





## **Corporations Amendment (Design and Distribution Obligations) Regulations 2019**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 December 2019

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg  
Treasurer

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
	<b>Schedule 1—Amendments</b>	<b>2</b>
	<i>Corporations Regulations 2001</i>	<i>2</i>



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## 1 Name

This instrument is the *Corporations Amendment (Design and Distribution Obligations) Regulations 2019*.

## 2 Commencement

- (1) Each provision of this instrument 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		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019</i> commences.	5 April 2021 (paragraph (b) applies)

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Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Corporations Regulations 2001*

#### 1 Subregulation 7.1.07C(2)

Repeal the subregulation, substitute:

(2) In this regulation:

*overseas student health insurance contract* has the same meaning as in Private Health Insurance Rules made for the purposes of Part 4-2 of the *Private Health Insurance Act 2007* (which is about health insurance business).

Note: In 2019, the meaning was given by rule 18 of the *Private Health Insurance (Health Insurance Business) Rules 2018*.

#### 2 After Part 7.8

Insert:

### **Part 7.8A—Design and distribution requirements relating to financial products for retail clients**

#### **Division 1—Preliminary**

##### **7.8A.01 Definitions**

In this Part:

*credit* has the same meaning as in subregulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*.

*credit facility* has the same meaning as in the *Australian Securities and Investments Commission Regulations 2001*.

*extended operation financial product* means a financial product covered by paragraph 994AA(1)(b) of the Act (about the extended operation of Part 7.8A of the Act in relation to ASIC Act financial products).

##### **7.8A.02 Definitions—regulated person**

(1) This regulation is made for the purposes of paragraph (c) of the definition of *regulated person* in subsection 994A(1) of the Act.

*Persons who are exempt from having an Australian financial services licence*

(2) A person is prescribed in relation to a financial product if the person is exempt from the requirement in section 911A of the Act to hold an Australian financial services licence under either of the following provisions of the Act:

- (a) paragraph 926A(2)(a);
- (b) paragraph 926B(1)(a).

*Product distributors*

- (3) A product distributor within the meaning of section 910A of the Act (as modified by the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682*) is prescribed in relation to the following financial products:
- (a) a basic deposit product;
  - (b) a general insurance product;
  - (c) a bundled consumer credit insurance product (within the meaning of that instrument).

*Credit licensees*

- (4) Each of the following persons is prescribed in relation to a financial product that is a credit facility:
- (a) a person who is a licensee within the meaning of the *National Consumer Credit Protection Act 2009* (the **Credit Act**);
  - (b) a person who is a credit representative (within the meaning of the Credit Act) of such a licensee;
  - (c) a person who is exempt from the operation of section 29 of the Credit Act (which is about the requirement to hold a credit licence) under any of the following provisions of that Act:
    - (i) paragraph 109(1)(a);
    - (ii) paragraph 109(3)(a);
    - (iii) paragraph 110(a);
  - (d) a person who engages in a credit activity (within the meaning of section 6 of the Credit Act) on the person's own behalf;
  - (e) a person who contravenes section 29 of the Credit Act.

*Issuers and sellers of extended operation financial products*

- (5) Each of the following persons is prescribed in relation to an extended operation financial product:
- (a) a person who issues the product;
  - (b) a person who sells the product under a regulated sale.

## **Division 2—Financial products for which target market determinations are required**

### **7.8A.03 Financial products for which target market determinations are required**

This Division is made for the purposes of paragraphs 994B(1)(c) and 994B(2)(b) of the Act.

### **7.8A.04 Jurisdictional scope of Division**

- (1) A person is not required by this Division to make a target market determination for a financial product if the product is:
- (a) a financial product that is not available for acquisition by issue, or by regulated sale, in this jurisdiction; or

(b) securities offered under a recognised offer in relation to a recognised jurisdiction.

(2) The following terms used in paragraph (1)(b) have the same meaning as in subsection 1200A(1) of the Act:

- (a) recognised jurisdiction;
- (b) recognised offer;
- (c) securities.

#### **7.8A.05 Simple corporate bonds**

A person must make a target market determination for a financial product if:

- (a) the product is a simple corporate bonds depository interest where the bonds are to be issued under a 2-part simple corporate bonds prospectus; and
- (b) the person is the person required to prepare a disclosure document for the bonds.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

#### **7.8A.06 Debentures of certain bodies**

A person must make a target market determination for a financial product if:

- (a) the product is a debenture of a body that is:
  - (i) an ADI (short for authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; or
  - (ii) registered under section 21 of the *Life Insurance Act 1995*; and
- (b) but for subsection 708(19) of the Act, disclosure to investors under Part 6D.2 of the Act would be needed for an offer of the debenture for issue or sale; and
- (c) the person is the person who, but for subsection 708(19) of the Act, would be required to prepare a disclosure document for an offer of the debenture for issue or sale.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

#### **7.8A.07 Basic banking products**

A person must make a target market determination for a financial product if:

- (a) the product is a basic banking product within the meaning of section 961F of the Act; and
- (b) the person issues, or offers to issue, the product.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

#### **7.8A.08 Investor-directed portfolio services**

(1) A person must make a target market determination for a financial product if:

- (a) the product is an interest in a managed investment scheme; and

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- (b) the interest arises out of participation or proposed participation in an IDPS, but is not IDPS property; and
  - (c) but for ASIC Class Order [CO 13/763], Part 7.9 of the Act would give rise to an obligation on a person to give another person a Product Disclosure Statement for the interest; and
  - (d) the person is the operator of the IDPS.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

- (2) The following terms used in this regulation have the same meaning as in the section 912AD set out in paragraph 6 of ASIC Class Order [CO 13/763]:
  - (a) IDPS;
  - (b) IDPS property;
  - (c) operator, in relation to an IDPS.

### **7.8A.09 Exchange traded products**

- (1) A person must make a target market determination for a financial product if:
  - (a) the product is covered by subregulation (4); and
  - (b) the product is, or will be, able to be traded on a licensed market; and
  - (c) the issuer issued the product with the purpose mentioned in subparagraph 1012C(6)(c)(i) of the Act; and
  - (d) it is reasonably likely that a regulated person will offer to sell the product to a person as a retail client within 12 months of the issue of the product; and
  - (e) the person is the issuer of the product.

Note: Subsection 1012C(7) of the Act affects whether the issuer is taken to have a particular purpose.

- (2) The time before which the issuer is required to make the determination is the close of business on the day on which the issuer first issues the product with the purpose mentioned in paragraph (1)(c).
- (3) This regulation does not apply to a financial product if the issuer issued, or offered to issue, the product to a person as a retail client at or before the time specified in subregulation (2).
- (4) This subregulation covers the following financial products:
  - (a) an interest in a managed investment scheme;
  - (b) a share in a foreign company that has the economic features of a managed investment scheme and is an open-end investment company registered with the U.S. Securities and Exchange Commission under the *Investment Company Act 1940* of the United States of America;
  - (c) a legal or equitable right or interest in a financial product covered by paragraph (a) or (b);
  - (d) an option to acquire, by way of issue, a financial product covered by paragraph (a), (b) or (c).

### **7.8A.10 Custodial or depository services**

A person must make a target market determination for a financial product if:

- (a) the product includes a custodial or depository service; and
- (b) but for this regulation, Part 7.8A of the Act would not apply in relation to the financial product; and
- (c) the custodial or depository service is to be provided to a retail client; and
- (d) the person is the issuer of the product.

Note: The person must make the determination before any person engages in retail product distribution conduct in relation to the product: see subparagraph 994B(2)(b)(ii) of the Act.

## Division 3—Exemptions

### 7.8A.20 Financial products for which target market determinations are not required

- (1) For the purposes of paragraph 994B(3)(f) of the Act, each kind of financial product covered by a subregulation of this regulation is prescribed.

#### *Superannuation*

- (2) This subregulation covers an interest in an eligible rollover fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).
- (3) This subregulation covers a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*).

#### *Insurance products*

- (4) This subregulation covers a medical indemnity insurance product.

#### *Depository interests*

- (5) This subregulation covers a depository interest in fully paid ordinary shares in a foreign company, being shares in relation to which, if they were offered directly to retail clients, Part 7.8A of the Act would not apply.

#### *Money products*

- (6) This subregulation covers a bank draft, including (but not limited to):
  - (a) a cheque drawn by a financial institution on itself; or
  - (b) a cheque drawn by a financial institution on a financial institution other than itself.
- (7) This subregulation covers a money order issued as a money order by, or for, Australia Post.

#### *Extended operation financial products not received in this jurisdiction*

- (8) This subregulation covers an extended operation financial product, if the offer to issue or sell the product is not received in this jurisdiction.

#### *Credit facilities*

- (9) This subregulation covers each of the following:

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- (a) a credit facility that is not or was not issued, or that will not be issued, in the course of a business that is wholly or partly a business of providing credit;
  - (b) a credit facility under the terms of which the credit is, or must be, applied wholly or predominantly for business purposes;
  - (c) a credit facility that:
    - (i) involves a matter referred to in paragraph (b) of the definition of **credit** in subregulation 2B(3) of the *Australian Securities and Investments Commission Regulations 2001*; but
    - (ii) does not involve credit of a kind referred to in paragraph (a) of that definition;
  - (d) a credit facility that is the provision of a mortgage that secures obligations under a credit contract (but not the credit contract);
  - (e) the provision of credit by a pawnbroker in the ordinary course of a pawnbroker's business (being a business which is being lawfully conducted by the pawnbroker).

#### **7.8A.25 Exemption from Part 7.8A—Employers complying with certain superannuation guarantee obligations**

- (1) For the purposes of paragraph 1368(d) of the Act, Part 7.8A does not have effect in relation to a person in relation to a transaction that involves retail product distribution conduct if:
  - (a) the person is an employer; and
  - (b) the relevant retail client is an employee of the employer; and
  - (c) the conduct is covered by subregulation (2).
- (2) The following retail product distribution conduct is covered by this subregulation:
  - (a) under Part 7.9, giving the employee a Product Disclosure Statement for a product that is a default fund product for the employer and employee;
  - (b) dealing in a financial product that consists only of the employer paying contributions on behalf of the employee into a product that is:
    - (i) a default fund product for the employer and employee; or
    - (ii) a chosen fund product for the employee;
  - (c) dealing in a financial product that consists only of the employer arranging for the issue to the employee of a product that is:
    - (i) a default fund product for the employer and employee; or
    - (ii) a chosen fund product for the employee.
- (3) In this regulation:

**chosen fund product**, for an employee, means a financial product that is an interest in a chosen fund (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) for the employee.

**default fund product**: a financial product that is an interest in a fund is a **default fund product** for an employer and an employee at a time if, assuming that the employee were a member of the fund and the employer were to make a contribution to the fund at the time for the benefit of the employee, the employer could rely on a provision of section 32C of the *Superannuation Guarantee*

*(Administration) Act 1992* (other than subsection 32C(1)) to satisfy the choice of fund requirements in relation to the contribution.

**fund** has the same meaning as in Part 3A of the *Superannuation Guarantee (Administration) Act 1992*.