

Regulatory Change – Implications for Brokers

V0.1 effective 20th August 2021

Purpose of this Document

New laws commence this October that will give rise to new legal and professional obligations on you as a broker. This document provides some key tips and important considerations when you advise and deal in Hollard Personal Insurance products, to help you consider the implications of these laws for your business and your clients and highlight some of the new responsibilities and obligations you will have.

Key points:

- You need to assist your clients to comply with the new duty to answer honestly.
- You need to take reasonable steps to ensure your clients only purchases, renews or varies a product if the client is likely to be in the target market for the product, as stated in the TMD.
- We have identified some cohorts of clients who may not be in the target market for our products.
- Your conduct needs to be consistent with the target market determination for the product.
- You need to comply with your reporting obligations set out in the target market determination.

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1. Scope of this document

This document is focussed on the following two aspects of the forthcoming regulatory changes:

Regulatory Change	Abbreviation	Effective Date	Hollard's Go-live Date
<p>Duty to Answer Honestly</p> <p>A duty on clients purchasing or renewing insurance to take reasonable care not to make a misrepresentation.</p>	DTAH	5th Oct 2021	New Business and Renewals Effective: 1st Oct 2021
<p>Target Market Determination</p> <p>An obligation on retail product manufacturers to issue a Target Market Determination, and on distributors (including brokers) to act consistently with the TMD.</p>	TMD	5th Oct 2021	New Business and Renewals Effective: 1st Oct 2021

This document is designed to be read with (and does not limit or replace) the relevant TMDs, PDSs and derogation notices for those products. It is not legal advice and is not a complete statement of your obligations. You should obtain your own legal and compliance advice about the nature, extent and implications of the new laws and your legal obligations.

This document assumes that you only provide general advice and dealing services. To the extent that you provide personal advice, your professional and legal obligations will be different. However, the discussion of the target market for the products and product options will still be relevant for you.

2. Duty to Answer Honestly

2.1 What is the new duty to answer honestly?

The duty to answer honestly (DTAH) is replacing the Duty of Disclosure (DOD). In place of a duty to disclose 'every matter' that a reasonable person would expect to be relevant, consumers will instead be required 'to take reasonable care not to make a misrepresentation'. In our client-facing documents, we are calling this new duty 'the duty to answer honestly'.

In effect, the duty requires clients to take reasonable steps to honestly, accurately and completely answer the questions we ask. A failure to do so could result in the full or partial denial of claims and/or cancellation of your client's policy.

2.2 What are the implications for brokers?

When we ask you a question (or ask you to ask your client a question) as part of the process of quoting, issuing, varying or renewing a policy, we are (in effect) asking your client that question. This is because you are your client's agent. Because we are effectively asking your client that question, your client has a duty to take reasonable steps to answer that question honestly, accurately and completely.

This means you should ensure that you:

- communicate our questions to your client;
- take reasonable steps to ensure that your client understands those questions and takes reasonable care in answering them;
- record those answers; and
- communicate those answers to us.

If you fail to do so, it could result in your client breaching their duty. This may in turn result in your client's future claims being partially or wholly denied. If so, your client may seek to hold you responsible if and to the extent that your acts or omissions caused or contributed to their failure to comply with the duty and therefore to their claim being partially or wholly denied.

2.3 What other changes will we make?

We are working with Steadfast Technologies to roll out further changes, such as updates to the ways in which we ask questions and additional help text to address DTAH obligations. These changes will go live in SCTP November 2021. Further details will be released in due course.

3. Target Market Determinations

3.1 What is a target market determination?

From October this year, retail product manufacturers (including insurers) will be required to issue a target market determination (TMD) for each of their retail products.

The TMD is a document that specifies who the product is designed for, how the product manager helps ensure that clients who purchase the product are likely to be in the target market, and the obligations of distributors (including brokers) to report certain matters to the product manufacturer.

3.2 What are the implications for brokers?

Under the new laws, product distributors (including brokers) will be required to take reasonable steps to ensure that their distribution, advice and dealing services are consistent with the relevant target market determination (TMD) issued by the product manufacturer.

This means that you must take reasonable steps to ensure that your conduct is consistent with the TMD by ensuring that:

- each client that purchases, renews or varies the product is likely to be in the target market described in the TMD for both the product overall and their chosen product options;
- you comply with the distribution conditions described in the TMD; and
- you comply with the reporting requirements described in in the TMD.

Reasonable steps are steps that, in the circumstances, you are reasonably able to take that will, or are reasonably likely to, result in your conduct being consistent with the target market determination for the product, taking into account all relevant matters, including:

- (a) the likelihood of any such conduct being inconsistent with the determination; and
- (b) the nature and degree of harm that might result from an issue or regulated sale of the financial product:
 - (i) to retail clients who are not in the target market; or
 - (ii) that is inconsistent with the determination; and
- (c) what the person knows, or ought reasonably to know, about:
 - (i) the matters referred to in paragraphs (a) and (b); and
 - (ii) ways of eliminating or minimising the likelihood and the harm; and
- (d) the availability and suitability of ways to eliminate or minimise the likelihood and the harm.

3.3 What changes have we made as a result of the TMD?

3.3.1 SCTP

- We have reviewed all current question sets to ensure we are asking questions that help a broker purchase a relevant product for their client's needs.
- We have built business rules to help prevent brokers from purchasing products for which their clients are outside the target market.
- We are working with Steadfast Technologies to roll out further changes such as updates to the ways in which we ask questions and additional help text to address our DTAH obligations. These changes will go live in SCTP November 2021. Further details will be released in due course.

3.3.2 PDS

- We have reviewed and updated our PDSs to ensure we are offering products that address the likely needs of clients in our target markets.
- There are changes to the PDSs that clients need to understand, such as providing clarification and better explanation of clauses, adding a section about the TMD and introducing new exclusions.
- This new PDS will apply to clients that purchase or renew a policy on or after the 1st October 2021.
- To access the summary of the PDS changes refer to the Derogation Notice.
Please visit www.hollardinsurance.com.au
- The links to the Derogation Notices are:
 - <https://hollardinsurance.com.au/documents/Home-Accidental-Damage-v0520210901-Derogation-Notice.pdf>
 - <https://hollardinsurance.com.au/documents/Home-Listed-Events-v0520210901-Derogation-Notice.pdf>
 - <https://hollardinsurance.com.au/documents/Home-Listed-Events-Base-v0520210901-Derogation-Notice.pdf>
 - <https://hollardinsurance.com.au/documents/Landlord-Accidental-Damage-v0520210901-Derogation-Notice.pdf>
 - <https://hollardinsurance.com.au/documents/Landlord-Listed-Events-v0520210901-Derogation-Notice.pdf>
 - <https://hollardinsurance.com.au/documents/Motor-Vehicle-v0520210901-Derogation-Notice.pdf>

3.3.3 TMD Documents

- We have created 3 x TMD documents (one for each product set- Motor, Home and Landlord).
 - (a) The TMDs will be available on our Hollard Personal Insurance website. Links to the documents:
 - <https://hollardinsurance.com.au/documents/Home-TMD-v0120210901.pdf>
 - <https://hollardinsurance.com.au/documents/Landlord-TMD-v0120210901.pdf>
 - <https://hollardinsurance.com.au/documents/Motor-TMD-v0120210901.pdf>
- The relevant link will also appear in each policy schedule.
- TMD documents will also be made available by post at your request.

3.3.4 TMD Exceptions

- We have analysed our policies and checked our data to identify situations where there may be cohorts of clients who may be at particular risk of purchasing or renewing products where the client is outside of the target market.
- We have built business rules to manage a number of these exceptions at New Business.

- We have prepared the tips and instructions in this document to help you identify at-risk client cohorts and help you consider what the steps may be necessary to reduce the risk of selling to or renewing clients who are outside of the TMD.

3.4 What are some of the cohorts of clients who may not be in the target market?

Our TMDs identify clients who are in the target market for our products and coverage options. We believe our products are likely to be suitable for most retail clients who own the types of assets our policies are designed to cover.

To assist in complying with the new obligations, we have identified a number of circumstances in which clients may not be in the target market for the product. Clients in these circumstances may need to make changes to their sum insured, their policy options, or their choice of product in order to fall within the relevant target market.

You should consider whether these circumstances apply to your client as part of your obligation to ensure that the client is likely to be in the target market for their product and product options. We have outlined these circumstances below.

3.4.1 Motor policies

- **Low value policies** – where the sum insured or market value of the vehicle is not much more than the likely excess, the policy will not pay much for damage, loss or destruction of the vehicle. Clients in this position may consider decreasing their excess, increasing their Agreed Value, or switching to TPPD.

Having a low sum insured does not necessarily mean that the policy is not suitable. For example:

- If an accident occurs that is the insured's fault and damage occurs both to the insured vehicle and other property, the insured may still be better off with a Comprehensive policy. With Comprehensive, the vehicle value will absorb some or all of the excess, so the policy will cover more of the third party liability. In contrast, with TPPD, there will be no cover for the client's vehicle and the excess will be deducted only from the liability claim. In these situations, the client may be better off with Comprehensive cover than with TPPD.
- If the vehicle is used as security for a loan or other form of finance, loan terms often require the client to have Comprehensive insurance.

Clients in this position should consider whether the policy provides value for money having regard to the premium and the coverage provided. We have added an imposed clause to this effect on Comprehensive and TPFT policy Schedules when the following condition is met:

(Premium + Excess) divided by Sum Insured is greater than or equal to 80%.

The imposed clause is as follows:

Endorsement #1

There is only a small difference between your vehicle value and your excess. This means that your policy may not pay much for loss or damage to your own vehicle. Note that if you have an accident that is your fault, the policy will also cover your liability for damage to other people's cars and property, and you would only pay the applicable excess(es) once for that event. Please consider whether the policy provides value for money in your circumstances.

Note: There is an existing bug where an imposed clause does not display for single variant quotes in SCTP, which means while you may not see this message in SCTP it will display on the client's schedules.

Consider proactively contacting these clients to assist them in considering their options, which may include continuing with their current policy, decreasing their excess, increasing their Agreed Value, or switching to TPPD.

- **Third Party Property Damage Policies - Financed vehicle** – If a motor vehicle is being used as security for a loan or other form of finance, the loan contracts may require Comprehensive insurance for the motor vehicle. We do not have records as to which clients (if any) with TPPD policies have financed vehicles.

We have implemented a new imposed clause in the Schedule for each TPPD policy. The imposed clause is as follows:

Endorsement #1

If your vehicle is financed this product may not be suitable for you. Finance contracts usually require comprehensive cover to be in place. This product also only covers you for loss or damage to other people's property, not your vehicle. Please consider if the policy is right for you, given your personal circumstances and needs.

Note: There is an existing bug where an imposed clause does not display for single variant quotes in SCTP, which means while you may not see this message in SCTP it will display on the client's schedules.

You should consider checking whether clients with TPPD are using their vehicle as security for a loan or other form of finance, and if so asking them to check whether their finance terms require comprehensive insurance.

- **Driver age restrictions** – Some clients have a driver age restriction on their policy which excludes cover if an accident occurs and the driver does not meet that age restriction. Consider whether your client is aware of this restriction and the implications if they allow an under-age driver to use the vehicle. For example, some clients may have chosen the restriction when their children were too young to drive but have since forgotten the age restriction that applies to their car insurance. Consider taking steps to ensure your clients nominate all of the likely drivers of their vehicle.

3.4.2 Home and/or Landlord policies

- **No approved and completed dwelling on site** – We have introduced an exclusion and policy coverage terms with the effect that no cover is provided unless there is a residential dwelling on the site with a current occupancy certificate. Further, other domestic improvements are only covered if used in conjunction with that dwelling. If you have clients who do not have an approved and complete residential dwelling on site, you should consider whether they should move to a different policy or apply for a special endorsement to cover their circumstances.

3.4.3 Home policies

- **Insured must live on site** – We have introduced a new exclusion and coverage terms to the effect that the insured must live at the Situation. If you have clients who do not live at the site, you should consider whether they should move to a different policy or apply for a special endorsement to cover their circumstances.
- **Listed Events and Listed Events Base:** We have removed the separate coverage for accidental damage. This means that the policy only covers your client's Buildings and/or Contents only if one or more of the listed events in the policy occurs. Accidental glass breakage and accidental damage to Valuable Items is still covered. Consider raising this change with your clients as it means they have no coverage for certain events they were previously covered for (albeit with a \$5000 excess). Clients may want to consider moving to the Accidental Damage product.

3.4.4 Landlord policies

- **Short term rentals, holiday letting, multiple premises and sharing arrangements:** We have introduced new coverage terms and exclusions that may leave some clients with little or no cover if the property is available for rent on a short term basis or to multiple tenants, or which is (or is part of) part of a hotel, serviced apartment complex, resort, caravan park or holiday park. Further, holiday letting is no longer exempt from the requirement that the property not be continuously unoccupied for more than 90 days. For details of the new terms, please refer to the derogation notice and the new PDS. It is important that you identify clients who are or may be affected by these changes and determine whether those clients are or are not in the target market. Some of these clients will have no cover at all, or substantially reduced cover, under the policy.
- **Unwritten leases:** We have introduced new coverage terms and exclusions that may leave some clients with reduced cover if the property is let without a written lease or other tenancy agreement. It is important that you identify clients who are or may be affected by these changes and determine whether those clients are or are not in the target market.

3.4.5 All policies

- **GST treatment** – We have changed all our policies so that sums insured and sub-limits are now inclusive of GST. You may need to check whether your clients need to gross up their sums insured for GST to ensure they continue to have adequate cover.
- **Ongoing client obligation to notify changes:** We have added new examples as to when the insured is required to notify us of changes relating to their insured property. These include:
 - changes to insured buildings, including any proposed alterations or additions or any significant damage or deterioration;
 - changes to use and/or ownership of insured buildings or motor vehicles; and
 - changes or corrections to any other information the client has provided to us or to you.

This obligation applies throughout the period of insurance, not just at purchase, renewal, variation or claim. It is very important that You comply with this obligation as failure to do so could result in Claims being denied or Your Policy being cancelled.

- **Changes we have made to the policy:** Please note the changes outlined in the derogation notice for each product. If you have clients that may be adversely affected by those changes, please consider raising the relevant changes with them when they renew. For example, if you have clients who:
 - operate a medical surgery from their home;
 - operate or are proposing to operate a business from their home;
 - are proposing alterations to their property;
 - are proposing to sell their home or buy a new home;
 - have a private jetty, wharf, pontoon or mooring;
 - are covering items that are not normally kept at their situation;
 - use (or propose to use) their vehicle to deliver goods, carry passengers or give driving lessons for reward;
 - allow their rental property to be sub-let by tenants, or used for commercial purposes; or
 - rent out part of a home that they live in.

You may need to consider whether the policy is likely to remain suitable for those clients.

3.5 What are the TMD implications for renewals?

The new requirements apply to renewals as well as to new business.

For policies renewing with effect from 1st October 2021, when an existing client is currently on a product that may not align with our TMD, you should contact the client to gather information necessary for you to determine whether they are in the target market, and if they are not, tell the client and provide options of cover where they are in the target market.

For these clients, your options may include:

- **Renew the client’s policy with existing cover** – in unusual cases it may be that the policy is suitable for the client even if they are not in the target market. In these cases, you should consider carefully documenting the reasons the client proceeded with the renewal (and where appropriate ask for a written acknowledgement from the client), and you need to tell us that a sale has occurred outside our target market;
- **Update the client’s policy to change cover at renewal**- discuss any potential TMD exceptions with the client and if they agree, make changes to their existing policy (for example, change the sum insured, the excess or other product options);
- **Arrange to move the client to a different product**- change the client’s cover to another product, with their consent. For example, moving the client from TPPD to Comprehensive, or from a Home policy to a Landlords policy, or to a commercial policy; or
- **Not proceeding with the renewal** – if you and your client are not satisfied with any available policy or option, or if your client cannot be contacted to confirm suitability and accept the policy.

3.6 What are your reporting obligations?

You are required to report the following information to Hollard at the following times:

Reportable matter	When	How to report
The Product is issued to a client in breach of the distribution conditions or outside of the target market.	As soon as practicable after becoming aware of the matter, and no later than 10 business days.	Follow this link.
The nature and number of complaints received about the Product in the reporting period.	On a monthly basis.	Follow this link.
If there are any significant dealings that are inconsistent with the TMD.	As soon as practicable after becoming aware of the matter, and no later than 10 business days.	Follow this link.
Any compliance incident relating to the Product or its distribution.	As soon as practicable after becoming aware of the matter, and no later than 10 business days.	Follow this link.