INSURANCE COUNCIL OF AUSTRALIA

9 February 2018

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

Dear Sir/Madam

Design and Distribution Obligations and Product Intervention Power Draft Legislation

The Insurance Council of Australia (the Insurance Council) welcomes the opportunity to comment on the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Exposure Draft Bill 2018* (the draft Bill) and accompanying exposure draft Explanatory Memorandum (the draft EM). We are also grateful for the meeting which the Insurance Council and members had to discuss the draft legislation with Treasury on 31 January 2018.

Consistent with previous submissions, the Insurance Council continues to support broadly proposals to legislate obligations for products to be appropriately designed and distributed. We acknowledge that the Government's decision to accept the recommendation of the Financial System Inquiry (FSI) in favour of product design and distribution obligations was meant to be transformative, focusing product issuers and distributors on good consumer outcomes. However, the Insurance Council and its members are seriously concerned that the obligations as currently drafted will hinder rather than increase the likelihood that consumers buy insurance suitable for their needs. Furthermore, we fear that this will be accompanied by consumers having to face both more complex processes when buying and renewing policies and higher premiums because of greater compliance costs.

The draft Bill's provisions in relation to design and distribution do not seem to have been designed to mesh easily with the unique characteristics of general insurance products. Although the obligations are intended to be at a high enough principles-based level to operate effectively across different financial services sectors, as will be detailed in this submission, the draft Bill at times operates at too generic a level while at others is too prescriptive.

The Insurance Council recognises the role of ASIC guidance in fleshing out how the new regime will operate. However, without some anchor in the legislation to provide certainty as to the direction which ASIC will take in its guidance, Insurance Council members can have no certainty on how key obligations such as development of Target Market Determinations (TMD) should be fulfilled.

General insurers are better able to take on individual and household risks efficiently by pooling together diverse risk profiles. In this context, efficiency means insurers can hold proportionally less capital and therefore charge lower premiums. If insurers are required to design and distribute products that are aimed only at particular consumer segments (for example, consumers exposed to flood risk), this could increase the level of capital required to be held, leading to premium increases, and significant unintended and detrimental consequences for consumers.

Unlike other financial products, the key factors in whether a general insurance product is appropriate for a consumer are the consumer's risk factors and risk appetite; the consumer's financial situation will contribute to their risk appetite, but does not determine their product needs. Consumers have different risk factors, as well as varying appetites to self-insure and they balance these considerations against the cost of cover when making purchasing decisions.

This variability, as between consumers and for any individual consumer across time and life circumstances, requires general insurers to offer a range of product offerings. Currently, for the common retail policy classes such as home and motor vehicle insurance, products are designed to be tailored, at the consumer's choice, with optional covers to meet specific needs. In this context, it is concerning that, as currently drafted, a determination is only considered appropriate if it is reasonable to conclude that the product would generally meet the likely objectives, financial situations and needs of the persons in the target market.

It is our understanding, following the Insurance Council's meeting with Treasury on 31 January that Treasury considers that it would not be appropriate for the TMD for a motor vehicle insurance product to be "anyone with an insurable interest in a motor vehicle". However, this ***is*** the target market that the core cover has been designed for, with additional optional covers designed to meet diverse consumer needs. To artificially narrow this target market is unlikely to benefit consumers and is inconsistent with the FSI recommendation that 'during product design, issuers should identify the target market'[1].

We understand that the regime in the UK works better for general insurance because it is less prescriptive as to how insurers are to meet their obligations to design and distribute products appropriately. For example, rather than requiring limits to be drawn around a target market, the focus is on requiring issuers to carefully monitor (and be able to demonstrate this to the regulator) product performance, particularly for identified "High Product Risk" business.

This is complemented by a risk-based approach to supervision by the Financial Conduct Authority (FCA), where expectations on insurers are greater in relation to vulnerable consumers. The regime incorporates practical compliance requirements, such as the need to conduct market research for new products and post-launch surveys/reviews to refine product design. We suggest that when considering the points raised in this submission, Treasury look at how the UK has dealt with general insurance.

The following case studies outline the difficulties for insurers in meeting the design and distribution obligations as currently drafted.

[1] Financial System Inquiry (November 2014), *Final report*, page 198.

Defining and distributing to the target market for general insurance products

Case study 1
Consider a home insurance policy that enables consumers to purchase either defined events only cover or defined events with accidental damage cover. Accidental damage provides wider coverage to include a range of accidental loss or damage, compared to defined events cover which provides cover following the occurrence of specific events.

An insurer, when designing their product, may consider that accidental damage cover is most suitable for families with young children, where accidental damage of assets are more likely to occur. However, this does not mean that a household with no children would not also benefit from accidental cover. This creates complexities for insurers in defining a class of consumers for products that are designed to be tailored, at the consumer's choice, with optional covers to meet specific needs.

Case study 2
Another example is motor insurance, where there are multiple levels of cover that consumers can select; comprehensive, third party fire and theft, or third party property damage. A consumer may, having considered their risk of loss, the impact of such loss and their risk appetite, decide to self-insure a substantial level of risk by selecting non-comprehensive cover. In this scenario, what are the implications for insurers in meeting the obligation to ensure consistency of sales with the TMD?

The Insurance Council submits that the draft Bill requires substantial refinement to ensure that it applies sensibly to the general insurance industry. We strongly suggest that the Bill and EM are amended to:

i) include an explicit objective for the obligations to apply in a scalable and proportionate manner;

ii) ensure that the distribution obligation does not interfere with efficient and effective policy renewal processes;

iii) ensure that the obligations do not unnecessarily constrain consumer choice; and

iv) ensure that the obligations do not impose onerous obligations for distributed products through insurance brokers.

We address each of these recommendations in **Attachment A** and detail some specific drafting issues in **Attachment B**.

Given the limited time provided for consultation, particularly co-inciding as it did with a major holiday period, the Insurance Council is concerned that we have not been able to identify all areas of concern. The limited time has precluded us from determining all of the associated impacts of the proposed reform, including costs to industry and consumers. While Treasury has attempted to estimate the cost to industry (as outlined in the Regulation Impact Statement), the Insurance Council respectfully submits that such costs cannot be determined with any accuracy until there is greater certainty in how the regime will operate in practice.

Given the substantial reform being proposed, and the significance of industry concerns about the draft Bill, we strongly urge the Government to delay introduction of the Bill until all matters have been satisfactorily resolved to ensure that the reforms lead to good consumer

outcomes, rather than cause consumer detriment and expose general insurers to unnecessary regulatory action. The Insurance Council would welcome further meetings with Treasury specifically on general insurance issues.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on [redacted] or [redacted].

Yours sincerely

Robert Whelan
Executive Director and CEO

INSURANCE COUNCIL OF AUSTRALIA

ATTACHMENT A

RECOMMENDATIONS ON HOW THE DESIGN AND DISTRIBUTION OBLIGATIONS COULD BE MADE BETTER SUITED TO GENERAL INSURANCE

1. The obligations need to be scalable

As drafted, there is substantial ambiguity around how the obligations will apply to general insurers and distributors of their products. Partly, this is due to undefined key terms and thresholds, such as "significant", "harm", "reasonable steps" and "generally". While we understand that the range of products which will be captured by the obligations necessitates legislation that is principles-based, the Insurance Council submits that the draft Bill lacks key principles to ensure the obligations are applied in a proportionate, balanced and risk-based manner.

The lack of clarity on how crucial aspects of the regime will work in practice gives rise to concerns that the regime will be administered in a manner that is disproportionate to the risk posed in the general insurance sector. While the draft EM acknowledges the FSI's intention that the distribution obligation be scalable, there is no similar acknowledgement for the design obligation.

The FSI considered whether scalable obligations should apply to all retail financial products, regardless of their complexity. In making its recommendation, the FSI acknowledged that for simple products, the design and distribution obligations should operate in a relatively straightforward way. The Insurance Council recommended, in its submission to Treasury dated 15 March 2017, that the following principles should be enshrined in the law to ensure that the obligations are applied appropriately to general insurance:

i) simple mass-designed products are appropriate for most consumers;

ii) managing prudential risk, affordability and accessibility are key considerations in product design;

iii) the objective of the product design and distribution obligations is not to decrease choice for consumers; and

iv) the obligation to distribute products to a target market does not require individual assessment of suitability and must be consistent with the advice model under which the distributor is operating.

The Insurance Council strongly recommends that these principles are reflected in the legislation.

2. The distribution obligation should not apply to policy renewals

It is our understanding, following the Insurance Council's meeting with Treasury on 31 January that it is intended the distribution obligation will apply to policy renewals. As a result, insurers will be required to ensure that each renewal is consistent with a TMD. In practice, this will likely lengthen the renewal process substantially as insurers will be required to recollect information already obtained from the policyholder when they first purchased the product.

We note that insurers are required under the *Insurance Contracts Act 1984* (the Insurance Contracts Act) to provide a renewal letter at least 14 days before a contract of insurance expires. The renewal letter contains key information about the cover offered and reconfirms details of the asset/risk to be covered as previously disclosed by the insured. Insureds are invited to update these details if there has been any change to their circumstances.

As such, there is already a transparent and regulated process in which insurers make an offer of renewal to existing customers. Requiring insurers to ask insureds to provide information again would be a source of annoyance for consumers, and may also disadvantage some consumers if the only cost effective way for insurers to reconfirm information is the online channel.

If the distribution obligation does apply to renewals, insurers should be able to rely on insureds to disclose any changes in their circumstances, rather than require insurers to recollect information.

3. The design and distribution obligations should not constrain consumer choice

While Treasury has advised that it is not the intent of the draft Bill to prohibit sales of financial products to consumers who may fall outside of the target market, we find this advice difficult to reconcile with the obligations as drafted. Issuers and distributors will be required to "take reasonable steps" to ensure that any dealings in, and advice in relation to, financial products are consistent with the TMD. Failure to do so is an offence and a civil penalty regime. Arguably, any dealings or advice in relation to a product that is inconsistent with the TMD will cause the issuer and distributor to breach this obligation.

If the obligations are not clarified, this could have a significant and harmful impact on consumers of general insurance products. For example, where a consumer seeking to insure their home does not wish to opt-in to flood cover, but the insurer's data indicates the consumer's home is exposed to a high risk of flood, a conservative compliance approach may result in home cover not being offered at all. This would put the consumer in a worse-off position, as they would not be able to obtain cover.

It should be explicit in the legislation that the obligations will not prohibit individual consumers outside of the TMD from purchasing products/selecting product options of their choosing.

4. Insurers should not have to ensure consistency of dealings and advice for distributed products through insurance brokers

As drafted, the issuer is obliged to take reasonable steps to ensure that dealings in, and financial product advice provided in relation to, the product are consistent with the TMD. We are concerned that this would effectively mean insurers will be required to review all sales and advice provided by insurance brokers acting as agent of the insured and under their own Australian Financial Services Licence (AFSL). While we understand that this is not the Government's intent, we strongly recommend that the draft Bill is clarified accordingly.

The obligation as drafted would be impossible for insurers to comply with, given it would involve assessing the advice provided by brokers, which insurers would not have access to. Insurance brokers are already highly regulated as providers of personal financial advice, subject to the best interest duty under Part 7.7A. As proposed, brokers would also be

required to meet the distribution obligation in their own right and required to notify the issuer of instances of non-compliance with the distribution obligation.

We do not however object to an obligation on insurers to ensure compliance with a TMD for products distributed by authorised representatives and insurance brokers acting under a binder.

INSURANCE COUNCIL OF AUSTRALIA

ATTACHMENT B

SPECIFIC DRAFTING ISSUES FOR THE GENERAL INSURANCE INDUSTRY

	Issue	Description	Recommendation
1.	***Design Obligation***		
1.1.	Determining what "generally meets the likely objectives, financial situations, and needs" of the target market [proposed s.993DB(10)]	The product design obligations apply to a range of products, from complex investment products that are appropriate for a niche consumer segment to general insurance products that are designed to meet the needs of broad categories of consumers. There is no provision in the draft Bill or guidance in the draft EM that the design obligations are to be scalable, as intended by the FSI. It is disproportionate to apply the same standard to most general insurance products situated at the less complex end of the financial product spectrum. Without explicit recognition of this gradation in risk posed by different financial products, we are concerned that the regime will be administered in a manner that is disproportionate to the risk posed in the general insurance sector. Key areas of uncertainty include: • How do insurers define a class of consumers for products that are designed	There needs to be sufficient comfort in the legislation and EM that the obligation will be applied in a scalable and proportionate way. Under proposed Division 1 of Part 7.8A, the legislation should describe the objectives of the design and distribution requirements and incorporate the following principles: • simple mass-designed products are appropriate for most consumers; • managing prudential risk, affordability and accessibility are key considerations in product design; • the objective of the product design and distribution obligations is not to decrease choice for consumers; and

		to be tailored, at the consumer's choice, with optional covers to meet specific needs? If an option is selected/not selected as part of a consumer exercising his/her choice, what are the implications for compliance with this obligation? • Which product features do insurers consider when determining the likely objectives, financial situation and needs of the target market? Insurers provide cover for insurable risks within prudential risk parameters. How can insurers comply with a requirement to consider the likely objectives, financial situation and needs of consumers who face some uninsurable risks? For example, where a customer's most likely and greatest exposure to loss is not insurable, how can an insurer perform a TMD and still sell an insurance product? • At what level of a product is a TMD required? For example, is one TMD for all motor vehicle insurance product offerings from an insurer sufficient, or is a separate TMD required for each (e.g. comprehensive motor products, third party fire and theft and third party property)? • What will satisfy the thresholds that a product "generally meets" the needs of a	• the obligation to distribute products to a target market does not require individual assessment of suitability and must be consistent with the advice model under which the distributor is operating. There should be clarity in the legislation that: • the obligations will not prohibit individual consumers outside of the TMD from purchasing products/selecting product options of their choosing; • for simple products that are designed for mass markets, including general insurance, it is sufficient for the TMD to consider key product features, and not all product inclusions/exclusions; • further guidance should be provided in the EM around key factors product issuers should consider in determining whether a product "generally" meets the needs of a target market.

		target market in the context of general insurance, given each consumer's risk factors (and appetite to self-insure risks) differs. This variability (as between consumers and for any individual consumer across time and life circumstances) necessitates a range of product offerings. There is also an inconsistency between the draft Bill requiring the TMD to "***generally*** meet the likely objectives…" and draft EM requiring the TMD to "***likely*** meet the objectives…" (paragraph 1.40). The ambiguity in how the proposed obligations will apply in practice is particularly concerning given the consequences for regulated entities of breaching the provisions, including ASIC stop orders and the magnitude of the proposed civil and criminal penalties.	
1.2.	PDDO may inhibit innovation [proposed ss.993DB(4) and (5) and s.993DC(4)]	Until a target market determination has been made, a person is not to deal or advise on the product. This may inhibit innovation as there is no opportunity to undertake limited testing and trialling of new products, or existing product innovation without attracting the design and distribution obligations in full.	There should a limited exemption, in consultation with ASIC, from the requirement for a TMD to permit the development and release of new general insurance products.

1.3.	Prohibition on 'dealing' in a product where a TMD is no longer appropriate, is too broad [proposed ss.993DC (3) and (4)]	Under the proposed prohibition, if a TMD is no longer appropriate, there can be no 'dealing' in the product ('dealing' includes 'varying' or 'disposing of' the product). This creates a circularity whereby insurers would be precluded from permitting a consumer to vary or cancel their insurance policy. There are also practical difficulties for issuers to immediately cease dealing in a product if a review trigger has occurred or another event or circumstance has occurred.	The prohibition should be limited to "issuing" and "arranging" only and should not include "varying" or "disposing of". A customer should still be able to vary or cancel their policy. The prohibition on an issuer not to deal in/provide advice should commence "as soon as practicable".
1.4.	Prohibition not to deal in/provide advice where TMD no longer appropriate [proposed ss.993DC (4) and (5)]	Proposed s.993DC(4) prohibits dealing/advice immediately, which is misaligned with s.993DC(5) which requires the issuer to issue a direction no later than 10 business days to distributors to cease dealing/providing advice. Proposed ss.993DC(4) and (5) are also misaligned with the requirement in the Insurance Contracts Act (s.58) for the insurer to give notice to the insured no less than 14 days before the expiry of a contract of insurance whether or not they will renew the contract and if so on what terms. If a renewal letter is issued 14 days before expiry, and the insurer subsequently becomes aware the TMD is no longer appropriate, an offer of insurance has already been made.	The issuer should not be in breach for distributed sales where it has not yet notified a distributor. The prohibition on an issuer not to deal in/provide advice should commence "as soon as practicable" after notice has been given to distributors.

		Where a TMD is no longer appropriate, sufficient time needs to be provided for insurers to: • update the TMD; • analyse whether any customers do not fall within the target market; • segregate those customers from the renewal batch; and • draft and operationalise communication to explain why renewal is not being offered.	
1.5.	Who is responsible for meeting the design obligation unclear for co-issuer arrangements [proposed s.993DB(5)]	The person responsible for preparing a PDS will be the person responsible for making the TMD. If co-issuers jointly issue a PDS, it appears that both insurers would be responsible for making the TMD for the product. This could result in two or more varying TMDs for the same product.	There should be flexibility in the legislation to allow for the assignment of responsibility for the development of TMDs in co-issuer arrangements.
2.	***Distribution Obligation***		
2.1.	Application of obligation to renewal of policies [proposed ss.993DE (1), (2) and (3)]	It is unclear in the draft legislation whether a renewal to an existing policy will trigger the distribution obligation. Requiring insurers to meet this obligation at every renewal may result in an unnecessarily lengthened process for consumers if insurers are required to recollect information already obtained from the insured. This would also be a source of annoyance for consumers.	Renewal of existing policies should not trigger the distribution obligation where the TMD remains unchanged.

		We note that insurers are required under the Insurance Contracts Act to provide a renewal letter at least 14 days before a contract of insurance expires. The renewal letter contains key information about the cover offered and reconfirms details of the asset/risk to be covered as previously disclosed by the insured. Insureds are invited to update these details if there has been any change to their circumstances. If the distribution obligation does apply to renewals, insurers should be able to rely on insureds to disclose any changes in their circumstances, rather than require insurers to recollect information.	
2.2.	Obligation to review broker sales too onerous [proposed s.993DE (1)]	The issuer is obliged to take reasonable steps to ensure that dealings in, and financial product advice provided in relation to, the product are consistent with the TMD. We are concerned that this means insurers will be required to review all sales and advice provided by insurance brokers acting as agent of the insured and under their own AFSL. If this were the case, it would be impossible for insurers to comply with, given it would involve assessing the advice provided by brokers, which insurers would not have access to.	Issuers should not be required to review whether sales arranged by brokers acting as agent of the insured are compliant with the TMD. We note that as proposed, distributors are required to notify the issuer where they are non-compliant.

		We do not however object to an obligation on insurers to ensure compliance with a TMD for products distributed by authorised representatives and insurance brokers acting under a binder.	
2.3.	Obligation to ensure sales are consistent with the TMD [proposed s.993DE (1), (2) and (3)]	It is unclear whether the obligation to take "reasonable steps" to ensure sales are consistent with a TMD will prohibit sales where the consumer is outside of the TMD. General insurance consumers tailor their policies by selecting product options, excess levels and sums insured to reflect their own risk factors. Consumer choice should not be inhibited. We also note that the intended flexibility for regulated entities in the "reasonable steps" threshold is undermined by the obligation to report "a significant dealing" contrary to TMD and to report the proportion of inconsistent sales (s.993DF(2)(e)).	The draft legislation should clarify that the requirement to take "reasonable steps" to ensure consistency with the TMD does not prevent consumers from actively purchasing products or selecting product options by choice.
2.4.	Distribution obligation may trigger the provision of personal advice [proposed s.993DE (1), (2) and (3)]	The design obligations require issuers to consider the likely objectives, financial situations and needs of persons within a target market. While the EM states that this does not require issuers to consider the needs of individual consumers, it may be construed that dealings and advice that are "consistent" with the TMD require the	There should be a specific exemption, under existing Part 7.7, Division 3, from the personal advice regime for the purposes of meeting the requirements under the product design and distribution requirements.

		assessment of individual needs when a product is distributed. This would be inconsistent with how most general insurance products are distributed; without the provision of personal advice.	
2.5.	Obligation to collect distribution information requires clarity [proposed s.993DF(2)]	The draft legislation requires specific distribution information to be collected. Where insurers issue directly to the market, it is clear that they are obliged to meet this information requirement. However, where a third party distributor deals in a product, the draft legislation is unclear as to whether it is the distributor, issuer or both are required to collect and retain this information. It is unclear what is expected if a regulated person does not have access to the information (i.e. it is held by another regulated person or the insurer only). It is also unclear what level of detail is required regarding 'the ways in which the person's dealings in, or the person's providing financial advice in relation to, the financial product occurred'.	The requirement to collect and retain distribution information should attach to the distributor who holds the customer relationship at transaction. This would be the insurer for direct sales, and third party distributors for all other sales. The obligation should only apply to information 'actually known by' the relevant person.
2.6.	"a significant dealing" not defined [proposed s.993DG]	An issuer must notify ASIC of "a significant dealing" in a product that are not consistent with the product's TMD. "Significant" is not defined and the draft EM creates more ambiguity.	Proposed s.760A(aa) should be amended to accurately reflect the actual objective. A definition of "a significant dealing" should be included in a revised draft of the legislation and unambiguous

		The EM refers to the object of the legislation (under s.760A(a)) as the provision of "suitable" financial products to consumers of financial products. The word "suitable" is not otherwise used elsewhere in the draft Bill. The obligation in the draft Bill is to generally meet the likely objectives, financial situations and needs of the persons in the target market; not the provision of suitable financial products. This may result in ASIC taking a broader view than is warranted.	guidance should be provided in the EM as to what will constitute "a significant dealing".
2.7.	No definition of "harm" [proposed s.993DE(3)(b)]	"Harm" to a customer must be considered when taking reasonable steps to ensure dealing and advice is consistent with a TMD. There is no definition of "harm" creating compliance uncertainty.	Consideration should be given to the incorporation of an exhaustive list of factors to guide assessment, similar to recent Privacy Mandatory Breach reporting changes.
3.	***Scope and commencement of PDDO***		
3.1.	Clarity required for package products that are only partly retail [proposed s.993DB(1)]	Some general insurance package policies have components of cover that are partly wholesale and retail. It is unclear in the draft Bill whether the obligations apply only to the retail component of the package or the entire package.	The legislation should prescribe that the obligations apply only to the retail component of a product. This would be consistent with the existing retail client definition and the preparation of PDSs where only the part of the policy that is retail is caught (see Regulations 7.1.12).
3.2.	Commencement date unclear for general insurance products [Schedule 1, section 14]	The obligations apply 24 months from royal assent for existing products. Existing products are products where the "first issue" occurs before commencement of Schedule 1 and a "further issue" commences on or after	The legislation should prescribe what "first issue" and "further issue" means.

		the end of the commencement date. It is unclear what "first issue" and "further issue" means in an insurance context. The obligations apply 12 months from royal assent for products other than existing products.	"First issue" should be defined at the portfolio context, not for individual customers. First issue is used in the PDS In-Use notice regime to mean first issue of the product at a portfolio level, not first issue of the product to each customer. The obligations should apply to existing products 3 years after the reforms are given Royal Assent, to allow sufficient time for insurers to renegotiate existing arrangements with distributors, update applicable processes and systems (including information technology systems), manage the transition through the annual renewal cycle and educate staff, advisers and representatives. The 12 month transition period may not be long enough for new products, given steps outlined above required to become compliant. In addition, given Treasury has indicated much of the detail will be developed through ASIC guidance, there needs to be sufficient time for ASIC to consult with industry and

			finalise guidance before the obligations come into effect.
3.3.	Medical indemnity insurance [proposed s.993DL(b)]	Under Regulation 7.1.17A, the definition of a retail general insurance product is expanded to include medical indemnity insurance. Medical indemnity was included as a retail product following the 2002 reforms to stabilise the medical indemnity insurance market to assist medical practitioners to better understand the nature of their cover. All other professional indemnity products, including those provided to other healthcare practitioners such as dentists and optometrists, are not defined similarly as retail products. Medical indemnity should not be considered to be a retail product for the purposes of the obligations. Imposing the PDDOs would unnecessarily duplicate and complicate the mandated minimum medical indemnity product features, including a prescribed minimum cover amount, under the Medical Indemnity (Prudential Supervision and Product Standard) Act 2003 (Cth).	In the regulations, as enabled in s.993DL(b) of the draft Bill, there should be a clear exclusion for medical indemnity insurance.
3.4.	It is ambiguous whether strata insurance would be caught by the PDDO [proposed s.993DL(b)]	In some circumstances, insurers take a conservative compliance approach by providing PDSs for strata insurance, although it may not be required. In the vast majority of cases, strata insurance is not a retail product,	In the regulations, as enabled in s.993DL(b) of the draft Bill, there should be a clear exclusion for strata insurance.

		and should not be captured by the obligations.	
3.5.	Certain insurance distributors should not be captured by the distribution obligation [proposed s.993DE(2)]	The distribution obligation applies to a "regulated person" who deals in, or provides financial product advice in relation to, a financial product for which a TMD has been made. Certain distributors of insurance products have been given relief from the need to be licensed to encourage wider distribution and promotion of risk products. ASIC has given relief to insurance distributors (Instrument 2015/682) and group purchasing bodies (CO 08/1) from the need to be licensed. Currently, the insurer is responsible for the conduct of these distributors.	It should be clear that the distribution obligation does not apply to distributors accessing relief under CO 05/1070 and CO 08/1. Consistent with the other obligations under the Corporations Act, the insurer Licensee should assume responsibility for the distribution obligations.
3.6.	Insurer should be responsible for the conduct of authorised representatives	The distribution obligation applies to a "regulated person" who deals in, or provides financial product advice in relation to, a financial product for which a TMD has been made.	It should be clear that responsibility for the distribution obligation sits with the insurer Licensee, and not authorised representatives operating under that Licence.
4.	***PDDO – Other issues***		
4.1.	The benefit to consumers of requiring promotional material to refer to the target market is questionable [Schedule 1, sections 4 and 5]	The draft law amends existing s.1018A to require an advertisement or published statement in relation to the product to describe the target market or specify where the description is available. Given the target market for most general insurance products will include a broad range of consumers, we	The requirement for promotional material to refer to the target market should be removed. If the requirement is not removed, then it should be clear that the disclosure is only required in promotional material and not any

		question the benefit to consumers of this additional disclosure requirement.	other disclosures required by the Corporations Act. The requirement for insurers to make available a description of the target market should not require the disclosure of commercially confidential information.
4.2.	Court's power to declare a contract void is problematic for general insurance [proposed s.993DN(1)(a)]	Under the proposed civil liability provisions, the court is empowered to declare a contract void if it is determined that a consumer suffered loss or damage. There are concerning practical implications for consumers where a contract is declared void, including the potential liability for the consumer to have to repay any claims paid by the insurer prior to the contract rescission.	The remedies under the PDDO should be consistent with the remedies codified in the Insurance Contracts Act.
4.3.	ASIC's information gathering powers should be balanced with the associated compliance burden for regulated entities [proposed s.993DH]	ASIC will be empowered to request information relevant to its regulatory role.	ASIC should have a reasonable basis for making a request and should provide a reasonable period for regulated entities to respond.
4.4.	ASIC could issue an interim stop order without holding a hearing [proposed s.993DI]	ASIC may make an interim order if it considers that any delay in making an order pending the holding of a hearing would be prejudicial to the public interest. This could result in ASIC making an interim order on the basis of a subjective view as to whether a TMD is non-compliant.	ASIC should have "reasonable grounds to believe" that a delay in making an order would be prejudicial to the public interest.

5.	***Product Intervention Powers (PIP)***		
5.1.	PIP should only be used as a last resort	The FSI recommendation for ASIC to be given PIP intended for such powers to be used infrequently and as a last resort.	The FSI's intent should be made clearer in the EM.
5.2.	The scope of the powers are unclear, as some general insurance products are for practical reasons treated as retail when they are not legally. [proposed s.1022CC]	As noted in relation to the PDDO, package policies may have components of cover that are retail and wholesale. A small minority of strata policies are considered retail for the purposes of PDS provision.	The EM should clarify that the PIP only apply to the retail component of package policies, and exclude strata insurance.
5.3.	When the PIP will be triggered [proposed s.1022CC(1)]	The PIP can be used where ASIC is satisfied that a product or class of products has resulted, or is likely to result, in significant detriment to retail consumers. The subjective test should be replaced with an objective test. There is a lack of clarity around the threshold for determining what is a "significant" detriment.	The draft Bill should be amended to trigger the PIP if ASIC is satisfied, "***on reasonable grounds***" (***our addition***), that a product or class of products has resulted, or is likely to result, in significant detriment to retail consumers. A definition of "significant detriment" should be included in a revised draft of the legislation, and unambiguous guidance should be provided in the EM as to what will constitute "significant detriment".
5.4.	Failure of ASIC to comply with procedural requirements does not invalidate an intervention order [proposed s.1022CE(3)]	While the consultation process as proposed prior to an intervention is intended to be mandatory, failure to comply with the requirements does not invalidate an	There should not be such a blanket remedy for a failure by ASIC to comply with the consultation requirements.

		intervention order. In effect, the consultation requirements are not mandatory.	This is particularly important, given the PIP extend to remuneration arrangements. Without robust consultation requirements, ASIC could make changes to remuneration arrangements without the need to consult.
5.5.	ASIC not required to consider impact of intervention on competition	While ASIC is required to consult with APRA prior to making an intervention order in which APRA may have an interest, there is no obligation for ASIC to consider the impact of an intervention on market competition.	There should be an explicit requirement for ASIC to consider the impact of an intervention on competition prior to making an order.
5.6.	Extension of an intervention by the Minister inappropriate [proposed s.1022CG]	An intervention order can only be lengthened beyond 18 months if the Minister extends it for a set period of time or declares it permanent. The Minister may also delegate their power to extend an intervention or order to ASIC. Unlike a court determination, a Minister's decision would not afford affected parties with procedural fairness measures, as would a decision of the court.	The ability to extend an ASIC intervention should be limited to a determination of a court. The Minister should not be able to directly, or delegate their power to ASIC to, extend an intervention.