



6 March, 2014  
File:

Mr Jason McNamara  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
One National Circuit  
Barton ACT 2600

Email: helpdesk@obpr.gov.au

Dear Mr McNamara

**DETAILS-STAGE REGULATION IMPACT STATEMENT – FUTURE OF FINANCIAL ADVICE AMENDMENTS**

I am writing in relation to the attached draft details-stage Regulation Impact Statement (RIS) prepared by the Treasury for the Future of Financial Advice amendments.

I am satisfied that the draft RIS meets the Government's best practice regulation requirements, in particular that:

- the problems being addressed and the objectives of government action are well articulated;
- in line with the requirements for election commitments, the RIS focuses on the commitment and the way in which the commitment is implemented;
- the analysis of the likely impacts is adequate and presented in a balanced way; and
- the conclusion is supported by the analysis in the RIS.

The Appendix to this letter details where the RIS has been amended to address the specific questions raised in your letter of 19 February 2014. Also, I note that the Office of Best Practice Regulation (OBPR) has agreed with the regulatory cost estimates provided in the RIS.

I submit the RIS to the OBPR for formal assessment.

Yours sincerely

Jenny Wilkinson  
Acting Executive Director  
Markets Group

## Appendix: Treasury's responses to items raised by the OBPR on the 1st pass RIS

### Overall concerns

#### *OBPR issue*

1. Give a clear indication of the extent to which the regulatory cost estimates and other business impacts in the options-stage RIS are consistent with stakeholder views.

#### *Treasury response*

The subsection 'Cost savings' has been updated, and includes a more detailed discussion of stakeholder views on both the qualitative and quantitative impacts described in the options-stage RIS (p17-22). The section arrives at the conclusion that, based on all stakeholder feedback, the cost estimates from the options-stage RIS should not be changed for the details-stage RIS. In contrast, the qualitative impacts from the options-stage RIS have been updated to incorporate stakeholder feedback since the options-stage RIS, particularly from a consumer perspective.

#### *OBPR issue*

2. Give a more detailed and balanced explanation of the likely impacts of the reforms on consumers of financial products and advice.

#### *Treasury response*

As noted above, more detail on the effect of the amendments on consumers has been added to the 'Impact analysis' section. For each amendment that is likely to have a material impact on consumers, there is a discussion of those impacts. More detail has been added to incorporate further analysis completed, and further consultations conducted.

It should be noted that there is very limited evidence on the quantitative impacts of FOFA and the planned FOFA amendments on consumers. Treasury has reached out to industry and consumer groups for additional analysis and statistics but only limited information was received and it was generally a few years old. Most of the evidence we have received has been commercial-in-confidence or, more generally, not for publication so it has been paraphrased and not referenced in the RIS. This limitation has been highlighted in a footnote so the general reader is aware.

#### *OBPR issue*

3. Provide more depth to the discussion of stakeholder views of the costs and benefits of repealing each measure, along with a critical assessment of these views.

#### *Treasury response*

For each measure within the 'Impact analysis' section, there is a discussion of stakeholder views. For each amendment, the arguments, both for and against, have been presented and more depth has been added to these arguments. This includes new information that was gathered from submissions that were received after the initial details-stage RIS was submitted to OBPR.

The discussion of each amendment now concludes with a clearer assessment of the overall costs and benefits of the reform proposed.

## Significance of the problem to be addressed

### *OBPR issue*

4. The RIS must provide greater depth to discussion of the problem...to achieve this the RIS could do the following:
  - a) Identify the original intent (objectives) of the relevant measures and the extent to which this is being achieved, or is expected to be achieved.
  - b) Assess the costs versus the benefits.
  - c) Identify the stakeholders views on the regulatory failure.
  - d) Form a conclusion on the cost effectiveness of each measure.

### *Treasury response*

This section of the RIS has been significantly expanded to clarify the scope and scale of the problem (p9-14). The Ripoll Inquiry and the FOFA response are outlined in detail, and the instances where the FOFA legislation deviates from the recommendations of the Ripoll Inquiry have been noted. Further, the section has been updated to provide more detail on the policy objectives of certain parts of FOFA (best interests duty, opt-in and fee disclosure statements), and the problems that have been encountered to date with the legislation.

This section also includes references to the Coalition's arguments as outlined in the Dissenting Report of the PJC Inquiry into financial products and services in Australia (p11-12). Treasury has also summarised the evidence as to whether these concerns about FOFA have eventuated; however, given the short time since FOFA became mandatory and the continuing adjustments that are taking place in the industry, this evidence is limited. The section then concludes with an outline of the broader economic challenges facing the Australian economy, including the financial services industry, and the importance of reducing the regulatory burden on industry to improve productivity and economic growth.

### *OBPR issue*

5. As an example, the RIS suggests some of the FOFA measures have caused confusion.
  - a) What are those measures?
  - b) How have they caused confusion?
  - c) What have the consequences of this been?

### *Treasury response*

In this section, Table 1: Select Ripoll Inquiry recommendations and FOFA, provides an outline of some of the FOFA amendments and the subsequent problems with those responses (p9-11). In particular, the statutory best interest duty is highlighted as being unclear to industry, which has created legal uncertainty. This table also incorporates stakeholder views. There is a much more detailed discussion of these measures and their consequences in the 'Impact analysis' section.



*OBPR issue*

6. Additionally, the RIS suggests some of the FOFA measures prevent business from providing 'high-quality' financial advice.
- a) Has the quality of financial advice been reduced since the introduction of FOFA? Is it anticipated to erode further in the absence of repeal?
  - b) What metric is used to assess the quality of advice?
  - c) How will repealing the relevant measures improve the quality of financial advice?
  - d) Are these views supported by stakeholders?

*Treasury response*

The options-stage RIS included a sentence regarding the quality of financial advice; this sentence was misinterpreted. We have removed the reference to 'high quality financial advice' and discussed with OBPR, who were satisfied with the change.

**Objectives of government action***OBPR issue*

7. As noted in our advice on 20 January, this section should reference the relevant election commitment.

*Treasury response*

The relevant election commitment has now been referenced (p14).

*OBPR issue*

8. As currently drafted, the objective is fairly standard. The RIS should consider the following:
- a) How is the 'right balance' determined?
  - b) How can it be measured if the right balance has been achieved?

*Treasury response*

Following a conversation with OBPR, the reference to 'achieving the right balance' has been deleted.

*OBPR issue*

9. It may be relevant to draw on statements made by the Assistant Treasurer or other members of the Government about what they are seeking to achieve.

*Treasury response*

A quote from the Assistant Treasurer has been included in this section (p14). The Coalition's pre-election *Policy to Boost Productivity and Reduce Regulation* has also been quoted (p14).

## Impact Analysis

### *OBPR issue*

10. *Removal of opt-in requirements* – the RIS could consider the following:

- a) What are the consequences of less active engagement?
- b) Is it considered the responsibility of the firm or consumer to maintain consumer engagement?
- c) Is consumer engagement important?
- d) Are there other channels through which consumers could be expected to remain engaged?
- e) How will this impact price and/or fees?
- f) How will this impact the availability of financial products?

### *Treasury response*

The opt-in section has been updated to discuss the importance of client engagement and the impact of the amendment on the price and availability of financial products, where information is available (p23-25). The section also highlights the diverse opinions among firms in the industry, some of whom do believe that the driver for consumer engagement should come from within the industry rather than be mandated by government.

The section also outlines the concerns from consumer groups that the majority of clients are disengaged and that removing the opt-in requirement might drive up the cost of advice, as advisers will earn revenue from disengaged clients without providing any advice to them. However, alternative opportunities for client engagement are highlighted (p25).

### *OBPR issue*

11. *Limit the annual fee disclosure requirements to be for prospective clients only* –

- a) There is an apparent inconsistency between what the RIS states in this section and the assumptions in the costing provided to us at the options stage that needs clarifying. The inconsistency is: the statement in the RIS that some businesses have already implemented functions that allow them to implement the fee disclosure requirements (and will meet the substance of these requirements of their own volition) and the assumption in the costs that all business will benefit from the removal of the requirement to disclose fees to retrospective customers.
- b) How will this proposal impact prices and/or fees?
- c) How will this proposal impact the availability of financial products?

### *Treasury response*

In regards to item 11(a), the reference to firms continuing to provide fee disclosure statements to pre-1 July 2013 clients has been removed. This is because, in further discussions with industry, no firms indicated they that would continue providing fee disclosure statements to pre-1 July 2013 clients.

The fee disclosure statement section has been updated to discuss the impact of the amendment on the price and availability of financial products (p26).

*OBPR issue*

12. *Removal of the catch all provision in the best interest duty* – the RIS could consider the following:

- a) What is a 'safe harbour' in this context?
- b) Why is it considered that the catch all provision renders the safe harbour protection unworkable?
- c) How does removing the catch all provision enable the functioning of a 'true safe harbour'?
- d) Is the view from consumer groups that satisfaction of the six remaining steps of the best interest duty does not ensure that advice will be in the best interest of clients supportable? Is there, for instance, legal advice that the six remaining steps ensure adherence to the best interest duty?
- e) How will this proposal impact prices and/or fees?
- f) How will this proposal impact the availability of financial products?

*Treasury response*

The catch all section has been significantly expanded to describe what a 'safe harbour' is, why it is considered unworkable and how its removal would enable a true safe harbour (p27-28). Evidence has been included to address the concern by consumer groups that advisers will no longer have to act in their clients' best interest (p28).

The section has also been updated to include information on the impact of the amendment on the price and availability of financial products, where available (p27-28).

*OBPR issue*

13. *Exempt general advice from definition of conflicted remuneration* – the RIS could consider the following:

- a) Is it considered that consumers are able to distinguish between general and specific advice? If so, there is evidence to support this view?
- b) Is there a risk of over-provision of general advice relative to specific advice?
- c) Is the view from industry that the ban on conflicted remuneration captures activities that were not the primary focus of FOFA supportable?
- d) How will this proposal impact prices and/or fees?
- e) How will this proposal impact the availability of financial products?

*Treasury response*

The general advice section has been amended in a number of ways to:



- reference the level of public knowledge of the distinction between general and personal advice (p33);
- specify the risk of the over-provision of more sales-based general advice (p31);
- include a reference to the activities that the ban currently captures, but was not intended to capture (p31); and
- describe the impact of the amendment on price and availability of financial products (p31-33).

### **General costing issue**

#### *OBPR issue*

14. As noted in our advice of 20 January, the RIS should:

- a) Provide a clear outline of the key assumptions that underpin the compliance costings (similar to the information already provided to OBPR during agreement of the costings for the options-stage RIS); and
- b) Provide a balanced and detailed discussion of stakeholder feedback on the analysis of compliance costs (and impacts more generally) as outlined in the options-stage RIS.

#### *Treasury response*

This has been updated and split into three subsections. Information has been included (to the extent possible) about the methodology and assumptions underpinning the cost estimates, and stakeholder views of those cost estimates. Tables have also been included - Table 3: Breakdown of FOFA amendment savings estimates (p18) and Appendix A (p41) - which provide details on the inputs used to arrive at the cost savings estimates.

### **Consultation**

#### *OBPR issue*

15. As noted in our advice of 20 January, the details-stage RIS should discuss all consultation undertaken. This usually will involve:

- a) Describing the full consultation process;
- b) Summarising the main views of each stakeholder group, both for and against aspects of each of the options; and
- c) Describing how the views were fed back into the development of options and, where relevant, how the final RIS reflects the information provided in consultation.

#### *Treasury response*

More information has been included to describe the full consultation process. This includes the three-week public consultation period in February 2014 and the more recent targeted consultation with key stakeholders, as well as how these comments were incorporated (p38-39). More detailed information on stakeholder views for each of the amendments is available in the 'Impact analysis' section.

*OBPR issue*

16. As noted in our advice of 20 January, agencies are also required to self-assess their compliance with the options-stage RIS requirements. Agencies include one of the following statements:
- a) 'With regard to the option-stage RIS, the agency has fully complied with the RIS requirements'.
  - b) 'With regard to the options-stage RIS, the agency has not fully complied with the RIS requirements.'
  - c) 'The agency has prepared a single-stage RIS, and as no decision has been previously announced, an options-stage RIS is not required.'

*Treasury response*

A sentence identical to that provided in item 16(a) has been included in the section (p39).

**Conclusion***OBPR issue*

17. The conclusion will need to provide an assessment of the overall impacts of the proposal. For example:
- a) On balance, how will the repeal impact on consumer protection?
  - b) Is the reduction of consumer protection worth the cost savings to industry (and consumers)?

*Treasury response*

The conclusion now provides our assessment that, on balance, the amendments will be beneficial overall (p39).