



Australian Government

The Treasury

**OPTIONS-STAGE
REGULATION IMPACT STATEMENT**

Future of Financial Advice amendments

November 2013

1. Introduction to FOFA

In February 2009, the Parliamentary Joint Committee on Corporations and Financial Services (PJC) undertook a detailed inquiry into financial products and services in Australia (the Ripoll Inquiry). This inquiry was a response to concerns raised following the collapse of several high profile financial product and service providers. The PJC delivered its report in November 2009 and made a number of recommendations aimed at providing better protection for consumers of financial products and services, including to:

- introduce a statutory fiduciary duty for financial advisers to act in their client's best interest;
- consult with industry on how best to remove conflicts of interest in remuneration structures paid by financial product manufacturers to financial advisers; and
- expand the Australian Securities and Investments Commission's (ASIC's) regulatory powers.

In April 2010, the former Government announced the Future of Financial Advice (FOFA) package as its response to the Ripoll Inquiry. The proposed package of changes endorsed the majority of the Ripoll Inquiry's recommendations and put forward a range of additional measures. In late 2011, the former Government introduced into Parliament the Corporations Amendment (Future of Financial Advice) Bill 2011 and the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011. The Parliament referred the Bills to the PJC for its consideration. The PJC delivered its report on the draft legislation in February 2012, which included a Dissenting Report from the Coalition members of the Committee. The Dissenting Report put forward 16 recommendations for changes to FOFA, reflecting the Coalition's concerns that the FOFA Bills were too complex, costly to implement and created unnecessary red tape. The initial FOFA changes were estimated to cost industry up to \$700 million to implement, with ongoing costs of \$375 million¹.

Despite industry concerns about the costs of FOFA, as well as the timing of the new regulatory environment, the FOFA Bills were passed through Parliament and came into effect on a voluntary basis from 1 July 2012; with the mandatory enforcement of FOFA commencing on 1 July 2013.

In July 2013, the Coalition released its *Policy to Boost Productivity and Reduce Regulation*, in which it committed to implementing all 16 recommendations from the Dissenting Report. These recommendations aim to reduce the regulatory burden created by FOFA, while ensuring adequate consumer protection measures remain in place.

As a result of its Constitutional powers and a referral of powers from the States, the Commonwealth Government has the power to legislate in this area. The financial advice industry is primarily regulated under the *Corporations Act 2001* (the Act) and the *Corporation Regulations 2001*. ASIC is responsible for administering these laws.

Overview of the Financial Services Industry

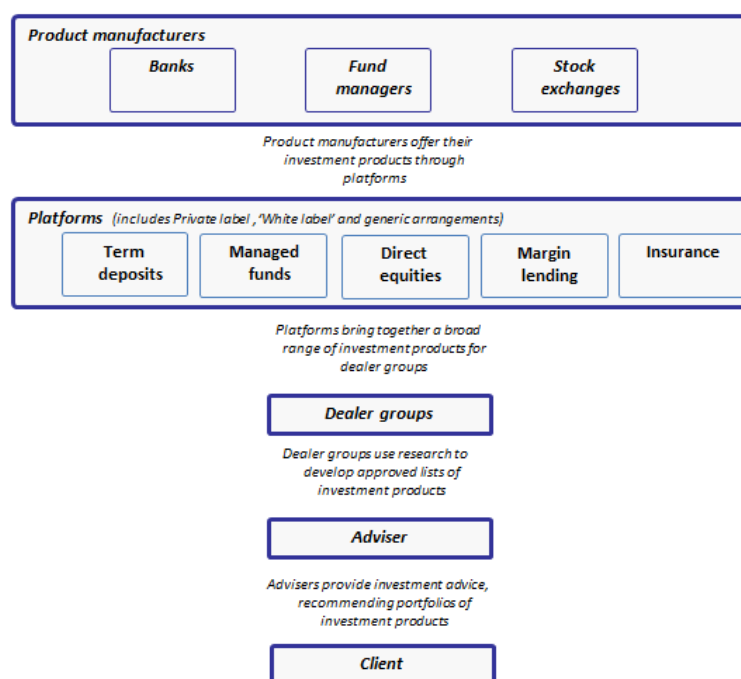
The financial and insurance services industry is an important part of the Australian economy; it currently employs over 400,000 people and is the largest industry in Australia when measured by gross value add (a measure of the economic worth of the goods and services produced)². As a share of national gross value add, the industry has grown strongly, increasing from around 6 per cent in 1990, to 10.5 per cent in 2012. Continued industry growth is expected to be largely driven by Australia's ageing population and the increasing pool of superannuation funds.

The structure of the financial services industry is represented in [Chart 1](#).

¹ Mr John Brogden, Chief Executive Officer, Financial Services Council, Proof Committee Hansard, 23 January 2012, p. 30.

² ABS - 5204.0 - Australian System of National Accounts, 2011-12

Chart 1: Structure of financial services industry



Product manufacturers, or fund managers, are responsible for creating and managing financial products. Australia's managed funds industry is one of the largest in the world, and the majority of these funds are attributable to the advanced superannuation system, which encourages employees to save for retirement throughout their working life; the pool of superannuation funds in Australia is roughly the same size as Australia's economy³.

Platforms act as an intermediary between product manufacturers and dealer groups. A product manufacturer will typically place their financial products on a platform to make their products accessible to dealer groups. A dealer group is made up of multiple representatives who are authorised by a licensee to provide financial advice under that licensee's financial services license. In Australia, there are more than 750 dealer groups⁴ who compare and assess financial products on platforms and select a range of products (commonly referred to as an 'approved product list') for their aligned advisers to offer to their clients. Dealer groups also offer a range of other services, including back-end support and administrative functions.

Advisers use the approved product list(s) when giving financial advice to clients. Industry estimates indicate that there are around 18,000 financial advisers in Australia⁵, who collectively manage over \$500 billion of funds under advice and generate over \$4 billion of revenue per annum⁶. Between 20 and 40 per cent of Australian adults use or have used a financial adviser⁷.

The financial advice industry is stratified into three distinct segments: large, medium and small firms. There are five large firms, all of which directly employ over 1,000 financial advisers. These large firms are also financial product manufacturers and offer platform services. The medium sized firms employ between 60 and 1,000 advisers and the small firms employ less than 60 advisers. Many, but not all, of the small and medium sized firms are aligned with one of the larger firms, often using the platform(s) of a large firm to access, and manage, financial products for their clients.

³ ABS - 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Jun 2013

⁴ ASIC Report 224: Access to Financial advice in Australia, p.29.

⁵ ASIC Report 224: Access to Financial advice in Australia.

⁶ IBISWorld Industry Report K6419b Financial Planning and Investment Advice in Australia,

⁷ Access to financial advice in Australia, ASIC, 2010, pg.14, (Online) Available: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep224.pdf/\\$file/rep224.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep224.pdf/$file/rep224.pdf)

The industry is relatively competitive, with around half the market accounted for by the top five firms, and the remaining half occupied by small and medium firms⁸. Whilst there are some impediments for consumers switching financial products and advisers, the competitive nature and the need for advisers to act in the best interests of their clients ensures that clients have the ability to switch products and advisers.

2. Significance of the problem to be addressed

The Government made an election commitment to reduce the regulatory burden on the financial services industry. The election commitment was a response to concerns that the current FOFA requirements (see section 2.2 for more detail) have added unnecessary red tape and imposed significant costs on businesses; costs that are likely to be passed onto customers.

FOFA was introduced to improve the quality of advice provided to retail clients and to promote transparency in the industry. FOFA aimed to address conflicts of interests by introducing a best interests duty that requires advisers to act in the best interests of their retail clients when providing personal advice. FOFA also introduced a prospective ban on conflicted remuneration to address conflicts of interest. Other measures designed to improve consumer protection and engagement included an 'opt-in' system, which requires advisers to obtain client approval at least every two years to continue an ongoing fee arrangement, and an enhanced fee disclosure process, which requires advisers to disclose the fees paid by their client, the services received and the services the client was entitled to receive in the preceding 12 month period.

Despite widespread support for the objectives of FOFA, many industry stakeholders have expressed concern that several of the FOFA measures are overly prescriptive, unclear, costly to implement and maintain, and do nothing to enhance consumer protections. These stakeholders argue that, as a result, businesses have had to invest significant time and money to transition into the new regulatory environment and will incur significant ongoing costs to continue to satisfy the compliance requirements imposed by FOFA.

Many stakeholders have argued that removing some aspects of FOFA will remove confusion and allow businesses to focus on their core business of providing high-quality financial advice, which should ultimately benefit consumers.

3. Objectives of Government action

The objective of Government action is to strike the right balance between investor protection, investor access to affordable high quality financial advice and correcting the current regulatory overreach.

4. Options that may achieve the objectives

This regulation impact statement assesses the impacts of the Government's proposed amendments, based on its election commitment, and does not explore any other options. The Government's election commitment was to implement the 16 recommendations of the Dissenting Report, however a number of the recommendations are no longer applicable, as changes have already been made to FOFA that achieve the objectives sought, or the recommendations are no longer relevant due to the passage of time.

This regulatory impact statement considers the impact of a package of amendments to FOFA, which includes all of the (still relevant) Dissenting Report recommendations, as well as changes to the current grandfathering arrangements and some additional minor technical amendments.

5. Impact analysis

5.1 Impact on Industry and Consumers

The proposed FOFA amendments are deregulatory and have been designed to reduce the compliance burden on the financial advice industry; industry is likely to welcome these changes.

To estimate the cost savings from these proposed amendments, consultations were undertaken with a range of industry stakeholders. Given the size and disparity of the financial advice sector, and differences in operational aspects and cost structures within the industry, it is difficult to reliably estimate cost savings. Industry has

⁸ IBISWorld Industry Report K6419b *Financial Planning and Investment Advice in Australia*,

provided a broad array of estimated ongoing cost savings associated with the proposed amendments; some estimates totalled over \$400 million per year.

Treasury’s preliminary estimates of the ongoing cost savings are approximately \$190 million per year, with one-off implementation savings of approximately \$90 million. These preliminary estimates represent just over half of the estimated \$375 million ongoing costs of complying with FOFA. Consultation on this options-stage Regulation Impact Statement will enable these cost estimates to be further refined. Whilst it is anticipated that some of the cost savings to industry will be passed through to consumers, it is difficult to quantify the extent to which this will occur.

Consumer groups are unlikely to support the proposed package of amendments as they believe that any changes to FOFA will compromise consumer protections. Despite these concerns, many of the measures which were originally introduced by FOFA will remain, including an amended best interests duty and the ban on conflicted remuneration.

Table 1 lists the estimated cost savings to industry (if any) for each of the proposed changes. The Business Cost Calculator output table is at Appendix A. The impacts of the proposed changes on stakeholders are discussed in more detail in the following section.

Table 1: Cost savings of proposed changes

Proposed change	Estimated average ongoing cost saving per year (\$Million)	Estimated implementation cost saving (\$Million)
Remove opt-in requirements.	\$45.1	\$76.9
Limit the annual fee disclosure requirements to be for prospective clients only.	\$40.8	\$0.8
Removal of the ‘catch all’ provision in the best interests duty.	\$33.3	Nil
Explicit provision of scaled advice.	\$34.1	Nil
Limit the ban of commissions on risk insurance to circumstances where no personal financial advice has been provided, specifically where automatic cover is provided under a default (MySuper) fund.	Nil	Nil
Exempt “general advice” from definition of “conflicted remuneration”.	\$38.0	\$10.0
Clarify the exemption from the ban for execution-only services.	Nil	Nil
That the training exemption permits training expenses related to conducting a financial services business, rather than just the provision of advice.	Nil	Nil
Amendments to volume-based shelf-space fees.	Nil	Nil
Clarify the definition of intra-fund advice.	Nil	Nil
Grandfather existing remuneration from the ban on conflicted remuneration.	Nil	Nil
Explicitly recognise that a “balanced” remuneration structure is not conflicted remuneration.	Nil	Nil

Proposed change	Estimated average ongoing cost saving per year (\$Million)	Estimated implementation cost saving (\$Million)
Allow bonuses to be paid in relation to revenue that is permissible under FOFA.	Nil	Nil
Allow banks to continue to take advantage of the basic banking carve-out, even when providing financial advice on other products.	Nil	Nil
Amendments to the FOFA stockbroking exemptions.	Nil	Nil
Other minor technical changes	Nil	Nil
Total	\$191.3	\$87.7

Dissenting Report amendments

Remove opt-in requirements

This amendment would remove the requirement for advisers to obtain their client's approval at least every two years in order to continue an ongoing fee arrangement (opt-in only relates to clients who enter into an ongoing fee arrangement from 1 July 2013). The opt-in requirement was introduced to enable customers to assess the quality of service they receive for the fees they pay. Currently, if a client does not opt-in within 30 days of receiving an opt-in notice, their ongoing arrangement is terminated (termination occurs 60 days after receiving the opt-in notice). Under the proposed change, clients would maintain the right to opt-out of their ongoing fee arrangements.

Removing the opt-in requirement would result in ongoing cost savings to businesses; industry stakeholders have been largely supportive of this proposed change.

Although FOFA became mandatory on 1 July 2013, the effective start date for opt-in is 1 July 2015 – as clients only need to opt-in every two years. Consultation with industry has suggested that many firms in the industry are yet to commence building systems to perform the opt-in function. As such, implementation cost savings, as well as ongoing cost savings, would be achieved from this change.

Consumer groups have argued that opt-in is important to promote client engagement and transparency of fees charged. An ASIC report found that only 33 per cent of clients serviced by the top 20 licensees were considered active⁹. For consumers who are not actively engaged, the opt-in requirement provides an opportunity to assess whether they wish to continue the arrangements with their adviser.

As the removal of opt-in would reduce costs for advisers, the amendment may result in lower costs to consumers. In addition, this amendment would eliminate the risk of consumers' arrangements being inadvertently terminated due to them not responding to a request within 30 days (for example, due to being on holiday, being sick or simply forgetting).

Limit the annual fee disclosure requirements to be for prospective clients only

This amendment would remove the requirement for advisers to provide a fee disclosure statement to clients who entered into their advice arrangement prior to 1 July 2013. Advisers would still need to provide an annual fee disclosure statement to post-1 July 2013 clients. Fee disclosure statements provide customers with a single statement that shows, for the previous 12 months, the fees paid by the client, the services the client received and the services the client was entitled to receive.

⁹ Report 251: Review of Financial Advice Industry Practice, ASIC, September 2011.

The proposed removal of the fee disclosure statement requirement for pre-1 July 2013 clients has been strongly supported by the majority of industry. Industry stakeholders have argued that it costs significantly more to produce a fee disclosure statement for a pre-1 July 2013 client than for a post-1 July 2013 client¹⁰, and that these costs will be passed onto the client, which could reduce the accessibility and affordability of financial advice. Consultations have suggested that the higher costs for old clients are driven by the age of systems, which may struggle to provide accurate fee information for pre-1 July 2013 clients.

A number of firms in the industry have already built functions within their businesses to fulfil the requirements and may continue to provide a fee disclosure statement to their clients even if this proposed change was implemented.

Consumers who may not have the time or skills to collate and fully understand the fees they are paying may be disadvantaged by this amendment as they will not have the simple source of information the fee disclosure statement provides. Consumer groups are likely to oppose this amendment as they have previously indicated that they believe the fee disclosure statement is an important source of information.

Removing the annual fee disclosure requirement for pre-1 July 2013 clients will reduce costs for financial advisers relating to sending out documents to clients and maintaining systems. This could result in cost savings being passed onto consumers, who would benefit through cheaper financial services.

Removal of the 'catch all' provision in the best interests duty

This amendment would remove paragraph 961B(2)(g); paragraph 961B(2)(g) is known as the 'catch all' provision. Subsection 961B(2) provides a safe harbour for satisfying the best interests duty and lists a series of steps that an adviser can follow to prove that they have discharged their duty to their client. Paragraph 961B(2)(g) is the last of the steps and states that an adviser must prove that they have "taken any other step [in addition to the six preceding ones] that ... would reasonably be regarded as being in the best interest of the client". The intention behind the catch all provision was to make the best interests duty flexible and principles-based, which avoids legislation from becoming overly prescriptive.

The proposed change would be beneficial for industry, which has expressed concerns that the current provision is unclear due to its open-ended nature and has created significant legal uncertainty on how advisers can actually satisfy the best interests duty. These stakeholders have also argued that the provision renders the safe-harbour protection of subsection 961B(2) unworkable. Removing paragraph 961B(2)(g) would make the best interests duty more objective and ensure that section 961B(2) functions as a true safe harbour.

There are concerns that removing the catch all provision could lead to consumers receiving lower quality advice as it would weaken the best interests duty and reduce it to a 'tick a box' exercise for advisers. Whilst consumer groups are not likely to support the removal of this provision, the best interests duty without paragraph 961B(2)(g) would still provide a higher level of consumer protection than pre-FOFA arrangements.

Explicit provision of scaled advice

This amendment would allow clients and advisers to explicitly agree on the scope of any scaled advice provided, whilst still ensuring the advice is appropriate for the client. Scaled advice is a targeted form of advice that has a limited scope and is often much cheaper than full, holistic advice.

The explicit provision of scaled advice would be a beneficial amendment for advisers, who have argued that the provisions in the best interests duty do not provide sufficient comfort that scaled advice can be provided. This uncertainty has led to advisers considering all of the client's circumstances before providing scaled advice, rather than only considering their relevant circumstances, which makes scaled advice more expensive than otherwise necessary.

This amendment would give advisers confidence that the law permits the provision of scaled advice, which would allow advisers to more specifically meet the needs of their clients. As a result, consumers would have greater access to scaled advice arrangements instead of holistic financial advice, which could save consumers money.

¹⁰ Dissenting Report, pg. 165.

Consumer groups have raised concerns that this amendment could allow advisers to avoid certain obligations imposed by the best interests duty, which could affect the quality of advice being given to consumers.

Limit the ban of commissions on risk (life) insurance to circumstances where no personal financial advice has been provided, specifically where automatic cover is provided under a default fund

This amendment would allow commissions to be paid on all types of risk insurance products within superannuation where personal financial advice is provided, effectively limiting the ban on commissions to automatically provided group-risk insurance within default superannuation funds. Currently, commissions are banned on risk insurance provided within superannuation to group life policies or on individual life policies for members of a default superannuation fund; commissions are allowed on risk insurance outside of superannuation and on individual life policies inside choice superannuation funds.

Industry believes that commissions payable on risk insurance should be exempt from the ban on conflicted remuneration. They argue that this would reduce unnecessary administrative burdens and regulatory complexity within the industry, reduce distortions (given that commissions can be paid in other circumstances, for example outside of superannuation) and promote a more efficient risk insurance market.

This amendment may affect consumers in a number of different ways. Some stakeholders argue that consumers who receive advice on group-risk insurance products within superannuation are currently subject to higher up-front fees due to the ban on commissions on such products. Removing the ban may reduce the up-front costs that consumers face and encourage more consumers to take-up insurance, which should assist in addressing the problem of underinsurance in Australia¹¹. Some consumer groups have raised concerns that allowing commissions on more types of life insurance policies could adversely affect member balances in the long term (as commissions may be greater than up-front fees). In addition, there is a risk that, despite the application of the best interests duty, the advice provided to consumers may be influenced by the payment of commissions to advisers.

Exempt “general advice” from definition of “conflicted remuneration”

This amendment seeks to exempt general advice from the definition of conflicted remuneration. Currently, the conflicted remuneration provisions capture both general and personal advice; commissions cannot be paid on either type of advice. This amendment would allow commissions to be paid on general, but not personal, advice. Unlike personal advice, general advice does not take into account the personal circumstances of the client. As such, general advice—by its very nature—is less likely to influence a person’s financial decision making.

This change would be beneficial for industry as it would clarify the scope of the ban on conflicted remuneration, which currently captures activities that were not the primary focus of FOFA. Industry have argued that they are currently required to maintain complex systems in order to ensure compliance with the existing conflicted remuneration provisions. The proposed change would reduce costs as industry would no longer need to maintain these complex systems.

In addition, this amendment is likely to increase the prevalence of general advice as allowing commissions would facilitate its delivery. To the extent that general advice increases engagement and awareness of financial products, consumers may be better informed.

There is, however, a risk that consumers may not understand the distinction between personal and general advice, which may lead to them relying on general advice even though it may not be appropriate for them.

Clarify the exemption from the ban for execution-only services

This amendment would broaden the existing execution-only exemption from conflicted remuneration. The current exemption permits commissions on execution-only services where no advice has been provided to a client by a licensee, or representative of that licensee, in the previous 12 months. This amendment would permit commissions if no advice had been provided by the individual receiving the commission for the execution service (as opposed to the licensee or representative employing the individual). Linking the provision

¹¹ *Underinsurance, a problem in Australia*, (Online) Available: <http://www.lifewise.org.au/about/underinsurance-a-problem-in-australia>

of advice to an individual rather than a licensee or representative (usually a group entity) provides a more direct link between the provision of advice and the execution service.

This amendment would be beneficial for industry, as it would ensure commissions can be earned on legitimate execution-only services. The amendment would provide clarity to advisers who believe the current legislation has had the unintended consequence of rendering advisers unable to receive commissions despite there being no conflict of interest.

This amendment is not expected to have any material impact on consumers.

That the training exemption permits training expenses related to conducting a financial services business rather than just the provision of advice

This amendment would broaden the training exemption in relation to non-monetary benefits to cover all training relevant to conducting a financial services business. Currently, the exemption states that only training relevant to the provision of financial product advice is excluded from conflicted remuneration.

This amendment would benefit advisory firms by allowing them to use the training exemption for a wider range of activities, including administrative, dealing or trading activities. This would allow businesses to improve their productivity, and should also raise the standard of advice being provided to consumers.

This amendment is not expected to have any material impact on consumers.

Amendments to volume-based shelf-space fees

This amendment would clarify the drafting of the ban on volume-based shelf-space fees to clearly define the benefits the ban intends to capture. In particular, it seeks to clarify that incentive payments between fund managers and platform operators to give preferential treatment to certain products on the platform “shelf”—which could potentially influence advice provided to the client—are prohibited.

This amendment would benefit industry by clarifying the operation of the law and would not have any direct impact on consumers.

Clarify the definition of intra-fund advice

Intra-fund advice is defined in the *Superannuation Industry (Supervision) Act 1993* but is not specifically mentioned in FOFA. This amendment would ensure that the definition of intra-fund advice is appropriately cross-referenced. Intra-fund advice is a type of scaled advice provided by both retail and industry superannuation funds to their members. The advice is simple in nature and solely related to the member’s superannuation products.

This amendment would clarify the operation of the law and would not have any direct impact on consumers.

Other changes

Grandfathering existing remuneration from the ban on conflicted remuneration

This amendment would broaden the circumstances under which conflicted remuneration can continue to be paid (that is, grandfathered). As long as a client maintains their interest in a financial product, the proposed amendment would allow advisers to move licensees and continue to access grandfathered benefits; currently, any move after 1 July 2013 causes grandfathering to cease.

This amendment would be beneficial for industry as it would promote greater competition between licensees and allow advisers to move between firms more freely. Most industry stakeholders argue that the current provisions have reduced adviser movements in the industry and have effectively “frozen” the market; few advisers are willing to move licensees at all due to the loss of grandfathered commissions. Whilst the amendments would allow grandfathered benefits to continue for a longer period of time, it is anticipated that industry would transition to fee-for-service model as advisers cannot receive conflicted remuneration on arrangements entered into with new clients, and existing clients are likely to be transferred into new products/arrangements over time.

There are also technical amendments proposed to clarify that:

- when a financial planning business or client book is sold, the rights to the grandfathered benefits can be transferred to the purchaser, who will then receive the ongoing benefit;
- when an employed adviser becomes a self-employed authorised representative within the same licensing group, the adviser can continue to receive grandfathered benefits; and
- when a client switches from a superannuation product to a pension product, and both are offered under a multi-product offering, grandfathering will not cease in relation to that client's investment.

These are minor technical amendments that provide certainty and clarity to industry.

The proposed changes to grandfathering arrangements are not expected to have any material impact on consumers.

Explicitly recognise that a “balanced” remuneration structure is not conflicted remuneration

This amendment would clarify that benefits paid under a “balanced scorecard” arrangement are not conflicted remuneration. Balanced scorecard benefits are calculated by reference to both volume-based and non-volume-based factors. When FOFA was introduced, it was envisaged that payments made under a balanced scorecard approach would be able to rebut the presumption that volume-based benefits were conflicted.

This amendment would provide industry with certainty when paying its employees bonuses under these arrangements.

Customers are unlikely to be materially affected by this change.

Allow banks to continue to take advantage of the basic banking carve-out even when providing financial advice on other products

This amendment would broaden the existing basic banking exemption to include consumer credit insurance. The exemption covers front-line bank employees who typically provide advice on basic banking and general insurance products; these employees were not the target of FOFA.

This is a minor amendment that will clarify the operation of FOFA for industry.

Consumers are unlikely to be materially affected by this change.

Allow bonuses to be paid in relation to revenue that is permissible under FOFA

This amendment would permit payment of performance bonuses that are calculated by reference to remuneration that is exempt from the ban on conflicted remuneration. For example, an employer will be allowed to pay an adviser a bonus calculated by reference to the fee-for-service revenue the adviser generates in a given period of time. Currently, such a bonus may be banned as it is volume-based, even though the fee-for-service revenue it is based upon is not banned.

This amendment would assist industry in shifting to a fee-for-service model—one of the objectives of FOFA—and would remove an inconsistency between earning permissible revenue and receiving a bonus on permissible revenue.

This change is not likely to materially affect consumers.

Amendments to the FOFA stockbroking exemptions

This amendment would clarify the existing stockbroking-related carve-outs under FOFA, including providing for the application of the brokerage fee exemption to products traded on the ASX24 (the ASX24 is a 24-hour platform for derivatives trading run by the ASX) and the broadening of the stamping fee exemption for initial public offering (IPO) arrangements.

These amendments are minor and clarify the operation of the legislation – stockbroking was not the intended target of FOFA and stockbroking-related activities have been largely carved-out of the reforms.

Consumers are unlikely to be affected by this change.

Other minor technical amendments

The other minor amendments are:

- an amendment to ensure that the wholesale and retail client distinction that currently exists in other parts of the Act also applies to the FOFA provisions; and
- an amendment that clarifies that the client-pays exemption operates to allow clients to direct product issuers—such as superannuation trustees or responsible entities of managed investment schemes—to deduct payments from funds held by the client in the products to be paid to an adviser.

These proposed changes are purely consequential and provide clarity to the operation of the law.

5.2 Specific impact on small businesses

As a result of these deregulatory amendments, small businesses are likely to be able to spend more time on their core business of providing financial advice to consumers and less time on compliance-related activities. This should result in both cost savings and revenue growth opportunities, both of which should increase the competitiveness of small businesses in the industry.

As noted earlier, the market is broken into small, medium and large firms. Small businesses, for the purposes of this analysis, are considered to employ fewer than 60 advisers. Particularly for the smallest firms, compliance requirements typically come with significant opportunity costs: small businesses have fewer staff available to dedicate to administration and compliance, and any time spent on compliance is time not spent providing advice, and hence earning fees.

5.3 Impact on Government

The impact on Government will be relatively small and non-ongoing. In the short-term, implementation costs will be incurred to draft the legislation for the proposed amendments, and to make changes to the regulations. ASIC's role as the industry regulator will continue, albeit under the new rules and regulations.

6. Consultation

Since the Ripoll Inquiry was initially commissioned in February 2009, extensive consultation has occurred with key stakeholders through submissions, consultation groups, public information sessions, consultation papers and meetings with stakeholders.

In developing the proposed package of amendments, the Government has conducted targeted consultations with a number of stakeholders, including the Association of Financial Advisers, the Association of Independently Owned Financial Professionals, the Australian Bankers' Association, Choice, the Financial Planning Association, Financial Services Council, Industry Super Australia, the Property Council of Australia and the major wealth management companies. Consultation will continue as the amendments are implemented so that that the policy intentions are realised and the risk of unintended consequences is minimised.

Prior to the legislation being introduced into Parliament, the Treasury will be consulting further with industry on the proposed amendments. As a part of this process, a details-stage regulation impact statement will be produced, to accompany the legislation in Parliament.

7. Conclusion

The Government has announced that it will implement its election commitment to reduce unnecessary red tape and regulatory costs on the financial advice industry. The proposed amendments are deregulatory and will represent a move towards a more efficient system whilst maintaining the core consumer protections introduced by FOFA.

8. Implementation and review

It is proposed that the package of amendments be implemented through regulations where legally possible to ensure the amendments are processed as soon as practicable; the majority of the amendments would be implemented through regulations. To provide greater clarity and certainty for industry, some changes made through regulations would be subsequently amended through legislation.

A post implementation review will commence within five years of these changes being implemented.

Appendix A: Regulatory Burden and Cost Offset Estimate Table

Average Annual Change in Compliance Costs (from BAU)				
Sector/Cost Categories	Business	Not-for-profit	Individuals	Total by cost category
Administrative Costs	(\$191,290,756.58)	\$0	\$0	(\$191,290,756.58)
Substantive Compliance Costs	\$0	\$0	\$0	\$0
Delay Costs	\$0	\$0	\$0	\$0
Total by Sector	(\$191,290,756.58)	\$0	\$0	(\$191,290,756.58)
Annual Cost Offset				
	Agency	Within portfolio	Outside portfolio	Total
Business	\$0	\$0	\$0	\$0
Not-for-profit	\$0	\$0	\$0	\$0
Individuals	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0
Proposal is cost neutral? No				
Proposal is deregulatory Yes				
Balance of cost offsets = (\$191,290,756.58)				