means a sale that takes place in  
35 circumstances described in subsection 707(2), (3) or (5) or  
36 subsection 1012C(5), (6) or (8).

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## Schedule 1 Amendments relating to design and distribution of financial products

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1 *Regulations*

2 (4) The regulations may impose requirements in relation to records  
3 relating to compliance with this Part.

4 *Notifications to persons who make target market determinations*

5 (5) If:

6 (a) a target market determination for a financial product has been  
7 made; and

8 (b) a regulated person deals in, or provides financial advice in  
9 relation to, the product; and

10 (c) the regulated person becomes aware of a significant dealing  
11 in the financial product that is not consistent with the  
12 determination;

13 the regulated person must, as soon as practicable, and in any case  
14 within 10 business days, give written notice to the person who  
15 made the determination.

16 Note 1: Failure to comply with this subsection is an offence (see  
17 subsection 1311(1)).

18 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
19 For relief from liability to a civil penalty relating to this subsection,  
20 see section 1317S.

21 **993DG Notifications to ASIC**

22 A person who makes a target market determination for a financial  
23 product must give written notice to ASIC, as soon as practicable,  
24 and in any case within 10 business days, if the person becomes  
25 aware of a significant dealing in the financial product that is not  
26 consistent with the determination.

27 Note 1: Failure to comply with this section is an offence (see  
28 subsection 1311(1)).

29 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
30 For relief from liability to a civil penalty relating to this subsection,  
31 see section 1317S.

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Amendments relating to design and distribution of financial products **Schedule 1**

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## 1 **Division 4—ASIC powers**

### 2 **993DH Information to be provided to ASIC on request**

3 (1) ASIC may, in writing, request:

4 (a) the person who makes, or is required by this Part to make, a  
5 target market determination; or

6 (b) a regulated person who deals in, or provides financial advice  
7 in relation to, a financial product for which a target market  
8 determination is, has been or is required to be made;

9 to provide ASIC with distribution information in relation to a  
10 financial product, being information in the person's possession or  
11 to which the person has access.

12 (2) ASIC may, in writing, request a person who makes, or is required  
13 by this Part to make, a target market determination to provide  
14 records referred to in subsection 993DF(1).

15 (3) The person must give the information to ASIC in writing by the  
16 date specified in the request or, if no date is specified, within 10  
17 business days after the day the person receives the request.

18 Note 1: Failure to comply with this subsection is an offence (see  
19 subsection 1311(1)).

20 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
21 For relief from liability to a civil penalty relating to this subsection,  
22 see section 1317S.

### 23 **993DI Stop orders**

24 (1) This section applies if ASIC is satisfied that a provision of  
25 Division 2, or section 993DD or 993DE, has been contravened in  
26 relation to a financial product.

27 (2) ASIC may order that specified conduct in respect of the financial  
28 product must not be engaged in while the order is in force. The  
29 order is not a legislative instrument.

30 (3) The order may include a statement that specified conduct engaged  
31 in contrary to the order will be regarded as not complying with the  
32 requirements of a specified provision of this Part.

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## Schedule 1 Amendments relating to design and distribution of financial products

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- 1 (4) Before making an order under subsection (2), ASIC must:  
2 (a) hold a hearing; and  
3 (b) give a reasonable opportunity to any interested person to  
4 make oral or written submissions to ASIC on whether an  
5 order should be made.
- 6 (5) If ASIC considers that any delay in making an order under  
7 subsection (2) pending the holding of a hearing would be  
8 prejudicial to the public interest, ASIC may make an interim order  
9 under that subsection. The interim order may be made without  
10 holding a hearing and lasts for 21 days after the day on which it is  
11 made unless revoked before then.
- 12 (6) At any time during the hearing, ASIC may make an interim order  
13 under subsection (2). The interim order lasts until:  
14 (a) ASIC makes an order under subsection (2) after the  
15 conclusion of the hearing; or  
16 (b) the interim order is revoked;  
17 whichever happens first.
- 18 (7) The order under subsection (2) must be in writing and must be  
19 served on the person who made or was required to make the target  
20 market determination.
- 21 (8) The person on whom the order is served must take reasonable steps  
22 to ensure that other people who engage in conduct to which the  
23 order applies are aware of the order.
- 24 Note 1: Failure to comply with this subsection is an offence (see  
25 subsection 1311(1)).
- 26 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
27 For relief from liability to a civil penalty relating to this subsection,  
28 see section 1317S.
- 29 (9) The person on whom the order is served, or a person who is aware  
30 of the order, must not engage in conduct contrary to the order.
- 31 Note 1: Failure to comply with this subsection is an offence (see  
32 subsection 1311(1)).
- 33 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
34 For relief from liability to a civil penalty relating to this subsection,  
35 see section 1317S.
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Amendments relating to design and distribution of financial products **Schedule 1**

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- 1 (10) If the person on whom the order is served, or a person who is  
2 aware of the order, engages in conduct contrary to the order, any  
3 relevant statement included in the order under subsection (3) has  
4 effect accordingly. This applies in addition to any other  
5 consequence that is provided for by this Act.

## 6 **Division 5—Exemptions and modifications**

### 7 **993DJ Definitions**

8 In this Division, the *provisions of this Part* include:

- 9 (a) definitions in this Act, or in the regulations, as they apply to  
10 references in this Part; and  
11 (b) any provisions of Part 10.2 (transitional provisions) that  
12 relate to provisions of this Part.

13 Note: Because of section 761H, a reference to this Part or Part 10.2 also  
14 includes a reference to regulations or other instruments made for the  
15 purposes of this Part or Part 10.2 (as the case requires).

### 16 **993DK Exemptions and modifications by ASIC**

- 17 (1) ASIC may:  
18 (a) exempt a person or class of persons from all or specified  
19 provisions of this Part; or  
20 (b) exempt a financial product or a class of financial products  
21 from all or specified provisions of this Part; or  
22 (c) declare that this Part applies in relation to:  
23 (i) a person or a financial product; or  
24 (ii) a class of persons or financial products;  
25 in respect of which a person is required to make a target  
26 market determination as if specified provisions were omitted,  
27 modified or varied as specified in the declaration.
- 28 (2) An exemption or declaration is not a legislative instrument.
- 29 (3) An exemption may apply unconditionally or subject to specified  
30 conditions. A person to whom a condition specified in an  
31 exemption applies must comply with the condition. The Court may

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## Schedule 1 Amendments relating to design and distribution of financial products

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1 order the person to comply with the condition in a specified way.  
2 Only ASIC may apply to the Court for the order.

3 (4) An exemption or declaration must be in writing and ASIC must  
4 publish notice of it in the *Gazette*.

5 (5) If conduct (including an omission) of a person would not have  
6 constituted an offence if a particular declaration under  
7 paragraph (1)(c) had not been made, that conduct does not  
8 constitute an offence unless, before the conduct occurred (in  
9 addition to complying with the gazettal requirement of  
10 subsection (4)):

11 (a) the text of the declaration was made available by ASIC on  
12 the internet; or

13 (b) ASIC gave written notice setting out the text of the  
14 declaration to the person.

15 In a prosecution for an offence to which this subsection applies, the  
16 prosecution must prove that paragraph (a) or (b) was complied with  
17 before the conduct occurred.

### 18 **993DL Exemptions and modifications by regulations**

19 The regulations may:

20 (a) exempt a person or class of persons from all or specified  
21 provisions of this Part; or

22 (b) exempt a financial product or a class of financial products  
23 from all or specified provisions of this Part; or

24 (c) provide that this Part applies as if specified provisions of this  
25 Part were omitted, modified or varied as specified in the  
26 regulations.

### 27 **Division 6—Miscellaneous**

#### 28 **993DM Civil liability**

29 (1) If:

30 (a) a person (the *first person*) is required by  
31 subsection 993DD(1) to not deal in, or to not provide,  
32 financial product advice in relation to, a product; and

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- 1 (b) the first person deals in, or provides financial product advice  
2 in relation to, the product; and  
3 (c) another person (the *client*) suffers loss or damage because of  
4 the dealing or provision of financial product advice;  
5 the client may recover the amount of the loss or damage by action  
6 against the first person, whether or not the first person (or anyone  
7 else) has been convicted of an offence in respect of the failure.
- 8 (2) Subsection (1) does not apply to a proceeding against a regulated  
9 person who is not required to make the target market determination  
10 if:  
11 (a) the person who is required to make the determination notified  
12 the regulated person with that it had made a target market  
13 determination; and  
14 (b) the regulated person's failure to comply with subsection (1)  
15 occurred because the regulated person was acting on reliance  
16 on that notice; and  
17 (c) the regulated person's reliance on that notice was reasonable.
- 18 (3) If:  
19 (a) a person (the *first person*) is required by  
20 subsection 993DE(1) or (2) to take reasonable steps; and  
21 (b) the first person fails to take all those reasonable steps; and  
22 (c) another person (the *client*) suffers loss or damage because of  
23 the failure;  
24 the client may recover the amount of the loss or damage by action  
25 against the first person, whether or not the first person (or anyone  
26 else) has been convicted of an offence in respect of the failure.
- 27 (4) An action under subsections (1) or (2) may be begun at any time  
28 within 6 years after the day on which the cause of action arose.
- 29 (5) This section does not affect any liability that a person has under  
30 any other law.

## 31 **993DN Additional powers of court to make orders**

- 32 (1) The court dealing with an action under subsection 993DM(1) or (2)  
33 may, in addition to awarding loss or damage under that subsection
- 

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## Schedule 1 Amendments relating to design and distribution of financial products

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- 1 and if it thinks it necessary in order to do justice between the  
2 parties:
- 3 (a) make an order declaring void a contract entered into by the  
4 client who suffered loss or damage relating to a financial  
5 product; and
- 6 (b) if it makes an order under paragraph (a)—make such other  
7 order or orders as it thinks are necessary or desirable because  
8 of that order.
- 9 (2) Without limiting paragraph (1)(b), the orders that may be made  
10 under that paragraph include (but are not limited to) an order for  
11 the return of money paid by a person, and/or an order for payment  
12 of an amount of interest specified in, or calculated in accordance  
13 with, the order.

### 4 After subparagraph 1018A(1)(c)(ii)

14 Insert:

- 15 (ca) if Part 7.8A requires a target market determination be made  
16 in relation to the product—describes the target market or  
17 specifies where the description is available; and  
18

### 5 After subparagraph 1018A(2)(c)

19 Insert:

- 20 (ca) if Part 7.8A requires a target market determination be made  
21 in relation to the product—describes the target market or  
22 specifies where the description is available; and  
23

### 6 Subsection 1317E(1) (after table item 40)

24 Insert:

25 40AA	subsections 993DB(4), (5), (6) and (7)	determining target market for financial products
40AB	section 993DB(12)	determining review triggers and review period for target market determination
40AC	subsections 993DC(2), (4), (5) and (6)	reviewing target market determination
40AD	subsection 993DD(1) and (3)	dealing in or providing financial product advice unless target market determination made

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Amendments relating to design and distribution of financial products **Schedule 1**

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40AE	subsections 993DE(1) and (2)	reasonable steps to ensure target market determinations given effect to
40AF	subsections 993DF(1), (2) and (5)	record keeping and notification
40AG	subsection 993DG	failure to notify ASIC
40AH	subsection 993DH(3)	failure to provide information to ASIC on request
40AI	subsections 993DI(8) and (9)	stop orders

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1 **7 Schedule 3 (after table item 290C)**

2 Insert:

290CAA	Subsections 993DB(4), (5), (6), (7) and (12)	200 penalty units or imprisonment for 5 years, or both.
290CAB	Subsection 993DC(2)	50 penalty units or imprisonment for 12 months, or both.
290CAC	Subsections 993DC(4) and (5)	200 penalty units or imprisonment for 5 years, or both.
290CAD	Subsection 993DC(6)	100 penalty units or imprisonment for 2 years, or both.
290CAE	Subsections 993DD(1) and (3)	200 penalty units or imprisonment for 5 years, or both.
290CAF	Subsections 993DE(1) and (2)	200 penalty units or imprisonment for 5 years, or both.
290CAG	Subsections 993DF(1) and (2)	50 penalty units or imprisonment for 12 months, or both.
290CAH	Subsection 993DF(5)	50 penalty units.
290CAI	Section 993DG	50 penalty units.
290CAJ	Section 993DH(3)	10 penalty units or imprisonment for 3 months, or both.
290CAK	Subsections 993DI(8) and (9)	100 penalty units or imprisonment for 2 years, or both.

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3 **14 In the appropriate position in Chapter 10**

4 Insert:

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Schedule 1 Amendments relating to design and distribution of financial products

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1 **Part 10.[ ]—Transitional provisions relating to the**  
2 **Treasury Laws Amendment (Design and**  
3 **Distribution Obligations and Product**  
4 **Intervention Powers) Act 2018**

5 **[ ] Application of Schedule 1 of the *Treasury Laws Amendment***  
6 ***(Design and Distribution Obligations and Product***  
7 ***Intervention Powers) Act 2018***

8 (1) In this section:

9 ***commencement day*** means the day on which Schedule 1 to the  
10 *Treasury Laws Amendment (Design and Distribution Obligations*  
11 *and Product Intervention Powers) Act 2018* commences.

12 (2) The amendments made by Schedule 1 to the *Treasury Laws*  
13 *Amendment (Design and Distribution Obligations and Product*  
14 *Intervention Powers) Act 2018* apply in relation to a financial  
15 product:

16 (a) if the first issue of the financial product occurs after the  
17 commencement day, on the commencement day; or

18 (b) if:

19 (i) the first issue of the financial product occurs before the  
20 commencement day; and

21 (ii) a further issue occurs on or after the end of 12 months  
22 after the commencement day;

23 on the day that is 12 months after the commencement day.

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Amendments relating to product intervention orders **Schedule 2**

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1 **Schedule 2—Amendments relating to product**  
2 **intervention orders**

3 *Corporations Act 2001*

4 **1 Section 760B (after table item 9)**

5 Insert:

9A 7.9A intervention powers in relation to financial  
products

6 **2 After Part 7.9**

7 Insert:

8 **Part 7.9A—Product intervention orders**

9 **1022CA Object**

10 The object of this Part is to provide ASIC with proactive powers to  
11 reduce the risk of significant detriment to retail clients resulting  
12 from financial products.

13 **1022CB Definitions**

14 In this Part:

15 *financial product* does not include a financial product specified in  
16 regulations made for the purposes of this definition.

17 *prescribed period* has the meaning given by subsection 1022CF(2).

18 *product intervention order* means an order made under  
19 subsection 1022CC(1) or (3).

20 **1022CC ASIC may make product intervention orders**

21 *Making product intervention orders*

22 (1) If ASIC is satisfied that a financial product:

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## Schedule 2 Amendments relating to product intervention orders

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- 1 (a) is, or is likely to be, available for acquisition by persons as  
2 retail clients (whether or not it is also available or likely to be  
3 available for acquisition by persons as wholesale clients) by  
4 way of issue or pursuant to an offer to which section 707 or  
5 1012C applies or will apply; and  
6 (b) has resulted in or will, or is likely to, result in significant  
7 detriment to retail clients;  
8 ASIC may, in accordance with this Part, order that:  
9 (c) a person must not engage in specified conduct in relation to  
10 the product; or  
11 (d) a person must not engage in specified conduct in relation to  
12 the product except in circumstances specified in the order; or  
13 (e) a person must not engage in specified conduct in relation to  
14 the product unless steps specified in the order have been  
15 taken.

16 Note: An example of circumstances that may be specified in a product  
17 intervention order include that the product not be issued to a retail  
18 client unless the retail client has received personal advice.

19 (2) An order under subsection (1) is not a legislative instrument.

20 (3) If ASIC is satisfied that a class of financial products:

- 21 (a) is, or is likely to be, available for acquisition by persons as  
22 retail clients (whether or not it is also available or likely to be  
23 available for acquisition by persons as wholesale clients) by  
24 way of issue or pursuant to an offer to which section 707 or  
25 1012C applies or will apply; and  
26 (b) has resulted in or will, or is likely to, result in significant  
27 detriment to retail clients,

28 ASIC may, in accordance with this Part and by legislative  
29 instrument, order that:

- 30 (c) a person must not engage in specified conduct in relation to  
31 the class of products; or  
32 (d) a person must not engage in specified conduct in relation to  
33 the class of products except in circumstances specified in the  
34 order; or

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Amendments relating to product intervention orders **Schedule 2**

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1 (e) a person must not engage in specified conduct in relation to  
2 the class of products unless steps specified in the order have  
3 been taken.

4 Note: An example of circumstances that may be specified in a product  
5 intervention order include that a product in a class of products not be  
6 issued to a retail client unless the retail client has received personal  
7 advice.

8 (4) A product intervention order may include a statement that specified  
9 conduct engaged in contrary to the order will be regarded as not  
10 complying with a specified provision of Chapter 6D or this  
11 Chapter.

## 12 *Restrictions on product intervention orders*

13 (5) A product intervention order may not impose an obligation on a  
14 person:

- 15 (a) in the person's capacity as a retail client; or  
16 (b) who is specified in regulations made for the purposes of this  
17 paragraph.

18 (6) A product intervention order cannot:

- 19 (a) require that a person satisfy a standard of training, or meet a  
20 professional standard, other than a standard prescribed for the  
21 person by or under this Act; or  
22 (b) require that a person who is not required to hold a Australian  
23 financial services licence join an external dispute resolution  
24 scheme; or  
25 (c) impose requirements in relation to a person's remuneration,  
26 other than so much of the remuneration as is conditional on  
27 the achievement of objectives directly related to the financial  
28 product.

## 29 *Commencement of product intervention orders*

30 (7) A product intervention order comes into force:

- 31 (a) in the case of an order that is a legislative instrument—on the  
32 day after the instrument is registered; or  
33 (b) in other cases—on the day on which the notice under  
34 subsection 1022CJ(1) in relation to the order is published;
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## Schedule 2 Amendments relating to product intervention orders

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1 or a later date specified in the order.

### 2 **1022CD Significant detriment to retail clients**

3 (1) In considering whether detriment resulting from a financial product  
4 is significant for the purposes of paragraph 1022CC(1)(b) or (3)(b),  
5 the following must be taken into account:

- 6 (a) the nature and extent of the detriment;
- 7 (b) without limiting paragraph (a)—the actual or potential  
8 financial loss to retail clients resulting from the product;
- 9 (c) the impact that the detriment has had, or will or is likely to  
10 have, on retail clients;
- 11 (d) any other matter prescribed by regulations made for the  
12 purposes of this paragraph.

13 (2) Subsection (1) does not limit the matters to be taken into account in  
14 considering whether a financial product has resulted in, or will or is  
15 likely to result in, significant detriment to retail clients.

16 (3) A financial product may result in significant detriment to retail  
17 clients even if a person has complied with the disclosure  
18 requirements in Chapter 6D or this Chapter, and with the person's  
19 obligations under Part 7.8A, in relation to the product.

### 20 **1022CE ASIC to consult before making product intervention orders**

21 (1) ASIC must not make a product intervention order unless ASIC has:  
22 (a) consulted persons who are reasonably likely to be affected by  
23 the proposed order; and

24 (b) if the proposed order will apply to a body that is regulated by  
25 APRA—consulted APRA; and

26 (c) complied with any other requirements as to consultation  
27 prescribed by regulations made for the purposes of this  
28 paragraph.

29 (2) Without limiting paragraph (1)(a), ASIC is taken to comply with  
30 paragraph (1)(a) if ASIC, on its website:

31 (a) makes the proposed order, or a description of the content of  
32 the proposed order, available; and

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Amendments relating to product intervention orders **Schedule 2**

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1 (b) invites the public to comment on the proposed order.

2 (3) A failure to comply with subsection (1) does not invalidate a  
3 product intervention order.

## 4 **1022CF Duration of product intervention orders**

5 (1) A product intervention order expires at the end of the prescribed  
6 period after it comes into force unless:

7 (a) a declaration under section 1022CG is in force in relation to  
8 the order; or

9 (b) the order is revoked.

10 (2) The *prescribed period* is:

11 (a) 18 months, or a shorter period specified in regulations made  
12 for the purposes of this paragraph; or

13 (b) if the order specifies a shorter period than that determined  
14 under paragraph (a)—that period.

15 However, if the Court makes an order staying or otherwise  
16 affecting the operation or enforcement of a product intervention  
17 order, the period of the Court's order is to be disregarded in  
18 determining the prescribed period.

## 19 **1022CG Making product intervention orders permanent**

20 The Minister may, after considering a report from ASIC, by  
21 legislative instrument, declare that a product intervention order that  
22 is in force:

23 (a) remains in force until revoked; or

24 (b) remains in force, unless revoked, for a specified period.

## 25 **1022CH Amendment of product intervention orders**

26 (1) The Minister may, after considering a report from ASIC, in  
27 writing, amend a product intervention order in respect of which a  
28 declaration under section 1022CG is in force.

29 (2) ASIC may, in writing, amend any other product intervention order.  
30 The amendment may not extend the term of the order if, as a result

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## Schedule 2 Amendments relating to product intervention orders

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- 1 of the amendment, the term of the order would be more than the  
2 prescribed period for the product intervention order.
- 3 (3) If the product intervention order is a legislative instrument, the  
4 amendment must be by legislative instrument.
- 5 (4) An amendment to a product intervention order comes into force:  
6 (a) in the case of an order that is a legislative instrument—on the  
7 day after the instrument is registered; or  
8 (b) in other cases—on the day on which the notice under  
9 subsection 1022CJ(2) in relation to the order is published;  
10 or on a later date specified in the amendment.

### 11 **1022CI Revocation of product intervention orders**

- 12 (1) The Minister may, after considering a report from ASIC, in  
13 writing, revoke a product intervention order in respect of which a  
14 declaration under section 1022CG is in force.
- 15 (2) ASIC may, in writing, revoke any other product intervention order.
- 16 (3) If the product intervention order is a legislative instrument, the  
17 revocation must be by legislative instrument.

### 18 **1022CJ ASIC to issue public notice of product intervention orders**

- 19 (1) For each product intervention order, ASIC must publish on its  
20 website a notice that:  
21 (a) describes the financial product or class of financial products;  
22 and  
23 (b) describes the significant detriment to retail clients; and  
24 (c) sets out or summarises the terms of the order; and  
25 (d) specifies the date the order is to take effect; and  
26 (e) describes the consultation ASIC has undertaken on the order;  
27 and  
28 (f) sets out why the order is an appropriate way of reducing the  
29 significant detriment.

30 Note: The order cannot come into effect before the notice is published: see  
31 subsection 1022CC(7).



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Amendments relating to product intervention orders **Schedule 2**

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- 1 (2) If a product intervention order is amended, ASIC must publish on  
2 its website a notice that:  
3 (a) sets out or summarises the effect of the amendment; and  
4 (b) specifies the date the amendment is to take effect; and  
5 (d) describes the consultation ASIC has undertaken on the  
6 amendment.; and  
7 (e) sets out why the amendment is appropriate.
- 8 Note: The amendment cannot come into effect before the notice is  
9 published: see subsection 1022CH(4).
- 10 (3) If a product intervention order is revoked, ASIC must publish  
11 notice of the revocation on its website.

## 12 **1022CK Re-making product intervention orders**

- 13 If a product intervention order expires or is revoked, ASIC may not  
14 remake the order, or make an order in substantially the same terms,  
15 unless:  
16 (a) the circumstances have materially changed from those when  
17 the order was made; or  
18 (b) the Minister approves.

## 19 **1022CL Enforcement of product intervention orders**

- 20 (1) A person must not engage in conduct contrary to a product  
21 intervention order.
- 22 Note 1: Failure to comply with this subsection is an offence (see  
23 subsection 1311(1)).
- 24 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
25 For relief from liability to a civil penalty relating to this subsection,  
26 see section 1317S.
- 27 (2) In any proceedings against a person for an offence based on  
28 subsection (1), it is a defence if:  
29 (a) the product intervention order is not a legislative instrument;  
30 and  
31 (b) the defendant was not aware, and could not reasonably have  
32 been aware, of the order.

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## Schedule 2 Amendments relating to product intervention orders

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1 Note: A defendant bears an evidential burden in relation to the matters in  
2 this subsection. See subsection 13.3(3) of the Criminal Code.

3 (3) If a product intervention order has been served on a person, the  
4 person on whom the order is served must take reasonable steps to  
5 ensure that other persons who engage in conduct to which the order  
6 applies are aware of the order.

7 Note 1: Failure to comply with this subsection is an offence (see  
8 subsection 1311(1)).

9 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
10 For relief from liability to a civil penalty relating to this subsection,  
11 see section 1317S.

### 12 **1022CM Additional notification may be required**

13 (1) If ASIC makes a product intervention order in relation to a  
14 financial product, it may also by notice require a person (*first*  
15 *person*) who has dealt in, or provided financial advice in relation  
16 to, the product in respect of a retail client to notify the retail client:  
17 (a) of the terms of the order; and  
18 (b) of any other matter specified in regulations made for the  
19 purposes of this paragraph.

20 (2) The notice may specify the way in which notifications under  
21 subsection (1) are to be made.

22 (3) If the order is a legislative instrument, the notice must also be a  
23 legislative instrument.

24 (4) A person contravenes this subsection if the person fails to comply  
25 with a requirement under subsection (1).

26 Note 1: Failure to comply with this subsection is an offence (see  
27 subsection 1311(1)).

28 Note 2: This subsection is also a civil penalty provision (see section 1317E).  
29 For relief from liability to a civil penalty relating to this subsection,  
30 see section 1317S.

31 (5) In any proceedings against a person for an offence based on  
32 subsection (4), it is a defence if:  
33 (a) the notice is not a legislative instrument; and

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Amendments relating to product intervention orders **Schedule 2**

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1 (b) the defendant was not aware, and could not reasonably have  
2 been aware, of the notice.

3 Note: A defendant bears an evidential burden in relation to the matters in  
4 this subsection. See subsection 13.3(3) of the Criminal Code.

5 (6) In this section, **dealing** in a financial product has the meaning  
6 given by section 766C, subject to the following:

7 (a) subsection 766C(3) does not apply if the dealing is a sale that  
8 takes place in circumstances described in subsection 707(2),  
9 (3) or (5) or subsection 1012C(5), (6) or (8);

10 (b) paragraphs 766C(4)(c) and (d) do not apply if the dealing is  
11 an offer of securities that needs disclosure to investors under  
12 Part 6D.2.

## 13 **1022CN Civil liability**

14 (1) If:

15 (a) a person (the **first person**) is required to comply with a  
16 product intervention order; and

17 (b) the first person has contravened the product intervention  
18 order; and

19 (c) a retail client suffers loss or damage because of the breach;  
20 the retail client may recover the amount of the loss or damage by  
21 action against the first person, whether or not the first person (or  
22 anyone else) has been convicted of an offence in respect of the  
23 breach.

24 (2) An action under subsection (1) may be begun at any time within  
25 6 years after the day on which the cause of action arose.

26 (3) This section does not affect any liability that a person has under  
27 any other law.

## 28 **1022CO Additional powers of court to make orders**

29 (1) The court dealing with an action under subsection 1022CN(1) may,  
30 in addition to awarding loss or damage under that subsection and if  
31 it thinks it necessary in order to do justice between the parties:

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## Schedule 2 Amendments relating to product intervention orders

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- 1 (a) make an order declaring void a contract relating to the  
2 financial product that was entered into by the client who  
3 suffered the loss or damage; and  
4 (b) if it makes an order under paragraph (a)—make such other  
5 order or orders as it thinks are necessary or desirable because  
6 of that order.
- 7 (2) Without limiting paragraph (1)(b), the orders that may be made  
8 under that paragraph include (but are not limited to) an order for  
9 the return of money paid by a person, and/or an order for payment  
10 of an amount of interest specified in, or calculated in accordance  
11 with, the order.

### 3 Section 1101J

12 Renummer the section as subsection (1).

### 4 At the end of section 1101J

14 Add:

- 15 (2) However, the Minister must not delegate the Minister's powers  
16 under section 1022CG, 1022CH, 1022CI or 1022CK to a person  
17 other than ASIC.  
18

### 5 Subsection 1317E(1) (after table item 40)

19 Insert:

20 40A	subsection 1022CL(1)	engaging in conduct contrary to a product intervention order
40B	subsection 1022CL(3)	failure to take reasonable steps to make others aware of product intervention order
40C	subsection 1022CM(4)	failure to notify retail clients

### 7 Schedule 3 (after table item 309AF)

21 Insert:

22 309AG	Subsections 1022CL(1) and (3)	200 penalty units or imprisonment for 5 years, or both.
309AH	Subsection 1022CM(4)	200 penalty units or imprisonment for 5 years, or both.

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Amendments relating to product intervention orders **Schedule 2**

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1 ***National Consumer Credit Protection Act 2009***

2 **8 After Part 6-7**

3 Insert:

4 **Part 6-7A—Product intervention orders**

5 **Division 1—Introduction**

6 **301A Guide to this Part**

7 This Part is about reducing the risk that credit products result in  
8 significant detriment for consumers.

9 Division 2 provides ASIC with proactive powers to reduce the risk  
10 of significant detriment to consumers resulting from credit  
11 products.

12 **Division 2—Product intervention orders**

13 **301B Definitions**

14 In this Part:

15 ***credit product*** has the meaning give to in paragraph 301C(1)(a).

16 ***prescribed period*** has the meaning given by subsection 301F(2).

17 ***product intervention order*** means an order made under  
18 subsection 301C(1) or (3).

19 **301C ASIC may make product intervention orders**

20 *Making product intervention orders*

21 (1) If ASIC is satisfied that:

22 (a) a person is engaging, or is likely to engage, in credit activity  
23 in relation to a credit contract, mortgage, guarantee or

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## Schedule 2 Amendments relating to product intervention orders

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1 consumer lease (*credit product*) or a proposed credit product;  
2 and

3 (b) the credit product has resulted in or will, or is likely to, result  
4 in significant detriment to consumers;

5 ASIC may, in accordance with this Part, order that:

6 (c) a person must not engage in specified conduct in relation to  
7 the product; or

8 (d) a person must not engage in specified conduct in relation to  
9 the product except in circumstances specified in the order; or

10 (e) a person must not engage in specified conduct in relation to  
11 the product unless steps specified in the order have been  
12 taken.

13 Note: Specified conduct that could be the subject of a product intervention  
14 order includes the provision of credit services.

15 (2) An order under subsection (1) is not a legislative instrument.

16 (3) If ASIC is satisfied that:

17 (a) a person is engaging, or is likely to engage, in credit activity  
18 in relation to a class of credit products or proposed credit  
19 products; and

20 (b) the class of products has resulted in or will, or is likely to,  
21 result in significant detriment to consumers,

22 ASIC may, in accordance with this Part and by legislative  
23 instrument, order that:

24 (c) a person must not engage in specified conduct in relation to  
25 the class of products; or

26 (d) a person must not engage in specified conduct in relation to  
27 the class of products except in circumstances specified in the  
28 order; or

29 (e) a person must not engage in specified conduct in relation to  
30 the class of products unless steps specified in the order have  
31 been taken.

32 Note: Specified conduct that could be the subject of a product intervention  
33 order includes the provision of credit services.

34 (4) A product intervention order may not impose an obligation on a  
35 person:

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Amendments relating to product intervention orders **Schedule 2**

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- 1 (a) in the person's capacity as a consumer; or  
2 (b) who is specified in regulations made for the purposes of this  
3 paragraph.
- 4 (5) A product intervention order cannot:
- 5 (a) require that a person satisfy a standard of training, or meet a  
6 professional standard, other than a standard prescribed for the  
7 person by or under this Act; or
- 8 (b) require that a person who is not required to hold a Australian  
9 financial services licence join an external dispute resolution  
10 scheme; or
- 11 (c) impose requirements in relation to a person's remuneration,  
12 other than so much of the remuneration as is conditional on  
13 the achievement of objectives directly related to the credit  
14 product.

## *Commencement of product intervention orders*

- 15
- 16 (6) A product intervention order comes into force:
- 17 (a) in the case of an order that is a legislative instrument—on the  
18 day after the instrument is registered; or
- 19 (b) in other cases—on the day on which the notice under  
20 subsection 301K(1) in relation to the order is published;  
21 or a later date specified in the order.

## *Exclusion of credit products*

- 22
- 23 (7) The regulations may provide that this Part does not apply to a  
24 credit product specified in regulations.

## **301D Significant detriment to consumers**

- 25
- 26 (1) In considering whether detriment resulting from a credit product is  
27 significant for the purposes of paragraph 301C(1)(b) or (3)(b), the  
28 following must be taken into account:
- 29 (a) the nature and extent of the detriment;
- 30 (b) without limiting paragraph (a)—the actual or potential  
31 financial loss to consumers resulting from the product;

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## Schedule 2 Amendments relating to product intervention orders

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- 1 (c) the impact that the detriment has had, or will or is likely to  
2 have, on consumers;
- 3 (d) any other matter prescribed by regulations made for the  
4 purposes of this paragraph.
- 5 (2) Subsection (1) does not limit the matters to be taken into account in  
6 considering whether a credit product has resulted in, or will or is  
7 likely to result in, significant detriment to consumers.
- 8 (3) A credit product may result in significant detriment to consumers  
9 even if a person has complied with the disclosure requirements in  
10 the National Credit Code.

### 11 **301E ASIC to consult before making product intervention orders**

- 12 (1) ASIC must not make a product intervention order unless ASIC has:  
13 (a) consulted persons who are reasonably likely to be affected by  
14 the proposed order; and  
15 (b) if the proposed order will apply to a body that is regulated by  
16 APRA—consulted APRA; and  
17 (c) complied with any other requirements as to consultation  
18 prescribed by regulations made for the purposes of this  
19 paragraph.
- 20 (2) Without limiting paragraph (1)(a), ASIC is taken to comply with  
21 paragraph (1)(a) if ASIC, on its website:  
22 (a) makes the proposed order, or a description of the content of  
23 the proposed order, available; and  
24 (b) invites the public to comment on the proposed order.
- 25 (3) A failure to comply with subsection (1) does not invalidate a  
26 product intervention order.

### 27 **301F Duration of product intervention orders**

- 28 (1) A product intervention order expires at the end of the prescribed  
29 period after it comes into force unless:  
30 (a) a declaration under section 301G is in force in relation to the  
31 order; or  
32 (b) the order is revoked.
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Amendments relating to product intervention orders **Schedule 2**

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- 1 (2) The *prescribed period* is:  
2 (a) 18 months, or a shorter period specified in regulations made  
3 for the purposes of this paragraph; or  
4 (b) if the order specifies a shorter period than that determined  
5 under paragraph (a)—that period.  
6 However, if the Court makes an order staying or otherwise  
7 affecting the operation or enforcement of a product intervention  
8 order, the period of the Court’s order is to be disregarded in  
9 determining the prescribed period.

## 10 **301G Making product intervention orders permanent**

- 11 The Minister may, after considering a report from ASIC, by  
12 legislative instrument, declare that a product intervention order that  
13 is in force:  
14 (a) remains in force until revoked; or  
15 (b) remains in force, unless revoked, for a specified period.

## 16 **301H Amendment of product intervention orders**

- 17 (1) The Minister may, after considering a report from ASIC, in  
18 writing, amend a product intervention order in respect of which a  
19 declaration under section 301G is in force.  
20 (2) ASIC may, in writing, amend any other product intervention order.  
21 The amendment may not extend the term of the order if, as a result  
22 of the amendment, the term of the order would be more than the  
23 prescribed period for the product intervention order.  
24 (3) If the product intervention order is a legislative instrument, the  
25 amendment must be by legislative instrument.  
26 (4) An amendment to a product intervention order comes into force:  
27 (a) in the case of an order that is a legislative instrument—on the  
28 day after the instrument is registered; or  
29 (b) in other cases—on the day on which the notice under  
30 subsection 301K(2) in relation to the order is published;  
31 or on a later date specified in the amendment.

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## Schedule 2 Amendments relating to product intervention orders

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### 1 **301J Revocation of product intervention orders**

- 2 (1) The Minister may, after considering a report from ASIC, in  
3 writing, revoke a product intervention order in respect of which a  
4 declaration under section 301G is in force.
- 5 (2) ASIC may, in writing, revoke any other product intervention order.
- 6 (3) If the product intervention order is a legislative instrument, the  
7 revocation must be by legislative instrument.

### 8 **301K ASIC to issue public notice of product intervention orders**

- 9 (1) For each product intervention order, ASIC must publish on its  
10 website a notice that:
- 11 (a) describes the credit product or class of credit products; and  
12 (b) describes the significant detriment to consumers; and  
13 (c) sets out or summarises the terms of the order; and  
14 (d) specifies the date the order is to take effect; and  
15 (e) describes the consultation ASIC has undertaken on the order;  
16 and  
17 (f) sets out why the order is an appropriate way of reducing the  
18 significant detriment.

19 Note: The order cannot come into effect before the notice is published: see  
20 subsection 301C(6).

- 21 (2) If a product intervention order is amended, ASIC must publish on  
22 its website a notice that:
- 23 (a) sets out or summarises the effect of the amendment; and  
24 (b) specifies the date the amendment is to take effect; and  
25 (c) describes the consultation ASIC has undertaken on the  
26 amendment; and  
27 (d) sets out why the amendment is appropriate.

28 Note: The amendment cannot come into effect before the notice is  
29 published: see subsection 301H(4).

- 30 (3) If a product intervention order is revoked, ASIC must publish  
31 notice of the revocation on its website.

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Amendments relating to product intervention orders **Schedule 2**

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1 **301L Re-making product intervention orders**

2 If a product intervention order expires or is revoked, ASIC may not  
3 remake the order, or make an order in substantially the same terms,  
4 unless:

- 5 (a) the circumstances have materially changed from those when  
6 the order was made; or  
7 (b) the Minister approves.

8 **301M Enforcement of product intervention orders**

9 (1) A person must not engage in conduct contrary to a product  
10 intervention order.

11 Civil penalty: 200 penalty units.

12 Criminal penalty: 200 penalty units, or imprisonment for 5  
13 years, or both.

14 (2) In any proceedings against a person for an offence based on  
15 subsection (1), it is a defence if:

16 (a) the product intervention order is not a legislative instrument;  
17 and

18 (b) the defendant was not aware, and could not reasonably have  
19 been aware, of the order.

20 Note: A defendant bears an evidential burden in relation to the matters in  
21 this subsection. See subsection 13.3(3) of the Criminal Code.

22 (3) If a product intervention order has been served on a person, the  
23 person on whom the order is served must take reasonable steps to  
24 ensure that other persons who engage in conduct to which the order  
25 applies are aware of the order.

26 Civil penalty: 200 penalty units.

27 Criminal penalty: 200 penalty units, or imprisonment for 5  
28 years, or both.

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## Schedule 2 Amendments relating to product intervention orders

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### 301N Additional notification may be required

- 1
- 2 (1) If ASIC makes a product intervention order in relation to a credit  
3 product, it may also by notice require a person (*first person*) who  
4 has engaged in a credit activity in relation to the product in respect  
5 of a consumer to notify the consumer:  
6 (a) of the terms of the order; and  
7 (b) of any other matter specified in regulations made for the  
8 purposes of this paragraph.
- 9 (2) The notice may specify the way in which notifications under  
10 subsection (1) are to be made.
- 11 (3) If the order is a legislative instrument, the notice must also be a  
12 legislative instrument.
- 13 (4) A person contravenes this subsection if the person fails to comply  
14 with a requirement under subsection (1).

15 Civil penalty: 200 penalty units.

16 Criminal penalty: 200 penalty units, or imprisonment for 5  
17 years, or both.

- 18 (5) In any proceedings against a person for an offence based on  
19 subsection (4), it is a defence if:  
20 (a) the notice is not a legislative instrument; and  
21 (b) the defendant was not aware, and could not reasonably have  
22 been aware, of the notice.

23 Note: A defendant bears an evidential burden in relation to the matters in  
24 this subsection. See subsection 13.3(3) of the Criminal Code.

### 9 At the end of subsection 337(1)

25 Insert:

- 26 (1A) However, the Minister must not delegate the Minister's powers  
27 under section 301G, 301H, 301J or 301L to a person other than  
28 ASIC.  
29

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Amendments relating to product intervention orders **Schedule 2**

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1 ***Australian Securities and Investments Commission Act 2001***

2 **10 Subsection 102(2C)**

3 Omit “Part 2,”, insert “Part 2 or under Part 7.9A of the *Corporations*  
4 *Act 2001* or Part 6-7A of the *National Consumer Credit Protection Act*  
5 *2009*,”.

6 **11 After subsection 102(2C)**

7 Insert:

8 (2D) ASIC must not delegate a function or power under Part 7.9A of the  
9 *Corporations Act 2001* or Part 6-7A of the *National Consumer*  
10 *Credit Protection Act 2009* that has been delegated to it by the  
11 Minister.

12 **12 After paragraph 136(1)(ca)**

13 Insert:

14 (cb) information about any instances during the period where  
15 ASIC failed to consult as required by section 1022CE of the  
16 *Corporations Act 2001* or section 301E of the *National*  
17 *Consumer Credit Protection Act 2009*;

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