

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2017 - 2018

Division/Agency: Australian Securities and Investment Commission
Question No: 110
Topic: Product Intervention Power
Reference: Written
Senator: Ketter, Chris

Question:

1. Do you think that credit products should be subject to both the product intervention power AND the design and distribution obligation?
2. What is your view on whether timeshare products should be within the scope of product intervention power and design and distribution obligation?

Answer:

1. Yes. ASIC thinks that both the product intervention power and the design and distribution obligations (product governance obligations) should apply to:
 - a. credit products regulated by the *National Consumer Credit Protection Act 2009* (National Credit Act); and
 - b. those credit products not regulated by the National Credit Act, but subject to the limited consumer protections in the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

National Credit Act. The Government's current proposal is that credit products regulated by the National Credit Act will be subject to the product intervention power, but not the product governance obligations. The rationale for this is that these credit products are subject to responsible lending obligations.

ASIC considers that responsible lending obligations are not equivalent to—or an adequate substitute for—the proposed product governance obligations. We see the new obligations as a framework for ensuring that firms have appropriate governance processes and controls in place, while responsible lending is directed at each individual transaction. Also, responsible lending obligations do not expressly require credit providers to:

- i. identify appropriate target and non-target markets for their products;
- ii. select distribution channels that are likely to result in products being marketed to the identified target market;
- iii. consider whether consumers are able to understand the key features of the credit product; or
- iv. periodically review products to ensure that the identified target market and the selected distribution channel continue to be appropriate for the product.

Nevertheless, we acknowledge that the content of the product governance obligations may need to be modified where there is other relevant regulation, such as responsible lending, in place.

Other credit. The Government's proposal is also that those credit products not regulated by the National Credit Act, but subject to limited protections in ASIC Act will **not** be subject to either the product intervention power or the product governance obligations. This includes lending to small business consumers, certain credit contracts for investment purposes, and other credit products sold to consumers (e.g. some short-term credit products). Currently, these products are only subject to limited consumer protections and are not subject to responsible lending obligations. Extending the product governance obligations and product intervention power to these credit products would encourage industry to improve consumer outcomes and ensure ASIC has a tool to address problems in these markets.

2. While there may be arguments about whether timeshare schemes should be regulated as financial products at all, if they are to be treated as financial products, ASIC's view is that there is merit in having them within the scope of both the product intervention power and the product governance obligations.