

Introduction

Effective from the 5th October 2021 the new Design and Distribution Obligations (DDO) come into force. The change has been brought about by the findings of the Hayne Royal Commission into the Financial Services industry.

The Commission identified numerous examples where clients were being sold financial products that on any measure were inappropriate to the needs or requirements of the client. In many of these examples, the client was clearly worse off after purchasing the product or the product was completely inappropriate for the client's situation.

Based on these findings the government has passed legislation to put the responsibility on the businesses that develop and financial services to ensure that products are fit for purpose and generally suitable to the end Retail Client that purchases them.

It must be said that there were no instances raised in the Royal Commission of general insurance brokers selling inappropriate products, however the new obligations apply to brokers regardless of this.

Overview

DDO creates obligations for both the Issuer of the product and the Retailer of the product that is designed for and distributed to Retail Clients.

The Issuer is the insurance company, or an AFSL Holder acting under a binder on behalf of an insurer. The AFSL Holder may promote itself as an Underwriting Agency or a Wholesale Broker.

The Retailer of the product will typically be an insurance broker, their Authorised Representatives and any Distributors they may have appointed.

The key new document within the DDO is a Target Market Determination (TMD). Every product to be sold to a Retail Client must have a TMD. The TMD outlines who the product is appropriate and inappropriate for, based on the customer's profile / eligibility / characteristics and the risks required to be insured etc.

Simple examples of how this would work is a TMD would identify that a:

- standard Houseowners Policy is not appropriate for a client that operates a casual rental property e.g. – Air BNB.

- A Personal Accident policy with an age restriction of 75 would not be appropriate for a person aged over 75.

- A standard Private Motor vehicle policy is not appropriate for a client that uses the vehicle for Ride Share and goods delivery services.

- A Landlords policy is suitable for a client that wishes to insure regular rental property.

What does this mean for the business?

Where we act as an insurance broker, we will be required to meet the following new obligations:

Issuers of products caught by DDO will require us to commit to meeting the DDO obligations, by way of agreement / correspondence etc. In most cases we will have little opportunity to negotiate the agreement. If we do not commit to comply, the Issuer will not allow us to retail the product.

We are not legally able to offer product either by way of new business or renewal, to a client after the 5th October 2021 unless we have a TMD to provide us with guidance on who the product is suitable and not suitable for.

The business will collect and store all TMDs from all issuers, in much the same way that PDS's are managed. This includes ensuring that all TMDs are current. Staff placing business need to have access to each TMD in the same way that they need access to each PDS.

Management will ensure we have all current TMDs and follow up Issuers where a TMD has not been received and advise staff/representatives if we are no longer able to sell a particular product.

Management will review all TMDs received and advise staff and representatives of any issues identified where the TMD would require us to change the way which we have historically selected products for clients. In practice we expect little or no change to the product selection process.

We can only sell those products to clients where we have a reasonable basis for deciding that the client fits within the criteria outlined in the product's TMD. Asking questions of a client in order to assess whether they fit within a TMD and the answers they provide do not impact the level of advice that we provide e.g., General Advice or Personal Advice.

The only exception to Item 0 above is where we are providing Personal Advice to a client, in which case we do not need to follow the TMD. However, we should have documentation to support why the product is suitable for the client even though they are not in the TMD.

We now also have an obligation to advise the Issuer of any complaints we receive regarding the suitability of the product. Typically, this will be as soon as we receive the complaint. All complaints raised regarding product suitability should also be entered into our Complaints Register.

We must advise the Issuer where we become aware that we have been selling a product outside of the client profile specified in the TMD.

We must provide a client with the relevant TMD (free of charge) should they ask for it.

Design and Distribution Briefing Note

What do we expect our staff and representatives to do?

On a day-to-day level we do not expect there will be any practical change to the way that our staff and representatives select products for our clients.

We do not have an obligation to use the TMD as a checklist or quality control process when selecting a product for a client. The TMD provides guidance only and all staff and representatives should rely on their training, product knowledge and experience in product selection unless specifically instructed otherwise by management.

However, we request our staff and representatives to assist us to meet our DDO by immediately advising management:

1. If you become aware that we do not have a current TMD for a particular product.
2. If you believe that we may be selling a product to clients that is not suitable to the needs of the client or the client does not fit within the profile outlined in the relevant TMD.
3. If you become aware of any complaints or negative feedback surrounding the suitability of a product for a particular client.

Summary of Obligations for Issuers and Retailers

The Table below provides an outline of the responsibilities created by DDO. Only items with an asterisk next to them apply to Retailers.

Design Obligations	Distribution Obligations	Monitor and Review Obligations
Develop TMD. Review TMD For Appropriateness. Keep record of TMD decisions and reviews. Notify ASIC of significant dealings which are not consistent with TMD. Have a publicly available Product Development and Distribution Statement (this is a requirement of the General Insurance Code of Practice).	Supply TMD to all parties that have the ability to distribute the product. *Do not deal with product unless TMD exists. *Do not distribute product if TMD is inappropriate. *Take reasonable steps to ensure distribution is compliant with TMD. Collect complaint and distribution information. Notify significant dealing which is inconsistent with TMD.	Monitor distribution of products, review complaints received and the ongoing appropriateness of TMD. Review and update / replace inappropriate TMDs.