

Answer to question in writing:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

ASIC15QW

Question

In May 2020, ASIC announced it would defer the commencement date of the mortgage broker best interest duty and remuneration reforms, and the design and distribution obligations, for six months from their original commencement dates given the impact of COVID 19 (Source: ASIC).

- (a) Why is this delay necessary in ASIC's view?
- (b) What are the benefits and harms to consumers of this deferral?
- (c) What calculations have ASIC done to gauge the impact that the altered timeline will have on consumers?
- (d) What would be the cost of acting sooner?
- (e) In considering this deferral, and any possibility of further deferrals, has ASIC determined a threshold where the cost to consumers of delay becomes unacceptable?

Answer

(a) Why is this delay necessary in ASIC's view?

ASIC decided to defer the commencement date of the mortgage broker best interest duty and remuneration reforms and the design and distribution obligations for six months from their original commencement dates, given the significant impact of COVID-19 on the Australian economy, especially on the financial system and consumers. In particular, ASIC concluded that a deferral would be justifiable to enable the financial services industry to focus their efforts on planning for the recovery from, and supporting their customers and their staff during, the COVID-19 outbreak, while continuing to implement these important reforms over an extended period. In this environment, it also allows sufficient time for appropriate implementation to help ensure beneficial consumer outcomes.

The deferral of these reforms followed, and was consistent with, the Government's announcement on 8 May to defer by six months the implementation of commitments associated with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as a result of the significant impacts of COVID-19. These typically involved changes to the introduction dates of certain potential pieces of legislation, as well as changes to commencement dates when previous drafts of legislation are introduced in

Parliament. Because these reforms have not passed Parliament, the changes can effectively be made at a later time.

However, the laws containing the design and distribution obligations (DDOs) and the best interest duty and remuneration reforms for mortgage brokers (mortgage broker reforms) have passed Parliament. Based on our consultation with industry on draft guidance on both reforms, as well as with Treasury and the Treasurer, we concluded that the rationale for the Royal Commission announcement above was also relevant to these two reforms.

Additionally, we took into account that:

- The mortgage broker reforms were to commence on 1 July 2020, and until such time primary legislation amending that date received Royal Assent, the mortgage broking industry would have had to prepare to comply from 1 July. The COVID-19 restrictions were making it particularly difficult for credit licensees to appropriately train mortgage brokers, and to make systems changes needed to comply with the reforms.
- Although the DDOs were to commence in April 2021, the reforms are particularly significant and require a substantial amount of work to implement. Many of the new obligations will be owed by product issuers, who have had to dedicate additional resources to e.g. respond to consumer requests for hardship.

(b) What are the benefits and harms to consumers of this deferral?

This deferral was intended to facilitate industry participants focusing on immediate priorities and the needs of their customers during the COVID-19 pandemic. In the absence of this deferral, industry may have been more restricted in their ability to refocus resources to address these priorities arising from the pandemic.

In making the decision to effectively defer the commencement of these reforms, ASIC gave consideration to the important protections that both of these reforms introduce for consumers. These deferrals were about allowing industry to continue to implement these reforms, which involve significant preparation, over an extended timeframe to account for the interruption and redirection of resources caused by COVID-19.

ASIC conveyed this expectation of continued implementation in its announcement of the deferral, along with our expectations of meeting consumer needs at this time. ASIC has continued to engage with industry on the importance of these reforms, and the critical need for industry to continue to prepare for their commencement.

While the deferral delays the time before which industry has to comply with the reforms, we expect that medium term decisions by industry will contemplate the need to comply with these reforms in 2021. For example, an issuer developing a new product would need to have regard to the upcoming requirements they would need to meet under the design and distribution obligations in designing that product and in considering how it would reach

consumers. Additionally, mortgage brokers may be establishing and transitioning to systems that will allow them to comply with the mortgage broker reforms from 1 January 2021.

(c) What calculations have ASIC done to gauge the impact that the altered timeline will have on consumers?

We considered that a 6-month delay was appropriate in the circumstances as an urgent response to COVID-19 to allow ongoing preparation for DDO and the mortgage broker reforms over an extended period while also allowing time for industry to focus on COVID-19 related priorities which impact consumers.

We considered that any extension should be limited to the period of interruption caused by COVID-19 – estimated as 6 months.

(d) What would be the cost of acting sooner?

The transition periods for each reform were set before the COVID-19 pandemic.

COVID-19 has been a significant interruption to both industry and consumers. In the absence of a deferral, industry would have needed to prepare for these reforms and address COVID-19 related priorities within a shorter timeframe. The deferral provided a way for industry to continue to address both priorities over an extended period.

In the absence of this deferral, industry may have been more restricted in their ability to both address issues arising from the pandemic and/or properly implement the reforms within the shorter timeframe. It is in the interests of consumers that these reforms are properly implemented.

(e) In considering this deferral, and any possibility of further deferrals, has ASIC determined a threshold where the cost to consumers of delay becomes unacceptable?

No. In making the decision to effectively defer the commencement of these reforms, ASIC gave consideration to the important protections that both of these reforms introduce for consumers.