

Manager

Financial Services Reform Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

11 October 2019

By email

Dear Sir/Madam

Draft design and distribution obligations regulations

Thank you for the opportunity to provide a submission in response to the exposure draft of the Corporations Amendment (Design and Distribution Obligations) Regulations 2019 ('DDO regulations').

ARCA is the peak industry association for businesses using consumer information for risk and credit management. Our Members include Australia's leading banks, credit unions, finance companies, fintechs, and credit reporting bodies. Collectively, ARCA's Members account for well over 95% of all consumer lending in Australia.

We make the following observations in relation to the application of the new design and distribution obligations to credit products (particularly as those regulated by the *National Consumer Credit Protection Act*):

1. Further consideration should be given to simplifying the regulatory burden on providers of straightforward credit products such as home loans and personal loans. These products have such broad suitability for consumers that any target market determination is likely to be so generic as to be pointless. Further, the existing responsible lending obligations of the NCCP require that the product offered to an individual consumer is structured in a way that meets the individual's requirements and objectives.

2. The regulations should clarify the operation of the design and distribution obligations in respect of credit products. In their current form, the drafting of the obligations in relation to credit is confusing and unclear. As the design and distribution obligations form part of the Corporations Act, they incorporate terms that are not ordinarily used in respect of credit, and those terms may be inconsistent with equivalent terms used in respect of credit. This includes terms such as 'retail client', 'issue', 'dealing' and 'financial product advice'. The law should clarify how these terms operate with the credit related terms, such as 'credit activity', 'credit service', 'credit assistance'.
3. Further to the above, the regulations should clarify:
 - a. the entity that is taken to 'issue' the credit product under white labelling and certain other forms of securitisation arrangements. i.e. under such arrangements, the 'credit provider' acts as a trustee and may have little to do with the design or distribution of the product.
 - b. the meaning of 'financial product' as it relates to non-Chapter 7 products (including credit products) for which a product disclosure statement is not required. A particular financial product may have numerous configurable features, such as the payment type (principle and interest vs interest only), the interest type (fixed vs variable) and the rewards scheme attached to a credit card. It is not clear under the legislation whether one target market determination may be produced for a product range, regardless of the available configurable features, or whether a separate target market determination must be made for each of the configured product.

If you have any questions about this submission, please feel free to contact Michael Blyth.

Yours sincerely,

Mike Laing

Chief Executive Officer

Australian Retail Credit Association