

# Target Market Determination

for Stewart Products (TMD)

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## AMENDMENT HISTORY

### Document Control – Summary of Changes

The following changes have been made to this document:

Date	Version	Description of Change	Author
September 2021	Version 1.0	Initial Version	Paul Watkins Stewart Title Limited – Australian Branch

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## 1. Introduction

This *Target Market Determination* (“**TMD**”) applies to the following Stewart Title insurance policies (“**Stewart Products**”):

- Residential Purchaser Policy (RPP)
- Residential Existing Owner Policy (REP)
- Residential Strata Purchaser Policy (RSP)
- Residential Strata Existing Owner Policy (RESP)
- Commercial Purchaser Policy (CPP)
- Commercial Existing Owner Policy (CEP)

The purpose of this *TMD* is to provide consumers, distributors and the management and staff of Stewart Title Limited (hereafter referred to as “**Stewart**”) with an understanding of the type of consumers for which the Stewart products have been designed, having regard to the objectives, financial situation and needs of the target market.

This *TMD* is not intended to provide a full summary of all the terms and conditions of Stewart’s products and is not intended to provide financial advice. Consumers, distributors, and Stewart staff should read this *TMD* in conjunction with the following consumer information guides and facts sheets available on Stewart’s website ([www.stewartau.com](http://www.stewartau.com)) or upon request:

- Consumer Information & Disclosure Guides
- Key Facts Sheets
- Policy Consumer Guides
- Sample Policies

This *TMD* has been approved by the Board and is effective from **5 October 2021**.

### 1.2 About the Issuer

Stewart is the issuer of the Stewart Products and is:

- authorised as a general insurer to conduct title insurance business in Australia as defined by the Australian Prudential Regulation Authority (APRA) under the *Insurance Act 1973* (Cth); and
- registered with the Australian Securities and Investment Commission (ASIC) as a branch of Stewart Title Limited (UK) under Chapter 5B.2 of the *Corporations Act 2001* (Cth)

Stewart Products are “financial products” as defined under the *Australian Securities and Investments Commission Act 2001* but are not ‘retail’ insurance products as defined under the *Corporations Act 2001* (Cth) and *Corporations Regulations*. Stewart is exempt from the requirements to hold an Australian Financial Services License (AFSL) and to provide Product Disclosure Statements. This exemption is provided under s911A(2)(g) of the *Corporations Act 2001* (Cth).

Despite this exemption, Stewart has voluntarily adopted the following consumer protection and dispute resolution measures to ensure it maintains effective consumer protection in line with community, regulatory and industry expectations in relation to the Stewart Products:

- an internal dispute resolution system which is consistent with the requirements imposed on an AFSL holder under the *Corporations Act 2001* (Cth);
- membership with the Australian Financial Complaints Authority (AFCA) which offers consumers an alternative recourse in the event that a dispute cannot be resolved through the Stewart internal dispute resolution process;
- policy documents meeting the key content requirements prescribed by Part 7.9 of the *Corporations Act 2001* (Cth) for regulated Product Disclosure Statements;
- the provision of cooling-off periods and transaction confirmations in relation to Stewart Products;

- issuance of Key Facts Sheets in relation to Stewart Products which are modelled on one prescribed for home building and home contents policies under the *Insurance Contracts Act 1984* (Cth);
- publication of Stewart Product Consumer Guides in relation to coverage, exclusions and claims which are designed to promote a better understanding of Stewart Products;
- publication of Consumer & Disclosure Guides in relation to privacy, complaints, duty of disclosure and key features of cover

## 2. Stewart Products - Description and Key Attributes

The Stewart Products provide specialised insurance cover to individuals in relation to losses associated with or arising from “defects in the title” to, or conveyancing of, interests in real property, such as residential, strata and commercial real estate (hereafter referred to as the “**Cover**”) up to the Policy Amount.

Such ‘defects in title’ include (but are not limited to):

- enforcement action by a Local Authority in relation unapproved structures built by a previous owner;
- boundary discrepancies and defects, such as structures which encroach from the insured land onto an adjoining property and/or the insured land being subject to encroaching structures from adjoining properties;
- zoning non-compliance resulting in enforcement action by a Local Authority;
- non-compliance with easements, covenants and restrictions which are registered on title where there is enforcement action by a third party;
- unregistered easements, restrictions and covenants where there is enforcement action by a third party;
- non-compliance with planning and subdivision approvals and other transactional risks such as post settlement dealing registrations by a third party (a caveat for example) that prevent the insured from registering the insured’s title at the Land Titles Office and also loss of title through fraud and forgery.

The Stewart Products predominantly provide the Cover for risks which exist at the date the Stewart Product is issued (which is generally the date that settlement of the relevant real estate transaction occurs) but which are unknown to the insured at that time. Stewart Products also provide coverage for a very limited range of risks which may come into existence after the date the Stewart Product is issued (such as real estate fraud).

The commercial Stewart Products do not provide coverage for any risks which may come into existence after the date the Stewart Product is issued.

### 2.1 Target Market for Stewart Products

The Stewart Products have been designed specifically for individuals who are purchasing residential or commercial real estate (including strata title) or already own residential or commercial real estate (including strata title).

The Cover provided by the Stewart Products relate to risks which may fall outside of existing statutory and contractual protections for individuals purchasing real estate in Australia. For example:

- statutory protections which are widely available to consumers under the various land registry systems throughout Australia (commonly known as “Torrens Title Systems”) do not extend to provide coverage for many “defects in title” such as boundary encroachments and enforcement action by Local Authorities in relation to unapproved building works and non-compliance with zoning, planning and other laws which regulate the use of land in Australia.
- generally the doctrine of *caveat emptor* or “let the buyer beware” applies to real estate transactions in Australia, which means that buyers must satisfy themselves and exercise caution in relation to the quality of the property being purchased and whether any defects in title to the land exist.

## 2.2 Description of Target Market – Objectives, Financial situation and Need

The Target Market for Stewart Products are people or entities:

- buying residential or commercial real estate (including strata title) and have instructed a legal practitioner, licensed conveyancer or settlement agent to act on their behalf; and
- wishing to purchase the Cover provided by the Stewart Product in order to mitigate the risk of financial loss arising from defects in the title of the residential or commercial real estate (including strata title); and
- are willing and able to pay the applicable premium for the Stewart Product on a “one off” basis

The premium payable for the Stewart Products is charged only once at the time the policy is issued and the premium is calculated in accordance with the purchase price of the property. There are no recurring or annual premiums charged.

Premium schedules are available on Stewart’s website together with a premium calculator.

There is no excess or deductible payable by the insured under a Stewart Product.

## 2.3 Excluded Category of Consumers – Self Represented Consumers

Stewart Products have not been designed for individuals who are buying or have already purchased residential or commercial real estate (including strata title) and who have not instructed, or did not instruct, a legal practitioner, licensed conveyancer or settlement agent to act on the individual’s behalf in relation to the purchase of the real estate (hereafter referred to a “Self-Represented Consumers”).

Self-Represented Consumers are not eligible for Stewart Products and are not part of Stewart’s Target Market.

## 2.4 Adequacy of Stewart Products with Consumers in Target Market

The purpose of the Stewart Products is to provide the Cover to people and entities (other than Self Represented Consumers) in relation to risks which are either not covered by existing statutory and contractual protections when purchasing real estate in Australia or for which it may be difficult or costly to obtain a remedy.

The Stewart Products benefit consumers in the Target Market by providing the Cover which would not otherwise be available. The number and variety of claims made by consumers in the Target Market indicate a real need for the protection provided by the Stewart Products, in particular, the Cover which is provided in relation to the following issues (constituting the highest three sources of claims):

- enforcement action by a Local Authority in relation unapproved structures built by a previous owner;
- boundary discrepancies and defects, such as structures which encroach from the insured land onto an adjoining property and/or the insured land being subject to encroaching structures from adjoining properties; and
- unknown unpaid rates & taxes levied before the issue of the Stewart Product which may lead to an encumbrance, lien or charge affecting the title to land.

### 3. Distribution of Stewart Products

Stewart Products are designed to be distributed by the legal practitioners, licensed conveyancers, and settlement agents who act on behalf of the consumer in relation to the consumer's purchase of residential and commercial real estate (including strata title) for which a Stewart Product is purchased.

Stewart has developed a program called StewartCONNECT® which enables legal practitioners, licensed conveyancers and settlement agents who act on behalf of a consumer in relation to the purchase of residential and commercial real estate, including strata title (hereafter referred to as "**Distributors**" in this section of the *TMD*) to arrange Stewart Products on behalf of the consumer without the requirement for the Distributor to hold an AFSL.

#### 3.1 Distribution Conditions

##### *(a) StewartCONNECT® Members*

Distributors who are StewartCONNECT® members are authorised to:

- recommend Stewart Products to their clients;
- give advice about Stewart Products to their clients;
- distribute marketing material issued by Stewart Title to their clients;
- arrange Stewart Products for their clients by completing and submitting on behalf of their clients a Policy Order Form to Stewart Title.

StewartCONNECT® membership is governed by terms and conditions which can be accessed via the Stewart website: <https://www.stewartau.com/stewartconnect>.

##### *(b) Non-StewartCONNECT® Members*

Distributors who are not StewartCONNECT® members may provide their clients with factual information about the availability of Stewart Products and may refer their clients to Stewart but may not recommend or give advice about Stewart Products without holding an AFSL or otherwise falling under a recognised exemption under the *Corporations Act 2001 (Cth)* and *Corporations Regulations 2001 (Cth)*.

#### 3.2 Excluded Distribution Channels

Stewart only distributes Stewart Products through legal practitioners, licensed conveyancers or settlement agents and does not distribute Stewart Products through insurance brokers, financial planners or any other insurance or financial intermediaries.

### 3.3 Adequacy of Distribution Conditions and Restrictions

Distributors of Stewart Products (regardless of whether they are members of StewartCONNECT®) are legal practitioners, licensed conveyancers or settlement agents who are retained and instructed by the consumer in the Target Market to act on the consumer's behalf in respect of the purchase of residential or commercial real estate (including strata title).

This distribution model ensures that Stewart Products are only recommended to consumers in the Target Market as the Distributor acts on behalf of the consumer.

Distributors of Stewart Products owe professional and fiduciary duties to consumers in the Target Market, including duties to act in the best interests of the consumer client, and do not act for Stewart and are not agents of Stewart.

These duties and obligations take priority over any obligations owed by the Distributor to Stewart which are outlined in the StewartCONNECT® membership terms and conditions.

These overriding duties to the consumer in the Target Market also ensure that Distributors are only recommending Stewart Products in circumstances that are likely to be consistent with the likely objectives, financial situation and needs of the consumers in the Target Market.

## 4. Review of Target Market Determination

Stewart will conduct an initial review of this TMD on or about 5 October 2022 (being the date which is twelve months after the Effective Date) and will conduct periodic reviews no later than every three years thereafter.

Events, circumstances or triggers may arise which would reasonably suggest to Stewart that the TMD is no longer appropriate. Such events, circumstances may include (but are not limited to):

- a material change to the design or distribution model of the Stewart Products;
- occurrence of a significant dealing
- distribution conditions found to be inadequate
- a material change to the adequacy of the Stewart Products for consumers in the Target Market
- regulatory review
- significant complaints by consumers and/or Distributors in relation to the adequacy of the Stewart Products and/or the adequacy of the distribution model or this TMD.

Where a review trigger has occurred, this TMD will be reviewed within 10 business days.

## 5. Reporting and Monitoring this Target Market Determination

Stewart will maintain a written record of all decisions made by the management and Board of Stewart in relation to this TMD and associated reviews, together with the reasons (and underlying data) for those decisions, for up to seven years.