

DESIGN AND DISTRIBUTION OBLIGATIONS: REGULATIONS MADE

17 December 2019 | Australia

Legal Briefings - By **Fiona Smedley and David Curley**

The [Government has made](#) the *Corporations Amendment (Design and Distribution Obligations) Regulations 2019* (**Regulations**), relating to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (**DDO**).

WHAT'S CHANGED DURING THE CONSULTATION ON THE DRAFT REGULATIONS?

The Regulations are substantially similar to the consultation draft except in relation to:

- *Exchange traded product (ETF) issuers*, who are now confirmed to be required to make a target market determination (**TMD**) whether they issue direct to retail clients or to authorised participants;
- *Employer sponsors*. New exemptions have been proposed but they are limited in scope and will not assist an employer who wishes to provide a product disclosure statement (**PDS**) in relation to a choice superannuation product; and
- *Regulated persons*, who now include persons exempted by legislative instrument and an expanded range of regulations from the requirement to hold an Australian financial services licence (**AFSL**). Persons exempted by ASIC instrument from the requirement to hold an AFSL were already regulated persons.

HOW IS THE DDO EXTENDED UNDER THE REGULATIONS?

The Regulations extend the application of the DDO by:

- extending the definition of '*regulated person*' to:
 - distributors of basic deposit products, general insurance products or bundled consumer credit insurance products;
 - certain credit licensees and credit representatives; and
 - issuers and sellers of ASIC Act financial products; and
- extending the DDO to additional categories of financial product available in Australia, including:
 - simple corporate bonds and depository interests in simple corporate bonds;
 - debentures issued by ADIs and life insurance companies;
 - basic banking products;
 - interests in an investor directed portfolio service (**IPDS**);
 - ETFs; and
 - custodial or depository services.

HOW IS THE DDO LIMITED UNDER THE REGULATIONS?

The Regulations also exclude certain financial products from the requirement to prepare a TMD, including:

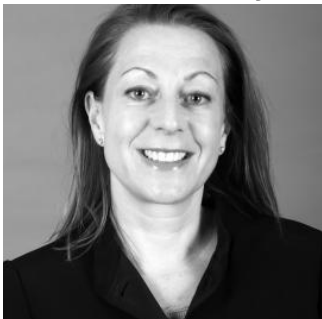
- defined benefit schemes and eligible rollover funds;
- depository interests in fully paid ordinary shares in a foreign company;
- ASIC Act financial products not offered in Australia; and
- certain credit arrangements.

Finally, the Regulations also provide some advice and dealing exclusions for employers but these are limited in scope. For example they will not assist an employer who wishes to provide a PDS in relation to a choice superannuation product in connection with complying with the employer's superannuation guarantee obligations.

The Regulations and the DDO both commence on 5 April 2021.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



FIONA SMEDLEY
PARTNER, SYDNEY

+61 2 9225 5828
Fiona.Smedley@hsf.com

LEGAL NOTICE

The contents of this publication, current at the date of publication set out above, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2020

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2020