

REGULATION IMPACT STATEMENT

Enhanced Register of Financial Advisers

BACKGROUND

Overview of the industry

There are around 22,500 financial advisers in Australia. Over 7,000 of these financial advisers are employees and directors, while the remainder are authorised representatives.¹

The financial advisers collectively manage over \$500 billion of funds under advice and generate over \$4 billion revenue per annum.²

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.

Medium sized firms employ between 60 and 1,000 advisers, and 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.

Operation of the licensing regime

Individuals who provide advice about financial products in Australia are regulated through a two-stage licencing and authorisation regime in the *Corporations Act 2001* (Cth) (the Act).

An entity that wishes to offer financial advisory services must obtain an Australian Financial Services (AFS) Licence. AFS licensees may then authorise representatives to provide advice on their behalf.

An employee or director of an AFS licensee is automatically permitted to provide advice on behalf of their licensee.³ These financial advisers are commonly referred to as 'employee representatives'.

An AFS licensee may authorise a person, who is not their employee or director, to provide specified financial services on their behalf.⁴ A body corporate that is an authorised representative of an AFS licensee may also sub-authorise persons to provide financial services on behalf of the licensee if the licensee consents in writing.⁵ Financial advisers who have been authorised to provide advice are commonly referred to as 'authorised representatives'.

Most obligations in the Corporations Act are imposed on AFS licensees and they are responsible for the competence and conduct of persons acting under their authority.

The licensing regime is overseen by the Australian Securities and Investments Commission (ASIC).

¹ Figures from the Register of Financial Advisers, reported in ASIC's Media Release, *ASIC Enhances Financial Adviser Register* (1 June 2015).

² Regulatory Impact Statement – Future of financial advice amendments (2014), available at: <ris.govspace.gov.au/files/2014/03/03Final_details_stage_RIS1.pdf>, Figures from the Register of Financial Advisers, reported in ASIC's Media Release, *ASIC Enhances Financial Adviser Register* (1 June 2015).

³ Subsection 911B(1) of the Act

⁴ Subsection 916A(1) of the Act

⁵ Subsections 916B(3) – (5) of the Act

Recent developments

The Government has announced that it will introduce legislation into Parliament in 2016 to give effect to reforms to raise education, training and ethical standards for financial advisers. New financial advisers will require a degree, undertake a professional year and pass an exam. Existing advisers will be required to complete an appropriate degree equivalent (or have a recognised transition pathway determined by the independent standard setting body) and pass an exam. All advisers will be required to undertake continuing professional development and be party to a code of ethics. As a result of these reforms, additional information will be added to the register, including:

- whether the financial adviser has complied with the new continuing professional development requirements;
- the scheme that will monitor the financial adviser's compliance with the new Code of Ethics;
- the financial adviser's principal place of business; and
- details about any breaches of the Code of Ethics and the sanctions imposed.

Key distinctions in the provision of financial advice

The obligations imposed on licensees depend on three aspects of the financial advice:

- the complexity of the product on which the advice is given;
- whether the advice takes into account the personal circumstances of the client; and
- whether the client is a retail or wholesale customer.

Financial products are separated into more complex products and less complex products in various parts of the law.

The Future of Financial Advice (FOFA) reforms separated financial products into "relevant financial products", which are more complex, and other financial products (see Table 1 below).⁶

Table 1: Relevant financial products and other financial products

	Products
"Relevant financial products"	All financial products except those listed below
Other financial products	Basic banking products General insurance products Consumer credit insurance Combination of these products

⁶ Subsection 961J(2) of the Act.

ASIC's Regulatory Guide 146 *Licensing: Training of financial product advisers* adopts a subtly different distinction. It labels complex products as "Tier 1" products and less complex products as "Tier 2" products (see Table 2).⁷

Table 2: Tier 1 and Tier 2 products

	Products
Tier 1	All financial products except those listed under Tier 2
Tier 2	General insurance products (except for personal sickness and accident) Consumer credit insurance Basic deposit products Non-cash payment products First Home Saver Accounts

The main difference between the classifications in FOFA and ASIC's regulatory guide is that personal sickness and accident insurance are considered to be complex in ASIC's regulatory guide, but not in FOFA.

Financial product advice may be either personal advice or general advice. Personal advice is given when the financial adviser has considered, or a reasonable person might expect the adviser to have considered, one or more of the person's objectives, financial situation and needs.

Clients may be either retail clients or wholesale clients. Wholesale clients are larger and generally have greater financial expertise. They include business clients who are not small businesses, professional investors, and clients with net assets of more than \$2.5 million or gross annual income of more than \$250,000.

Registers maintained by ASIC

ASIC maintained the following registers prior to the launch of the Register of Financial Advisers:

Register of AFS Licensees

The Register of AFS Licensees lists basic information about all entities that hold an AFS license. This includes their licence number, name, address, start date, status and any conditions on the license.

Register of Authorised Representatives

The Register of Authorised Representatives lists the name, and basic information, for all people and companies authorised as representatives by an AFS licensee. Employees and directors of AFS licensees are not listed as they do not need to be authorised. Details about employees and directors do not appear on any database or central repository.

⁷ See ASIC Regulatory Guidance 146 *Licensing: Training of financial product advisers* (RG 146).

Licencees have an obligation to report authorisations to ASIC.

- Licencees must notify ASIC of authorisations and most sub-authorisations within 15 business days of the date of issue.⁸
- Licencees must notify ASIC of any changes in information relating to details contained in the Authorised Representatives Register within 10 business days. This includes changes to:
 - the representative's name;
 - the representative's business address; or
 - the details of the authorisation including changes to the representative's powers to sub-authorise.⁹

Notifications of authorisation are made using ASIC Connect (an online portal) and immediately update ASIC's Authorised Representatives Register.

Banned and Disqualified Register

The Banned and Disqualified Register records the name of entities that have been banned or disqualified; their address; the type of banning or disqualification; the date of commencement and cessation of the order; and a copy of the order (where applicable).

Enforceable Undertakings Register

The Enforceable Undertakings Register lists enforceable undertakings accepted by ASIC under sections 93AA or 93A of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and section 322 of the *National Consumer Credit Protection Act 2009* (National Credit Act).

Enforceable undertakings are binding promises that are made to ASIC and are enforceable in a court. They are generally accepted by ASIC as an alternative to civil or administrative action where there has been a contravention of the legislation.

The Enforceable Undertakings Register includes the relevant section of the ASIC Act or the National Credit Act which allow ASIC to accept the undertaking; the name of the party giving the undertaking; a link to the undertaking and the media release about the undertaking; the date the undertaking was accepted by ASIC; and information about compliance with the terms of the undertaking.

PROBLEM

Consumers of financial services must take some responsibility for their investment decisions. Investment decisions can be complex and so consumers are likely to require the assistance of a suitably qualified professional to advise them on their investment options.

⁸ Subsection 916F(1). These information lodgement periods were extended to 30 business day to align them with the Register of Financial Advisers in August 2015.

⁹ Subsection 916F(3) and Regulation 7.6.04 of the Corporations Regulations. These information lodgement periods were extended to 30 business day to align them with the Register of Financial Advisers in August 2015.

There are a number of ways in which consumers can be assured that the person they are dealing with is adequately trained to provide the service that they are offering. This can include reviewing a statement of qualifications certified by a recognised body, checking that the person is a member of the relevant professional organisation and/or checking that the person has been authorised by the relevant government agency.

The less time and money spent by consumers in obtaining accurate advice on financial advisers' qualifications, the more efficient the market.

Before the Register of Financial Advisers was launched in March 2015, there was a lack of readily-accessible information about financial advisers' credentials available to the public. It was also difficult for consumers to verify the information that was provided to them by a particular financial adviser.

Prior to the commencement of *Financial Services Reform Act 2001*, a separate licence was required for securities dealers and investment advisers, futures advisers and brokers, general and life insurance brokers and foreign exchange dealers. Under this approach every individual service provider had to obtain a licence, which allowed consumers to at least check whether the person they were dealing with met this minimum requirement. There were a range of problems for consumers with this licencing regime¹⁰ which were addressed through the *Financial Services Reform Act 2001*.

The *Financial Services Reform Act 2001* introduced a two-stage licencing and authorisation regime. An entity that wishes to offer financial advisory services must obtain an AFS Licence. AFS licensees may then authorise representatives to provide advice on their behalf. In addition, an employee or director of an AFS licensee is automatically permitted to provide advice on behalf of their licensee.

For consumers wanting to verify the credentials of financial advisers, ASIC maintains registers of AFS licensees and authorised representatives. These registers do not contain any information about employees or directors, who comprise about one third of the industry. None of the registers maintained by ASIC were designed for use by consumers. The registers are not hosted on ASIC's 'Money Smart' website and some of the information is only available on payment of a fee.

The problems with the existing registers were acknowledged in various inquiries and reports¹¹. For example, the 2013 Senate Economic References Committee's Inquiry into the performance of the Australian Securities and Investments Commission (the ASIC Inquiry):

Given the complexities of the financial services industry, it is important that ASIC can emphasise certain consumer messages. One of our traditional messages has always been that investors should only obtain advice from properly licensed or authorised advisers. Before the commencement of the Financial Services Reform Act 2001, we could tell investors that before dealing with a purported adviser, they should check the person's name on the licensees and representatives register.

¹⁰ Regulation Impact Statement, Financial Service Reform Bill 2001, paragraph 2.41 [FSR 2001 RIS](#)

¹¹ See Consultation section for further details.

*This simple message is no longer possible. Investors cannot easily check whether someone holding themselves out as a financial adviser is properly able to do so. They may be an employee of a licensee and the only person that can verify that is the relevant licensee.*¹²

The Parliamentary Joint Committee (PJC) on Corporations and Financial Services also formed this view in the *Inquiry into financial products and services in Australia*:

*There are also very legitimate concerns about the varying competence of a broad range of people able to operate under the same 'financial adviser' or 'financial planner' banner. The licensing system does not currently provide a distinction between advisers on the basis of their qualifications, which is unhelpful for consumers when choosing a financial adviser.*¹³

The Financial System Inquiry final report agreed with the findings of the PJC *Inquiry into financial products and services in Australia* that the licencing system for financial advisers alone does not provide sufficient protection for consumers and greater transparency is required.¹⁴

WHY IS GOVERNMENT ACTION NEEDED?

There have been many regulatory interventions by Australian governments in recent years to help improve trust and confidence in the financial services industry and the quality of information for which consumers of financial services have access. Government intervention is justified because of the significant costs to individuals, the community and/or taxpayers that can result from poor information on the risks and returns of investment options.

This is particular relevant for decisions people take on their superannuation. Australia's system of compulsory superannuation and the predominance of defined contribution schemes mean that Australians are expected to take responsibility for their own lifelong financial security. To the extent that poor advice leads to losses in superannuation, consumers will have lower standards of living in retirement and rely more heavily on the age pension.

Government intervention is not inherently needed to reduce the information asymmetry between consumers of financial services and financial advisers. Well qualified and experienced advisers have an incentive to advertise their credentials in order to gain more business or a higher fee than their competitors. Government intervention may remove the onus on advisers to prove their status to potential clients.

However, as acknowledged in two parliamentary inquiries¹⁵, information on the credentials of financial advisers was not being supplied by the market in a way that was sufficiently easy for consumers to access and verify.

A database would only include information about every financial adviser in the industry if there was buy-in from all licensees and it is difficult to establish this level of cooperation without government intervention.¹⁶

¹² Senate Economics References Committee, ASIC Inquiry *Final Report* (2013), p381

¹³ PJC (2009), *Inquiry into financial products and services in Australia*, p90

¹⁴ Financial System Inquiry final report (2014), p224.

¹⁵ Senate Economics References Committee, ASIC Inquiry *Final Report* (2013), p381; PJC (2009) *Inquiry into financial products and services in Australia*, p90

The financial advice sector is heavily segmented and includes accountants, financial advisers, stockbrokers, tax agents and financial planners. There are 3,300 licensees who range from large established firms to single person operations. The fragmentation of the industry has proved to be a barrier to achieving coordinated action.

- The Professional Planner Dealer Group Summit held on 1-2 June 2015 found that there are 'clearly way too many players in this space, all representing different interests and all having clearly articulated different goals'.¹⁷
- The Professional Standards Councils' Whitepaper also reported that there were internal struggles within industry as to who would lead the process of implementing the Financial System Inquiry's recommendations, including those relating to the Register.¹⁸

In established professions, professional associations play a major role in coordinating action. However, professional associations have not been able to pay this role in the financial advice sector for three main reasons.

- First, there are a larger number of professional associations in the financial advice sector than in the established professions and coordination becomes more difficult when there are more players.

Table 3: Comparison of the number of professional association¹⁹

Industry	Number of major professional associations
Legal profession	2
Financial accounting	3
Dentistry	2
Medicine (general practitioners)	3
Financial advice industry	11

- Second, the professional associations cannot influence the behaviour of all financial advisers because membership of a professional association is not mandatory.

¹⁶ For a general discussion of the coordination problems in the financial advice sector, see Professional Standards Councils Whitepaper, Professionalization of financial services (2014), available at: www.psc.gov.au/news-and-publications/latest-news/new-white-paper.

¹⁷ Simon Hoyle, Financial planning licensees call for better promotion of profession, clearer graduate career paths, Professional Planner (4 June 2015), available at: www.professionalplanner.com.au/featured-posts/2015/06/04/financial-planning-licensees-call-for-better-promotion-of-profession-clearer-graduate-career-paths-37324/.

¹⁸ PSC Whitepaper Professionalisation of Financial Services, available at: www.psc.gov.au/news-and-publications/latest-news/new-white-paper, p. 17.

¹⁹ If the profession is bound by state and territory laws, the table reports the number of professional associations in New South Wales. If the profession is bound by Commonwealth law, the table reports the number of professional associations in Australia.

- Third, most reporting obligations in the financial services industry are imposed on licensees and it would be most effective for licensees to take responsibility for adding information about their financial advisers to a register. However professional associations only have a limited ability to influence licensees because their members are the individual financial advisers. This differs to the legal and medical professions where reporting and other obligations are imposed on the same group that professional associations represent, namely, the individual practitioners.

Professional associations and licensees have also been unwilling to contribute to the upfront cost of building an industry-wide register as they preferred to wait for other players to incur these costs and then 'free-ride'.²⁰

The objective of government intervention was to make it simpler for consumers to assess the quality of financial advisers by providing accurate and relevant information on all advisers in an easily accessible form.

WHAT ARE THE POLICY OPTIONS?

Option 1: Non-regulatory approach

The first option considered was a non-regulatory approach which preserved the status quo. Under this option, there would be no new regulation or industry-enforced standards, and no register of financial advisers would be established.

Option 2: Self-regulatory approach

The self-regulatory approach involves licensees or professional associations establishing and maintaining a database with information about their financial advisers. These registers would be hosted on the website of the licensee or professional association. Government agencies would not have any involvement in establishing or maintaining the registers.

Some licensees and professional associations established databases after the Government announced its intention to establish the Register of Financial Advisers.

- An example of a database maintained by a licensee is Westpac's Bankers Trust database, Adviser View (www.btadviserview.com.au/#M021597). The database displays each financial adviser's contact details, qualifications, languages spoken, areas of expertise and date of joining Bankers Trust. It also contains customer reviews.
- An example of a database maintained by a professional association is the Financial Planning Association's directory of member (fpa.com.au/find-a-planner/) which displays its members' names, employers, contact details and biographical details.

²⁰ PSC Whitepaper Professionalisation of Financial Services, available at: www.psc.gov.au/news-and-publications/latest-news/new-white-paper.

A variant of the self-regulatory approach would involve some licensees joining together and establishing a combined database that contained information about financial advisers who were employed by any of the participating licensees.

Option 3: Government regulation

The third option involves ASIC establishing and maintaining a register with information on all people who provide personal advice on more complex products to retail clients.

ASIC would update the register using its own records (for example, information relating to bannings or enforceable undertakings) and the information lodged by licensees.

The format of the Register would be user-friendly and would be hosted on ASIC's Money Smart, a consumer-focused website with other useful information about selecting a financial adviser. Consumers would be able to export the source data from www.data.gov.au and use it to perform advanced searches or generate reports.

NET BENEFITS OF THE OPTIONS

Assessment of Option 1 (Non-regulatory approach)

The adoption of Option 1 would have resulted in a continuation of the existing difficulties for consumers in obtaining useful and verifiable information on financial advisers.

There would have been no regulatory compliance costs imposed on the industry and no additional costs incurred by ASIC.

This option would maintain the onus on good financial advisers to demonstrate their qualification and performance record.

Option 1 would have allowed the Government to consider this problem in the context of its response to the FSI.²¹

Assessment of option 2 (self-regulatory approach)

The main benefit of the self-regulatory approach is that it encourages industry to take responsibility for improving transparency in the financial advice sector.

Option 2 would increase the availability of information about financial advisers. This would assist consumers to verify a financial adviser's credentials and therefore go some way to addressing the problem.

However, option 2 would not result in a single, comprehensive source of information about all financial advisers.

- As there are 3,300 licensees (as at 12 May 2014), there may be a large number of databases with different information fields and functionality.

²¹ As it turned out, the register was assessed by the FSI and the final report endorsed the introduction of the register alongside other measures to address the problems in the financial services industry.

- There would be information gaps if some licensees did not establish a database.
 - There is a risk that licensees who suspect that some of their financial advisers are ‘bad apples’ will not establish a database to avoid damage to their reputations. If this was to occur, the most useful information would remain unavailable.
 - : However, an absence of information on an adviser should signal to consumers that the person may not be reputable.
- Industry is prohibited from reporting some information which may be included in a government-maintained database because it breaches the privacy obligations imposed on a private organisation.
- There may not be consistent practices amongst licensees or professional organisations in regards to updating the information in their databases.

As a result, the potential benefits for consumers from a licensee or professional associations-based register would be reduced in the following ways:

- Consumers’ upfront learning costs would be high because they would need to familiarise themselves with multiple databases, that is, they would have high search costs.
- If an adviser frequently moves from one licensee to another, the advising history of this adviser would not appear on the register of the licensee for which the adviser is currently working.
- Consumers would only be able to verify the credentials of a financial adviser if the adviser’s licensee maintained a database.
- Consumers would not necessarily know when the information in the database was last updated.
- Consumers may lack confidence in databases maintained by licensees if they have lost confidence in the industry in light of recent scandals.

In terms of the financial costs associated with option 2, there are fixed costs with technology builds as well as ongoing costs associated with gathering information from financial advisers and updating and maintaining the register. The significant fixed costs associated with a register, that are largely unscaleable, mean that the aggregate cost associated with building and maintaining multiple registers would be higher than for a single register covering the whole industry. These costs would be borne by industry and would be proportionately greater for smaller licensees

Assessment of Option 3 (Government regulation)

A key benefit of an ASIC established and maintained register is that the information on all financial advisers’ credentials would be at a single location. The format of the Register of Financial Advisers would be user-friendly and would be hosted on ASIC’s Money Smart, a consumer-focused website with other useful information about selecting a financial adviser. Businesses and consumers would be able to compare financial advisers easily because the same details are provided for all financial advisers. This would reduce the search costs for consumers relative to Option 2. The register would

also have the advising history of each adviser, covering their experience with previous as well their current licensee.

ASIC would not actively verify the information supplied by licensees. The existing regulatory framework places the onus on licensees to verify the quality of their financial advisers. Similarly, the onus would be on licensees to supply accurate information to ASIC for inclusion on the Register of Financial Advisers. There are penalties in the Corporations Act for supplying false information to ASIC.

ASIC would supply the information about any bannings, disqualifications or enforceable undertakings entered into by a financial adviser.

The regulatory approach would impose compliance costs on licensees as they would need to obtain the relevant information from their advisers, verify and collate the information, and lodge it with ASIC. However, licensees already collect much of the information that will be included on the Register in order to comply with other parts of the Corporations Act.

Licensees would also incur small ongoing reporting costs because they have an obligation to notify ASIC of any changes to the information displayed in the Register of Financial Advisers.

The regulatory costs of this option are set out below and in Table 4. These costs include dedicated staffing costs and the costs of collecting information and submitting it electronically to ASIC via ASIC's portal. The figures are based on the assumption that licensees use mainly a manual process to collect the information from licensees.

Table 4: Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$2.05	\$	\$	\$2.05
Cost offset (\$ million)				
	Business	Community organisations	Individuals	Total, by source
Treasury	-2.05\$	\$	\$	-\$2.05
Are all new costs offset?				
X Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs - Cost offset) (\$ million) = \$0				

Note: A regulatory offset has been identified from within the Treasury portfolio.

ASIC's costs of establishing and updating the Register will be recovered from the industry via fees levied on licensees for lodging information for inclusion on the register. As of 1 October 2015, the fee structure was:

- a \$44 fee to appoint a financial adviser;
- a \$29 fee to update representative details or cease a representative;
- a \$75 late fee when a notification is less than one (calendar) month late; and
- a \$312 late fee when a notification is over one (calendar) month late.

A possible risk from Option 3 is that it could result in some consumers believing that, because of government involvement, they are protected from financial losses. Consumers could become more complacent about the risks associated with financial investments. As such, actions may be needed to remind consumers of the inherent risks associated with financial products.

CONSULTATION

Recent parliamentary inquiries

Several parliamentary inquiries have provided recommendations for improving the quality of financial advice. These include the 2013 Senate Economic References Committee's Inquiry into the performance of the Australian Securities and Investments Commission (ASIC Inquiry), the 2012 Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into the collapse of Trio Capital (Trio Inquiry), 2014 Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into financial products and services in Australia (PJC Inquiry); and the 2014 Financial System Inquiry (FSI).

Each of these inquiries recommended, or endorsed, the establishment of a public register of financial advisers. The recommendations are set out in Table 5.

Table 5: Recent inquiries recommending or endorsing the establishment of a Register

	Report	Recommendation
Before the decision to establish a Register	ASIC Inquiry - Recommendation 44	The committee recommends that a Register of employee representatives providing personal advice on Tier 1 products be established.
After the decision to establish a Register	Trio Inquiry - para[4.67]	The Committee notes ...there does appear to be a strong case to establish a register of employee representatives in the financial services industry.
	FSI - Recommendation 25	... introduce an enhanced Register of advisers
	PJC Inquiry - Recommendation 5	<p>The committee recommends that the Register of Financial Advisers:</p> <ul style="list-style-type: none"> • include the information fields detailed in the Government's announcement of the Register on 24 October 2014; • have a unique identifier that follows every individual adviser throughout their career; • only list financial advisers on the Register when a professional association ... advises that the adviser has completed the requirements of the Finance Professionals' Education Council approved professional year and passed the registration exam; • record any higher qualification awarded by a professional body to the adviser; • annotate any censure or limitation placed on a financial adviser by a professional body, Australian Securities and Investments Commission or Australian Financial Service Licence holder; and • highlight that an adviser is no longer authorised to provide financial advice if the adviser has their membership of the nominated professional body suspended or revoked.

As the establishment of the Register of Financial Advisers would not ordinarily have required a RIS and was relatively minor in nature, no further consultation on the options was undertaken. However, Treasury consulted extensively on the design and implementation of the Register as poor design decisions had the potential to undermine the benefit of the Register and impose unnecessary costs on industry (see *Implementation and Evaluation*).

AGREED OPTION

The Government decided that ASIC should establish and maintain a Register of Financial Advisers.

This option was considered preferable to no policy change and to provide greater benefits to consumers than registers established and maintained by individual licensees or professional associations. The key advantages are that:

- the information on all advisers would be on a single site in a standardised format, meaning reduced search costs for consumers; and
- there would be history of the adviser's record with previous licensees, not just the adviser's current licensee, meaning consumers could more easily identify advisers that had a poor advising record.

The financial cost for the industry of establishing and maintaining an ASIC register would also likely to be lower than if each licensee or professional organisation established their own registers. For the Register of Financial Advisers, even though it was built and maintained by ASIC, the costs are recovered from industry. However, the significant fixed costs associated with a register, that are largely unscalable, mean that ASIC could deliver the Register of Financial Advisers at a lower cost compared to the aggregate cost associated with building and maintaining multiple registers.

A possible risk from government intervention in the financial system is that it could result in some consumers believing that they are protected from financial losses. Consumers could become more complacent about the risks associated with financial investments. As such, actions may be needed to remind consumers of the inherent risks associated with financial products.

IMPLEMENTATION AND EVALUATION

Design of the register

The scope and content of the Register was informed by the views of stakeholders.

On 17 July 2014, the Acting Assistant Treasurer, Senator the Hon Mathias Cormann, announced that the Government would establish the Australian Financial Services Licence Industry Working Group (the Working Group) to provide advice to the Government on a number of implementation issues concerning the Register of Financial Advisers.²²

²² Media release: Establishing an enhanced public Register of Financial Advisers (17 July 2014), available at: <http://mhc.ministers.treasury.gov.au/media-release/031-2014/>.

The implementation issues considered by the Working Group included:

- its scope and content;
- whether reporting obligations are placed on licensees and/or financial advisers;
- who is responsible for providing information and input of data; and
- potential privacy issues.

The Working Group included representatives from the accounting, financial advising, financial services, funds management, insurance broking, banking, stockbroking and superannuation industries, as well as consumer and academic representatives, ASIC and Treasury.

The Working Group was used as the primary consultation method because it provided a mechanism for the key stakeholders to debate their ideas and reach broad agreement.

The Working Group met on three occasions (on 31 July, 8 July and 15 July 2014) before providing recommendations to the Minister on August 2014. The Register is fundamentally informed by the recommendations of the Working Group.

Further consultation was undertaken on an Exposure Draft of the Regulation and a consultation note which asked questions about the key drafting issues.

- Stakeholders were invited to make submissions between 27 November 2014 to 17 December 2014 and Treasury received 12 submissions.
- Treasury held a roundtable discussion with the Financial Planning Association (FPA), the Australian Bankers' Association (ABA), and the Financial Services Council (FSC) on 11 December 2014.
- Treasury then held a second roundtable with all members of the Working Group in December 2014.

Three of the main concerns that arose from the consultation discussions were:

- The Register was to initially capture information on the licensees' 'eventual owner' but stakeholders indicated that they would prefer to include information about 'control'.
- ASIC initially had the discretion to display information about advisers' place and date of birth. ASIC indicated that it did not intend to display this information but industry wanted to remove the discretion to ensure financial advisers' privacy was protected.
- The draft regulations generally imposed the obligation to lodge information on licensees but where there was a corporate authorised representative entity operating between the licensee and the financial adviser, the obligation to lodge information was placed on the corporate authorised representative. Stakeholders indicated that the legal obligation to lodge information should always be on the financial adviser's licensee, albeit that corporate authorised representative should be permitted to lodge on behalf of the licensee.

Stakeholders' concerns were carefully considered and changes were made to the regulations. These changes included replacing the 'eventual owner' test with a 'control' test, removing ASIC's discretion to display information about advisers' place and date of birth, and placing the obligation to lodge information on the licensee in all circumstances.

In February 2015, Treasury conducted a targeted consultation on the proposal to extend the information lodgement periods for the Authorised Representatives Register so that it aligned with the information lodgement period for the Register of Financial Advisers.²³

All stakeholders supported the change to the information lodgement periods. Industry (FPA, ABA, FSC, Industry Super Australia, and the Australian Financial Advisers Association) noted that the change would reduce their compliance costs, while CHOICE indicated that it did not consider that the extended lodgement period would cause consumer harm.

The same group of stakeholders were given an opportunity to comment on the draft legislation to align the information lodgement periods in July 2015. The stakeholders did not raise any concerns with the draft legislation and reiterated their support for the alignment of the information lodgement periods.

The outcome of the implementation consultations is that:

- The Register covers all persons who provide advice on sophisticated products to retail clients. This includes:
 - employees, directors and authorised representatives; and
 - persons who call themselves 'financial advisers' and advisers in related sectors, such as stockbrokers, insurance brokers, accountants, self-managed super fund professionals and some bank employees.
- Financial advisers who only provide general advice, exclusively advise on less sophisticated products, or only provide their services to wholesale clients are not captured by the Register. The general view of industry was that there was no net benefit in including these people in the Register.
- Consistent with the existing Register of Authorised Representatives, over time the Register will include information on financial advisers who are no longer authorised to provide advice, that is, ceased financial advisers.
- The Register contains the following information about a financial adviser:
 - the financial adviser's name;
 - a unique individual registration number for each adviser;
 - the adviser's status (current/ceased);
 - the year the adviser began advising,

²³ See the 'Implementation' section for further information about this implementation decision.

- a five year advising history;
 - the adviser's current licensee and authorised representative (if applicable), and a direct link to the business names associated with these entities;
 - what product areas the adviser can provide advice on;
 - any bans, disqualifications or enforceable undertakings; and
 - if applicable, each person that controls the adviser's licensee.
- From June 2015, the Register also included up to five of each adviser's training and qualifications, and up to five of each adviser's professional association memberships.
 - The Register is funded by increasing the ASIC lodgement fee for Australian Financial Services licensees by \$5 to \$39 (now \$44) and fees for amending information. The fees are indexed to the Consumer Price Index and increase each year.
 - Licensees will have up to 30 business days to lodge and update information on the Register of Financial Advisers. The information lodgement periods for the Register of Authorised Representatives will also be increased to align them with lodgement period for the Register of Financial Advisers.

Table 6: Lodgement periods for the registers maintained by ASIC

Register	Existing Lodgement Periods (business days)	New Lodgement Periods (business days)
Register of Authorised Representatives	15 (for new authorisations) 10 (for cancellations and variations)	30
Register of Financial Adviser	N/A	30
Banned and Disqualified Register	Updated by ASIC	Updated by ASIC
Register of Enforceable Undertakings	Updated by ASIC	Updated by ASIC

Implementation stages

The Register of Financial Adviser was launched in three phases.

- The first phase was successfully launched on 31 March 2015 and delivered a base Register with all fields, except advisers' training, qualifications and membership of professional associations.

- The second phase was launched on 31 May 2015 and delivered the training, qualifications and professional associations fields.
 - During the transitional period from 3 March to 30 September 2015, there were no fees to notify ASIC of changes to information on the Register and there will be no late fees.
- The third phase was completed on 1 October 2015. It provides the late and maintenance fee capabilities, ongoing reports, the capacity for users to set alerts which notify them of changes to the Register (such as a change in a financial adviser's status) and full maintenance functionality.
 - On 1 October 2015, the information lodgement period for the Register of Authorised Representatives will be aligned with the information lodgement period for the Register of Financial Advisers. Late fees will also begin to apply from this date.

The information on the Register will be updated from time to time. For example, if the Parliament supports the Government's professional standards reforms, additional information will be added (mostly from 1 July 2019), including:

- whether the financial adviser has complied with the new continuing professional development requirements;
- the scheme that will monitor the financial adviser's compliance with the new Code of Ethics;
- the financial adviser's principal place of business; and
- details about any breaches of the Code of Ethics and the sanctions imposed.

Evaluation of the Register

The success of the register can be judged by whether:

- consumers consider it a useful resource;
- it contributes to raising professional standards in the financial advising industry; and
- it leads to consumers being more informed about the risks and returns associated with alternative financial products.

There are early signs that the Register is providing a useful tool for consumers.

- There is evidence to show that consumers are using the Register to verify financial advisers' credentials. There were 81,979 search requests in the first two months after the launch of the Register. ASIC has advised that, as of 9 November 2015, there have been a total of 425,000 searches or an average of around 2000 searches per day²⁴.

²⁴ Parliamentary Joint Committee on Corporations and Financial Service, Oversight of the Australian Securities and Investments Commission and the Takeovers Panel, Public Hearing, 19 November 2015.

- The data from the Register is also available on [data.gov.au website](https://data.gov.au). Consumers are able to view and download the data, and use it to perform more advanced searches. ASIC reports that this data is popular with users with over 1,400 views and almost 300 downloads.

ASIC will continue to review the performance of the Register as part of the ongoing monitoring of its registry businesses.