POST-IMPLEMENTATION REVIEW

FUTURE OF FINANCIAL ADVICE

ADDITIONAL AMENDMENTS

EXECUTIVE SUMMARY

1. As part of the Government's Best Practice Regulation Framework, Treasury is required to undertake five Post Implementation Reviews (PIRs) on the regulatory impact of five Future of Financial Advice (FOFA) reforms.

2. The PIRs are required in relation to:

   - the ban on up-front and trailing commissions and like payments for both individual and group risk insurance within superannuation.

   - the requirement for advisers to renew client agreement to ongoing advice fees every two years (opt-in regime).

   - the ban on soft dollar benefits over $300 per benefit.

   - the limited carve-out for basic products from the ban on certain conflicted remuneration structures and best interests duty; and

   - the clarification provided in relation to access to scaled financial advice.

3. This PIR covers each of these regulations separately and examines the effects they have had on industry and consumers using the Regulatory Burden Measurement Framework developed by the Office of Best Practice Regulation (OBPR).

4. In the course of developing this PIR, Treasury has undertaken public and targeted consultation, including with industry and consumer organisations and the Australian Securities and Investments Commission (ASIC). Treasury released a consultation paper on the draft PIR for public consultation from 19 May to 9 June 2017. Treasury received 11 submissions in response to this consultation, from 3 industry associations, 1 consumer associations, 1 employee organisation and 4 individual financial planner organisations as well as submissions from regulatory bodies.

5. Treasury has considered a range of stakeholder viewpoints when analysing whether the regulations have met their intended purpose. Treasury's overall conclusion is it appears that that all five measures are functioning as intended.

INTRODUCTION

PURPOSE OF POST-IMPLEMENTATION REVIEWS

6. All Australian Government agencies need to undertake Post-Implementation Reviews (PIRs) when regulation has been introduced, removed, or significantly changed without a Regulation Impact Statement (RIS) having been approved by OBPR.

7. A RIS subjects the proposed regulation to scrutiny at the pre-decision stage, while a PIR is post implementation scrutiny of the regulation.

8. The development of a RIS or PIR is an important component of the Government's Best Practice Regulation Framework, which is designed to help ensure the delivery of efficient regulatory outcomes and prevent unnecessary red tape.

SCOPE OF THIS POST-IMPLEMENTATION REVIEW

9. Treasury is required to prepare a PIR in relation to the following five specific measures introduced as part of the FOFA reforms:

   - the ban on up-front and trailing commissions[1] and like payments for both individual and group risk insurance within superannuation;
   - the requirement for advisers to renew client agreement to ongoing advice fees every two years (opt-in);
   - the ban on soft dollar benefits over $300;
   - the limited carve-out for basic banking products from the ban on certain conflicted remuneration structures and the best interests duty; and
   - the clarification of the operation of the best interests duty in relation to scaled advice.

10. These measures were announced on 28 April 2011 without an appropriate RIS being completed.

11. The PIR does not cover the entirety of the FOFA reforms as a compliant RIS was prepared.

1 An up-front commission is a payment made to an adviser when purchasing a financial product, a trailing commission is any payment made to an adviser every year that an investment is held.

TIMING OF THIS PIR

12. This PIR is required to be completed within two years of the implementation of the relevant measures. The original FOFA legislation (which covered these five measures) was passed by Parliament on 25 June 2012 and commenced on 1 July 2012. Compliance with FOFA was mandatory from 1 July 2013, however, ASIC took a facilitative compliance approach to FOFA for the first 12 months, consistent with their approach in relation to other major policy reforms. The facilitative period ended on 1 July 2014.

13. Since these regulations did not become mandatory until 1 July 2015, the PIRs must be completed by 1 July 2017.

BACKGROUND TO FOFA

14. The objectives of FOFA were to improve the trust and confidence of Australian retail investors in the financial services sector and ensure the availability, accessibility and affordability of high quality financial advice.

15. FOFA has its genesis in the recommendations of the 'Ripoll Inquiry', a Parliamentary Joint Committee on Corporations and Financial Services (PJC) inquiry into financial products and services in Australia. The Ripoll Inquiry was set up in 2009 to inquire into, and report on, issues associated with financial products and services provider collapses that occurred in the wake of the Global Financial Crisis (GFC). It was undertaken in the context of the collapses of a number of financial firms, including Storm Financial and Opes Prime.

16. The terms of reference for the Ripoll Inquiry covered:

    - the role of financial advisers;
    - the general regulatory environment for these products and services;
    - the role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest, the need for appropriate disclosure, and remuneration models for financial advisers;
    - the role played by marketing and advertising campaigns;
    - the adequacy of licensing arrangements for those who sold the products and services;
    - the appropriateness of information and advice provided to consumers considering investing in those products and services, and how the interests of consumers can best be served;
    - consumer education and understanding of these financial products and services;
    - the adequacy of professional indemnity insurance arrangements for those who sold the products and services, and the impact on consumers; and
    - the need for any legislative or regulatory change.

17. The report made a number of recommendations for reform of the financial advice sector. The previous government's response was the introduction of the FOFA reforms.

RATIONALE FOR FOFA

18. The asymmetry between consumers and financial services providers is well known. Consumers in the financial system can be disengaged, may possess behavioural biases,[2] may have relatively low financial literacy and are often confronted with complex documents and products. Additionally, most financial products are a form of 'credence good' meaning that their true value or utility to a consumer is not known or cannot be calculated at the point of purchase.[3] Financial advisers, on the other hand, possess specialised knowledge used to provide advice and recommendations on financial products to clients.

19. Commission based payments can create real and potential conflicts of interests for advisers by encouraging advisers to sell products rather than provide advice that is in the best interest of the client. The Ripoll Inquiry, which examined the impact that conflicts of interest have on the provision of financial advice, noted that 'a significant conflict of interest for financial advisers occurs when they are remunerated by product manufacturers for a client acting on a recommendation to invest in their financial product'.[4]

20. Prior to the introduction of FOFA, the regulatory response to conflicts of interest was a legislative requirement to disclose conflicts of interest and provide advice to a standard that is appropriate to the client. However, many submissions to the Ripoll inquiry noted that this regulatory response had proved ineffective.[5]

21. In particular, although disclosure can make a client aware that a conflict of interest exists, due to the information asymmetry that exists between the adviser and the client, the client may not be able to determine the extent to which the conflict of interest has impacted on the advice given.

22. One of the key objectives of FOFA was to remove these conflicts of interest and require financial advisers to put the needs of their client first.

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2 Behavioural biases refers to the fact that consumers are subject to a range of emotional biases (for example, overconfidence bias, loss-aversion bias) and use various heuristics (rules-of-thumb, educated guesses, and so on) when making choices: see Financial Conduct Authority 2013, *Occasional Paper No. 1, Applying behavioural economics at the Financial Conduct Authority*, London.

3 Australian Securities and Investments Commission, submission to the EDR Final Report

4 Ripoll inquiry page 75 paragraph 5.29.

5 Ripoll inquiry page 74 paragraph 5.24.

23. The FOFA legislation is contained in part 7.7A of the *Corporations Act 2001* (the Act), which imposes the following standards on providers of financial advice:

    - a best interests obligation that requires financial advisers to act and provide advice that is in the best interests of their client;
    - an obligation to disclose ongoing fees and charges paid by their client; and
    - a requirement not to accept payments that may influence the advice provided to the client.

24. ASIC monitors the impacts of the FOFA reforms as part of its regulatory functions. ASIC regulates businesses and people who provide financial advice. This involves monitoring activities and using a number of powers granted to it where appropriate.

BAN ON UP-FRONT AND TRAILING COMMISSIONS AND LIKE PAYMENTS FOR INDIVIDUAL AND GROUP LIFE INSURANCE WITHIN SUPERANNUATION

25. This measure banned conflicted remuneration, including up-front and trailing commissions and like payments, for both individual and group life insurance within superannuation.

PROBLEM

Conflicts of interest in relation to life risk insurance within superannuation

26. Prior to FOFA, conflicted remuneration structures existed in relation to life insurance within superannuation funds.

27. This reflected in part the way in which group life risk insurance was purchased compared to other financial products. For example, group risk insurance is bought by a trustee on behalf of members and offered by that trustee to its members. In this context, an adviser can assist members of a superannuation fund in the composition and level of cover that they should have. However, if the member receives no advice, they are still likely to be insured through default arrangements unless they choose to opt-out.

28. Other examples of conflicted remuneration structures in relation to life insurance within superannuation are where a superannuation specialist advisory group makes a recommendation to an employer about which default fund to select over another fund and then receives service fee payments from that default fund for providing education and other services to employees who join the default fund.

Magnitude of the problem

29. An ASIC shadow shopping survey[6] conducted in 2006 found that there was a positive correlation between non-compliance with legislative requirements and conflicts of interest for all advice relating to superannuation, including life insurance. The survey found that where a conflict of interest existed, around 30 per cent of advice was non-compliant and when a conflict of interest did not exist, around 5 per cent of advice was non-compliant.

30. The Super System Review (Cooper Review), which also examined issue of insurance arrangements within superannuation, found that commission-based payments for insurance within superannuation had the potential to affect the quality of advice provided by financial planners when giving their superannuation advice.[7]

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6 ASIC Report 69: Shadow Shopping Survey on Superannuation Advice (2006)

7 Super System Review: Page 14

31. *ASIC report 498 (Life Insurance Claims: An Industry Overview)* found that in 2015 over 14 million group policies were in existence. The ubiquitous nature of these policies implies that any systematic misalignment between consumer and adviser interests has the potential for significant consumer harm.

32. When taking a broad view, these individual pieces of evidence show that there were significant issues in the way that life insurance was being sold and that there was potential for significant consumer harm.

Why was government action required?

33. The legislative requirements in place prior to FOFA were considered to be ineffective in adequately addressing the potential harm associated with conflicted remuneration and the absence of a 'best interests' duty.

34. This regulatory failure could only be addressed through legislative change, necessitating government action.

Objectives of Government action

35. The objective of government action was to ensure that the remuneration structures of life insurance advisers were appropriately aligned with the interests of their clients, by removing conflicts of interest and altering remuneration practices in relation to life insurance inside superannuation. At the same time the Government also intended to mitigate against a risk of increased underinsurance in the Australian community.[8]

OPTIONS THAT WERE CONSIDERED

36. There were four alternative options considered to address this problem.

Chosen option: Ban insurance commissions in relation to all policies in superannuation

37. Under this option, commissions and similar payments were prohibited in respect of any life insurance offered to any superannuation entity, including self-managed superannuation funds (SMSFs).

38. At the time this option was being considered, life insurance advisers would only have been able to receive commissions in relation to policies sold outside of superannuation. Subsequently, commissions in relation to life insurance policies sold outside of superannuation have been capped (*Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*).

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8 A study by Rice Warner indicated there was a persistent underinsurance gap in Australia (Rice Warner Report: *Australia's Persistent Underinsurance Gap*).

Alternate option A: Ban insurance commissions in relation to MySuper only

39. This option would have eliminated life insurance commissions on MySuper products[9] while allowing commissions on non-default products.

40. This would have meant that where a trustee of a MySuper product procured any group insurance cover to offer to its members, no commission could have been paid in relation to that policy. Where a trustee engaged an adviser to develop a group insurance package for MySuper members, that adviser could not have received any commissions from a product provider.

41. The option would have had the benefit of protecting consumers of MySuper products (who are typically disengaged consumers, given MySuper is the default superannuation option) from advice in relation to their default insurance cover being influenced by commissions.

42. However, this option was not selected for the following reasons:

- Firstly, cover above the automatic acceptance limit of the group insurance contract offered in a superannuation product must be taken out of an individual policy. As commissions continued to be permitted on individual policies, financial advisers would have had an incentive to recommend the member increase cover above the automatic acceptance limit to receive a commission payment, which may not have been in the client's best interest.

- Second, as commissions on other non-default life insurance policies would have been permitted, it could have created an incentive for financial advisers to recommend their clients move out of a MySuper product to another life insurance product, which may not have been in the client's best interest.

Alternate option B: Ban insurance commissions in relation to group policies in superannuation only

43. Under this option, where a trustee of a superannuation fund procured a group policy to offer to its members, no commission payments in relation to that group policy would be permitted. Where a trustee engaged an adviser to develop a group policy for its members, that intermediary could not receive any commission from a product provider.

44. This option was not selected as it would have created the same undesirable incentives as alternative option A.

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9 MySuper is a government superannuation initiative to provide low-cost and simple super products for employers to choose as their default super fund.

Alternate option C: Ban commissions in relation to all life insurance policies in superannuation and commissions in relation to all other all life insurance products

45. Option C would have banned commissions on all life insurance policies whether within or outside of superannuation.

46. Superannuation fund members have funds (in the form of their superannuation balances) that can be drawn on to pay for a range of services, including insurance advice. However, this is not necessarily the case for consumers seeking advice on life insurance products outside of superannuation. While some consumers may be willing to pay to obtain financial advice from an adviser, there is a risk that other consumers may either purchase cover directly from an insurer (without receiving advice) or may not obtain life insurance cover at all, which would increase underinsurance.

47. Applying a ban on commissions to life insurance policies provided outside of superannuation would also result in a loss of revenue for financial advisers providing such advice and, potentially, result in some advisers becoming unviable and having to exit the market. This could contribute to reduced access to affordable advice, which would adversely affect consumers.

48. Due to these concerns, this option was not selected at the time. Subsequently, in 2017, legislation to cap commissions payable in relation to life insurance policies outside of superannuation passed the Parliament and will take effect from 1 January 2018.

How the regulation was implemented

49. The government implemented a ban on conflicted remuneration for individual and group life insurance within superannuation.

Impacts of the regulation on stakeholders

50. Given the regulation was introduced at the same time as a number of other reforms, there are difficulties with isolating the impacts of the specific measure.

51. The baseline case is the previous regulatory regime in which there was no ban on conflicted remuneration.

52. At the time the measure was developed, Treasury had anticipated that:

    - The measure would have imposed some costs on financial advisers who would have lost access to a source of remuneration, resulting in lower profits for some advisers or some advisers exiting the market.

    - Consumers would have been the main beneficiaries of the policy as the ban on conflicted remuneration would have created better alignment between advisers' incentives and consumer interests. The removal of a conflict of interest would, therefore, contribute to increased trust and confidence in financial advisers and the financial system more generally.

53. Treasury received a number of submissions commenting on the impacts of this measure as part of its consultation on the draft PIR.

54. The regulation appears to be functioning as intended, the initial policy problem, that consumer and adviser interests may diverge due to the presence of conflicted remuneration, has been addressed. Treasury had anticipated that there may be some incentive for advisers to move clients outside of superannuation. This does not appear to have materialised, as discussed below. A number of submissions have highlighted the benefits of this legislation for consumers by the "removal of incentives to give conflicted advice". A submission by a financial industry stakeholder had stated that without the introduction of these reforms "the major financial institutions would not have altered their remuneration models" and that "the provision of exploitative financial advice would still be occurring". Thus, in general, the reforms appear to have had substantial benefits for consumers in terms of increased trust and confidence in their advisers, without generating unintended side effects such as mis-selling.

55. Treasury had anticipated that there would be some revenue losses from this ban as an important source of fees has been removed. A submission from an industry association representing financial advisers indicated that the reforms have imposed significant costs to businesses. The submission indicates there has been "a significant reduction in income – some small businesses lost between 15 to 30 per cent of revenue" and a "significant increase in compliance costs."

56. Most importantly, the regulation has removed a source of conflicted remuneration that had been creating poor consumer outcomes. This raises the question of whether industry has been able to move to new remuneration systems. A submission from an Industry Association has given evidence that financial planning practices have been able to move to new remuneration systems and other areas of advice to compensate from the loss of revenue from trailing commissions. For most stakeholders this cost of designing and moving to new remuneration systems was between $5,000 - 10,000. However for a small number of stakeholders, this cost was above $10,000.

57. Treasury anticipates that while revenues may have been impacted because of the removal of a fee structure, there appears to be evidence, as shown above, that businesses are moving to new remuneration structures, therefore Treasury expects that the effect on revenue will be neutral in the medium term as businesses move to new forms of remuneration.

58. Treasury did not receive any further information regarding the impacts of the regulation on stakeholders and to date a further shopping survey of the kind conducted in 2006 has not occurred. Treasury notes there has been an increase in the number of financial advisers since the Rippoll Inquiry – 18,000 – compared with 25,531 advisers according to the Financial Advisers Register presently.

59. Similarly, a submission from an individual financial adviser indicates there is now "little incentive for an adviser to accept an engagement to assist employers in tailoring an insurance package for their employees… the result has seen a reduction in these services with employers and employees being left to battle on their own".

60. Treasury had anticipated that there may be some incentive to move clients from inside to outside superannuation so that they may still benefit from commissions. Stakeholders have reported no evidence of this occurring in the marketplace. Thus there appear to have been very few unintended consequences of this regulation.

61. Other submissions (from consumer and superannuation industry stakeholders) were supportive of the ban on commissions for policies within superannuation, but argued that it should have applied to all life insurance policies, regardless of whether they are within or outside of superannuation.

Compliance Costs

Treasury estimates that compliance costs would include

- Training
- New remuneration systems
- IT changes

62. The compliance costs, developed in consultation with stakeholders and agreed with the Office of Best Practice Regulation are:

Measure	Year One Cost	Ten Year Cumulative Cost	Ten Year Average Cost
The ban on conflicted remuneration (up-front and trailing commissions and like payments) for both individual and group life insurance within superannuation	9,282,419.42	49,046,306.90	**4,904,630.69**

Whether the regulation has met its objectives

63. While the regulation has imposed costs on industry by removing a source of revenue for advisers and imposing compliance costs, it has provided a significant, although unquantifiable, benefit to consumers through the removal of a source of conflict of interest.

64. Although commissions continue to be permitted for life insurance policies outside of superannuation (although they will be capped from 1 January 2018). An industry association, in its submission to Treasury, indicated that they were not aware of any mis-selling as a result of the differential treatment between life insurance policies within and outside of superannuation.

65. Treasury considers the benefits, in terms of enhanced consumer protection and the removal of a conflicted form of remuneration, outweigh the costs to industry. Treasury considers that regulation has been effective in meeting its objective, a view that is broadly supported by stakeholder consultation. Treasury therefore considers that the regulation should continue in its current form.

REQUIREMENT FOR ADVISERS TO RENEW CLIENT AGREEMENT TO ONGOING ADVICE FEES EVERY TWO YEARS (OPT-IN) RATHER THAN ANNUALLY

66. This measure required financial advisers to renew client agreement to ongoing advice fees every two years.

67. When FOFA was initially announced, it was intended that the financial advisers would be required to ask their clients to opt-in on an annual basis.

PROBLEM

68. In the Australian financial system, to provide financial advice you must have a Australian Financial Service (AFS) licence. In providing advice, the adviser must consider what type of advice is appropriate for the client be it general, personal or scaled advice. Any advice given should be accompanied by a Statement of Advice (SOA). The purpose of a SOA is to communicate to the client important and relevant information about the advice.

69. In situations where the client pays a proportion of a financial adviser's remuneration directly (known as 'fee for service'), it is common for the remuneration to be ongoing in nature. An adviser might charge a client an ongoing annual fee calculated as a flat dollar amount or as a percentage of the client's funds under management (an 'asset-based' fee). Note that in many cases with ongoing advice, there is no need to provide a SOA once one has already been previously provided.

70. The annual fee generally covers a range of advisory services either provided or available to the client. As opposed to professions or other occupations that tend to charge for transactional, one-off services or advice, financial advisers' remuneration structure is partly reflective of the notion that the benefits of financial advice tend to be realised over the medium to long-term, and therefore remuneration structures tend to reflect the ongoing nature of the adviser/client relationship.

71. The ongoing contract includes a feature to allow the consumer to 'opt-out' of the arrangement if they wish to do so. In contrast, under an 'opt-in' requirement, a financial adviser with an ongoing fee arrangement with a retail client would be required to obtain their client's agreement at set intervals to continue the ongoing fee arrangement.

72. A consistent theme of the ASIC reports that examined ongoing fee arrangements was that, in many cases, a significant fee was being charged to a consumer who was disengaged from the process and was not receiving advice.

73. ASIC's analysis showed that, on average, trailing commissions were being charged to around 30 per cent of consumers between 2006 to 2012. However, ASIC's report[10] also indicated that 65 per cent of those who were under an ongoing fee arrangement were classed as inactive or 'passive', meaning they had received no advice or services in the past 12 months.

74. These results were indicative of continuing problems with the way that ongoing financial advice fees were structured.

75. This report implied that there was a significant cost to consumers from the absence of an opt-in requirement and highlighted the need for reform in the way that ongoing fee contracts were structured in the financial advice sector.

Why government action was required?

76. While consumers who had ongoing fee arrangements were able to opt-out of the arrangements, low levels of consumer engagement meant there was a significant proportion of consumers that did not exercise this option, resulting in fees being paid even though advice was not being provided. This could not be adequately addressed by the market and, therefore, government intervention was required.

Objectives of Government action

77. The objective of the opt-in requirement was to support client engagement, to enable consumers to understand the fees they were paying for ongoing financial advice and to require consumers to make a further assessment about whether they were receiving value for money for the fees paid. It was also aimed at ensuring that ongoing fees could not be charged to retail clients that were uncontactable and therefore were not receiving financial advice.

78. When initially announced, the proposal was to require financial advisers to provide their clients with an opt-in notice annually. The change to a two yearly requirement was intended to largely retain the benefits of 'opt-in' while significantly reducing the compliance costs for financial advisers.

OPTIONS THAT WERE CONSIDERED

79. The previous Government considered two potential options to address the problem:

Chosen option: Change the opt-in requirement from an annual requirement to a two yearly requirement.

80. Under this approach, financial advisers who have an ongoing fee arrangement with a retail client are required to obtain that client's agreement every two years to continue the ongoing fee arrangement.

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10 ASIC Report 407: Review of the Financial Advice Industry's Implementation of the FOFA reforms (2014)

81. This approach was selected as the previous government considered that requiring clients to opt-in every two years would retain the consumer protection elements of opt-in while lowering the regulatory impact on industry.

Alternative option: retain the annual opt-in requirement as originally announced

82. Under this alternative approach, opt-in would have continued to be an annual requirement.

83. An annual opt-in requirement would have imposed double the compliance costs compared to a requirement to obtain the client's agreement every two years, but arguably without doubling the benefits to consumers. For this reason, in order to provide the maximum net benefit, opt-in was set as a two yearly requirement, rather than an annual requirement.

Baseline Case

84. The baseline scenario considered is a yearly opt-in requirement as this was what was originally announced.

How the regulation was implemented

85. The government implemented a two yearly opt-in requirement. At the time it was originally implemented, if a client did not opt-in within 30 days of receiving the notice, the ongoing fee arrangement was terminated. Subsequently, amendments were passed in 2016 which meant that financial advisers had 60 days to provide renewal opt-in notices to clients.

Impacts of the regulation on stakeholders

86. Based on stakeholder submissions as well as informal stakeholder discussions, this reform appears to be working effectively. Treasury had anticipated that this amendment would impose significant costs both in terms of time and efficiency for advisers, this effect has been confirmed by stakeholders, however it was also anticipated that the benefit to consumers of these regulations would be significant. This benefit has also been confirmed by stakeholders.

87. There have been clear benefits on the consumer side from this regulation, there is clear evidence from stakeholders that consumers are now evaluating the service they are being provided and if consumers feel they are not receiving value for money, the opt-in allows them to easily void the service.

88. ASIC Report 499, which was based on data collected by ASIC from large AFS licensees, states that "this reform significantly reduces the likelihood that customers will continue to pay fees for ongoing advice services if they do not wish to receive those services or pay those fees". This choice represents a value judgement by consumers, when they feel they are not receiving sufficient advice to justify the fees, they are now prompted to decide whether to opt-in to receive further advice.

89. A superannuation industry stakeholder has stated that they "believe the benefits of this regulation outweighs the costs such as eliminating cases of 'nil'[11] advice where fees are being charged without any advice being provided." They also go on to state that the regulation should continue in its current form.

90. An individual submission has given evidence for the benefits outweighing the costs by stating that, "This [the regulation] has created considerable time and cost to my business. However, it isn't a bad idea and does achieve a positive outcome. I consider this to be a successful policy."

91. A financial planner stakeholder has also given further evidence that consumers are now making a further evaluation of whether they are receiving a benefit from the service, the submission also goes on to say that the regulation has also placed greater responsibility on advisers to continually demonstrate the value they provide to consumers. The submission notes that along with this demonstration comes an additional administrative cost. Broadly, these are the effects that were intended from the legislation.

92. Some submissions have also noted the drop in revenue because of these notices, this is further evidence of the effectiveness of this amendment. The fact that revenue drops is indicating that consumers may not be receiving value for money and are thus discontinuing the service. This further reinforces the conclusion that this regulation has been effective at meeting its objectives.

93. Submissions from financial firms and industry associations representing financial advisers have indicated that the process for issuing renewal opt-in notices can be costly and time consuming. The specific impacts are a significant increase in administration, especially with record keeping and follow up. Additional training of support staff is needed as well as new computer software. These costs were thought to be more onerous than first envisaged with the industry association indicating that "most survey respondents indicated that it takes more than 6 hours per client over a cycle to comply with the opt-in requirement."

94. Treasury considers it important to note that due to the delays in this regulation becoming mandatory, the full entire effects may not become apparent for a number of years. For example Treasury anticipates that while in the first few years, there will be significant burden as businesses must update their systems, however as businesses send out more and more notices, they will become much more efficient and costs may drop over time. Similarly, once consumers have been exposed to numerous notices, they will not be surprised to receive one and will understand better the implications of a notice. The regulation only become mandatory in 2015, thus businesses may have only had to send one round of notices to consumers. Treasury expects advisers to become much more efficient as they send further notices.

11 'Nil Advice' is defined in the same way as a 'passive client' in ASIC report 407: that a consumer has not received any advice for a period of 12 months. This does not imply that the consumer has received no advice, it simply means that they have not received any advice for an extended period of time.

95. The industry association submission suggested there were some situations (set out below) where a client may inadvertently miss the deadline in which to respond to the opt-in renewal notice:

- client not understanding the significance of not completing the form;
- illness;
- family issues which cause the client to 'fall behind' on paperwork;
- client travelling for extended period and may miss the notice; and
- unexpected events such as Cyclone Debbie may cause some clients to not focus on paperwork.

96. In such cases, the financial adviser may be forced to remove clients. Where the client does not wish to receive this service any more this would be appropriate, however, when a client misses a deadline for the reasons outlined above the consequence will be that the client will be cut off from receiving advice and may not be able to easily access them later. Treasury notes the opt-in notices have imposed a cost to consumers, who must now take action (including responding to the renewal notice) in order to continue to receive financial advice. Treasury notes that the likelihood of a consumer being cut-off from receiving advice where they did not want this to occur has been lessened by the fact the time to opt-in was extended from 30 to 60 days in the most recent amendments to FOFA, which passed the Parliament in March 2016.

Compliance Costs

97. In consultation with stakeholders, Treasury has developed regulatory costings for the preparation of these statements and the administration work associated with them.

98. Treasury, in consultation with stakeholders, estimates the following compliance costs for this reform:

- IT changes
- Set up costs – time spent preparing a new notice template
- Time spent customising for clients and administration
- Individuals costs of completing opt-in notice

99. The compliance costs, developed in consultation with stakeholders and agreed with the Office of Best Practice Regulation are:

Measure	Year One Cost	Ten Year Cumulative Cost	Ten Year Average Cost
The requirement for advisers to renew client agreement to ongoing advice fees every two years ('opt-in')	41,414,542	180,464,738	**18,046,473.80**

Whether the regulation has met its objectives

100. Broadly, feedback from stakeholders suggests that the opt-in notices are performing their designated function of creating a mechanism for consumers to evaluate the service they are receiving.

101. While submissions have raised concerns that there may be significant compliance costs for business, these costs are expected to drop over time as businesses become more efficient in designing systems to comply with requirements.

102. Treasury considers the costs to industry, while substantial, are outweighed by the significant, though unquantifiable, benefits to consumers by providing an opportunity for consumers to re-assess whether existing fee arrangements represent value for money and by reducing cases of 'nil' advice (where fees are being charged without any advice being provided). While there is a slight risk that the opt-in requirements will result in a consumer inadvertently no longer receiving financial advice they wish to receive, Treasury has no evidence to suggest this is a common occurrence.

103. Treasury therefore considers that the regulation has been effective in meeting its objective and should continue in its current form.

BAN ON SOFT DOLLAR BENEFITS OVER $300

104. This amendment banned 'soft dollar benefits' (defined below) in excess of $300 per benefit.

PROBLEM

105. Under the *Corporations Act 2001*, AFS licensees are obliged to have in place adequate arrangements for the management of conflicts of interest. A licensee (and its authorised representatives) must disclose any benefits and relationships in the Statement of Advice (SOA) which may reasonably be expected to be capable of influencing the advice. There must be disclosure of benefits in the Financial Services Guide (FSG) where it is attributable to the advisory services. Further, there must be disclosure of benefits in the Product Disclosure Statement (PDS) if it could affect the consumer's financial returns from the product.

106. Following the FOFA announcement, the previous government gave consideration to the treatment of 'soft dollar benefits' in light of the prospective ban on conflicted remuneration.

Meaning of soft dollar benefits

107. There is no uniform definition of the term 'soft dollar benefits'. Soft dollar benefits can vary from minor gifts valued at $50 to bonuses worth tens of thousands of dollars.

108. The broadest definition is used in *ASIC Report 30: Disclosure of soft dollar benefits* (ASIC Report 30) as 'any benefit received by a financial planning firm or its representatives or associates, other than basic monetary commissions or direct client advice fees'. The definition includes some monetary payments as well as non-monetary benefits.

109. The types of benefits that were identified in ASIC Report 30 include benefits offered by product providers or by the licensee which mainly go to individual advisers (often based on volume). These include:

- higher commission rates based on volume;
- shares (or options) in the product provider or advice licensee;
- a higher share of commissions paid to an adviser;
- buyer of last resort agreements;
- 'marketing support' payments;
- free or subsidised business equipment or services, such as computers, software, and industry association membership fees;
- adviser conferences; and
- hospitality, such as tickets to sporting events.

110. The ASIC report also identified benefits paid by product providers to advice licensees or related platforms which included 'fee rebates' or profit sharing arrangements. These are benefits that are paid by product providers and licensees flowing to individual advisers, as well as benefits to parent companies.

111. ASIC Report 30 noted that most soft dollar benefits are funded indirectly from investment fees charged to consumers.

112. ASIC Report 30 also noted that revenue sources such as volume bonuses, fee rebates and equity links can be a major element in a licensee's whole business model and these benefits can make up the majority of the licensee's revenue (it should be noted that some of these payments would have already been covered to a large extent by the ban on volume payments but otherwise would constitute a soft dollar benefit if they were not based on volume).

113. When this option was being considered, there was no available breakdown of revenue received for each of the different types of conflicted remuneration structures or how it affected the behaviours of financial advisers as this was inherently difficult to measure. However, as noted in ASIC Report 30, soft dollar benefits have the potential to influence advice (directly or indirectly), through financial incentives and other more indirect means of behaviour modification. This therefore suggested a moderate harm to consumers from the existence of remuneration structures that included soft dollar benefits.

Why government action was required?

114. Continuing to allow soft dollar benefits had the potential to undermine the FOFA reforms by providing an alternative mechanism for product providers and/or licensees to influence recommendations made by financial advisers, which could contribute to poor consumer outcomes.

115. Disclosure of soft dollar benefits, due to the asymmetry between consumers and their advisers, was ineffective in managing conflicts of interest. Therefore, government action was required to restrict soft dollar benefits.

Objectives of government action

116. The objective of the previous government's action was to minimise harm to consumers arising from the payment of soft dollar benefits to financial advisers.

OPTIONS THAT WERE CONSIDERED

Chosen option: Prospective legislative ban on soft dollar benefits over $300

117. The selected option was a prospective legislative ban on soft-dollar benefits over $300. The ban included any monetary or non-monetary benefit from a third party (or associate) over $300 (per item) made available to a platform, licensee, adviser or related party. Benefits under $300 were also required to meet the 'infrequent' or 'irregular' test for associated similar or identical benefits.

118. There was a carve-out from the ban for professional development that met the education and other set criteria and non-commercially available IT software which was necessary for the conduct of the adviser's business. This related to IT software provided as part of the licensee–representative relationship that is administrative in nature.

119. The prospective nature of the ban minimised regulatory costs by allowing existing contractual arrangements for the payment of benefits to continue.

120. A set monetary threshold was selected on the basis it was clear, simple and easy to apply and administer. The threshold was set at $300 as this was the amount deemed to be 'material' under the Financial Services Council (FSC)/Financial Planning Association (FPA) code on alternative remuneration.

Alternative option A: Status Quo — manage potential conflicts of interest via disclosure

121. This option would have maintained the status quo. The existing obligations for licensees to manage and disclose conflicts of interest (including soft-dollar benefits) would continue. Various disclosure documents would have continued to be provided to investors to assist them to understand the potential impact of remuneration based soft dollar benefits on the advice they received from financial advisers.

122. This option would have leveraged off the best interests duty introduced as part of the FOFA reforms. The best interests duty was announced prior to the ban on soft-dollar benefits, but was implemented at the same time.

123. Under this approach, soft dollar benefits would have continued to have been permitted, so long as they did not impair an adviser's duty to comply with the duty and the benefits were clearly disclosed to the client prior to the provision of advice.

124. This option was not selected because it had the potential to undermine the FOFA reforms by providing an alternative mechanism for product providers and/or licensees to receive remuneration that could result in poorer quality or inappropriate advice. In addition, it would have continued to rely on disclosure, which had largely proved to be ineffective in managing conflicts of interest between advisers and their clients.

Alternative option B: Co-regulation

125. Under this option, the legislation, rather than banning soft dollar limits over a set amount, would have stipulated broad parameters for soft dollar benefits, such as a requirement to comply with an industry code of practice.

126. An existing industry code could be then revised and adopted by all persons providing personal financial advice and all relevant industry bodies. The new code could either provide a ban or alternatively be based on the principles of existing industry codes, noting that industry currently takes different approaches.

127. Co-regulation, while having the benefits of encouraging industry to take action to address consequences of problematic remuneration structures, also created a risk that industry would take insufficient action (for example, set too high a threshold at which a ban applies) or would have non-uniform approaches (which means that consumers would have differing levels of protection depending on which code their adviser was a member of), which is undesirable. For these reasons, this option was not selected.

IMPACT ANALYSIS

Baseline Case

128. The baseline case considered is that there is no ban on soft dollar benefits, with advisers required to manage any potential conflicts of interest through disclosure.

How the regulation was implemented

129. The government implemented a prospective ban on soft dollar benefits over $300.

Impacts of the regulation

130. Given the regulation was introduced at the same time as a number of other reforms, there are difficulties with isolating the impacts of specific regulation.

131. Treasury received limited feedback in consultation regarding the impacts of the regulation.

132. Consumers have been the main beneficiaries of the policy as the ban on soft dollar limits over $300. The ban has removed a potential conflict of interest and created better alignment between advisers' incentives and consumer interests. This will contribute to increased trust and confidence in financial advisers and the financial system more generally. This position was also confirmed by two superannuation industry stakeholders that indicated in their submission that "Soft dollar benefits are conflicted remuneration and have no place in a system of integrity".

133. Another submission notes that "it is important to prevent scenarios which could cause a conflict of interest caused by soft dollar benefits used to incentivise product recommendations by advisors." In this sense the submission agrees that the regulation should continue in its current form and has been a successful policy.

134. Treasury had anticipated that the policy would impose some costs on financial advisers who have lost access to a source of remuneration, resulting in lower profits for some advisers or even some advisers exiting the market. However stakeholder consultation has shown that in the majority of businesses there was very little impact on costs or on business as usual.

135. The feedback from an individual financial firm is that this regulation is functioning as intended.

136. From a business perspective, a submission from a financial planning association has stated that "this provision did not have a major impact, with processes often in place to monitor soft dollar benefits."

137. From a business perspective, the point has been raised in private consultation, that there may be some confusion in regards to this regulation as some employers may not be aware of specific carve-outs for purposes such as professional development and education.

Compliance Costs

138. The compliance costs for businesses to implement this option were low as the regulation did not require a change in existing business practices.

139. These costs have been confirmed by stakeholders to be negligible in the majority of cases, however stakeholders have identified a minority of members who report costs above $10,000.

140. This has been confirmed though consultation, Treasury, together with stakeholders have identified that the main compliance costs are:

- creating new remuneration structures; and
- designing new IT systems for record keeping purposes.

141. The compliance costs, developed in consultation with stakeholders and agreed with the Office of Best Practice Regulation are:

Measure	Year One Cost	Ten Year Cumulative Cost	Ten Year Average Cost
The ban on soft dollar benefits over $300	1,765,529.75	1,765,529.75	**176,552.98**

Whether the regulation has met its objectives

142. While the regulation has removed a source of revenue for advisers, Treasury considers these costs have been outweighed by the benefits to consumers of increased consumer protection, through the removal of a potential conflict of interest which otherwise carried a risk of potential consumer harm.

143. Treasury therefore considers that the regulation should continue in its current form.

LIMITED CARVE-OUT FOR BASIC BANKING PRODUCTS FROM THE BAN ON CONFLICTED REMUNERATION AND THE BEST INTERESTS DUTY

144. The effect of this amendment is that the ban on conflicted remuneration and the full best interests duty does not apply in the case of advice or distribution of a basic banking product through an employee of the Authorised Deposit-taking institution (ADI) that issued the product.

145. A basic banking product is defined in the *Corporations Act 2001* as a basic deposit product, or a facility for making non-cash payments or travellers' cheques. In this Act a basic banking product is defined separately from more complex banking products and products such as consumer credit insurance. This definition is appropriate and should not be modified.

146. The exemption from the best interests duty and conflicted remuneration rules do not apply when the employee provides advice on a combination of basic banking products and other more complex financial products.

PROBLEM

147. The ban on conflicted remuneration introduced during the original FOFA reforms attempted to address conflicts of interest which adversely affect the quality of financial advice received by a client. The best interests duty reflects the need to ensure that advisers act in the best interests of clients and give priority to the interests of the client above any other interests.

Concerns about the ban on conflicted remuneration in relation to basic banking products

148. In relation to the distribution of retail banking products, some ADIs operate a 'no advice' model in their branches and call centres relying on the existing 'clerks and cashiers' exemption in subsection 766A(3) of the Corporations Act to facilitate basic transactional services. The staff in these ADIs do not provide financial advice, only factual information.

149. However, other ADIs offer financial advice about basic banking products. These ADIs are required to meet the various existing obligations attached to the financial advice regime, such as training requirements.

150. During consultation about the ban on conflicted remuneration, concerns were raised about the significant changes to employee remuneration and workplace arrangements that would have been required were the ban to apply to advice relating to basic banking products. Stakeholders argued that these costs were disproportionate to the potential consumer protection benefits as there was not the same degree of conflict, risk and potential consumer detriment in relation to basic banking products compared with other financial products.

Concerns about application of the best interests duty to basic banking products

151. The best interests duty attaches to the provision of personal advice, regardless of whether the service is full financial planning or more limited simple advice which takes into account only some basic personal circumstances.

152. Concerns were raised about the significant compliance costs and impracticalities of applying the best interest duty to personal advice given by an employee of an ADI in relation to that ADI's own basic banking products.

153. Stakeholders argued that application of the best interests duty could, for example, require a staff member to provide advice about a competitor's products (where it better suited to the client's needs) or could require a staff member to take into account, for example, the person's existing financial products prior to provision personal advice about the bank's products. However, in many cases advice is given by frontline staff, such as a teller or bank specialist, and in practice these employees only provide advice on the products offered by the bank, taking into account limited personal information and providing basic product information, such as current interest rate information.

154. In summary, it was argued that the application of a best interests duty in relation to basic banking products would impose significant costs without a corresponding increase in consumer benefits given there was not the same level of conflict, risk or impact in the case of these products compared with other financial products.

Why was Government action required?

155. As initially announced, a best interests duty and ban on conflicted remuneration would have been introduced via legislation. Hence, the only way to provide an exemption for basic banking products from these requirements was a carve-out from the legislation, that is, government action.

Objective of Government action

156. The objective of the government action was to ensure the ban on conflicted remuneration and best interests duty did not apply in cases where there would be a significant cost to industry without a commensurate increase in consumer protection.

OPTIONS THAT WERE CONSIDERED

Chosen option: Limited carve-out for basic banking products

157. This option resulted in advice relating solely to basic banking deposits, where an employee is advising on or selling their employer ADI's product, being fully carved out from the ban on conflicted remuneration and partially carved out from the best interests duty.

158. While this carve-out applies to any ADI employee (whether they provide frontline teller services or financial planning service), given tellers often provide this advice on basic banking products as part of their day to day employment activities, the carve-out is largely intended to address the more routine activities of frontline staff.

159. If an employee of an ADI provides advice on a combination of a banking product and more complex financial products, the carve-out from conflicted remuneration does not apply.

160. Under this carve-out, a modified best interests duty applies to the provision of advice on basic banking products. Specifically, the adviser must have identified the objectives and financial needs of the client, identified the subject matter of the advice being sought and made relevant enquiries into the client's circumstances.

161. After completing these elements, the carve-out exempts the adviser from performing the other elements of the best interests duty, which typically require the adviser to assess issues such as whether they have the expertise required to provide the advice and require the adviser to take into account the entirety of the client's circumstances.

Alternative option A: Status quo

162. This option would have maintained the status quo. It would have meant that the ban on conflicted remuneration and the full best interests duty would have applied to personal advice provided solely in relation to basic banking products.

163. This would have imposed a significant cost to ADIs and potentially consumers (who could no longer receive limited advice on bank banking products from bank employees) without generating a commensurate increase in consumer protection. For these reasons, the ban on conflicted remuneration and the full best interests duty was not applied to basic banking products.

Baseline Case

164. The baseline case corresponds to a situation where there is no carve-out for basic banking products from the conflicted remuneration structures and best interests duty. This implies that basic banking products are fully covered by this legislation.

How the regulation was implemented

165. The government implemented a carve-out for basic banking products from the ban on conflicted remuneration and the best interests duty.

Impacts of the regulation

166. The regulation essentially preserved the status quo (that is, ensured that advice provided in relation to basic banking products did not become subject to the ban on conflicted remuneration or the best interests duty). In this regard, the regulation itself did not have any impacts on stakeholders.

167. A number of submissions from stakeholders have indicated that this amendment appears to be functioning as intended. The goal for these carve outs was that the best interests duty would impose too great a cost on financial service providers, so the objective was to carve out products that were relatively homogenous and easily understood. This appears to have been broadly the effect of the legislation.

168. A financial services stakeholder submission has stated that they "support the basic banking product exemption as a logical modification which facilitates customer access to everyday simple banking products, on an economical basis." The submission goes on to say that they consider that the regulatory option that was chosen was aligned to the underlying nature of the products which are basic banking products.

169. Many stakeholders have indicated that they have not received feedback from members or individuals of consumer harm that is being cause by mis-selling of these products.

170. However one financial planning industry representative raised a concern in their submission in relation to annuities, citing anecdotal evidence from some of their members that there were instances where annuities were sold at very high values (compared to the portfolio value of the client) by bank employees with very little advice provided.

171. Based on informal stakeholder consultation as well as consultation with regulators, Treasury considers that the current definition of a basic banking product remains appropriate and does not need clarification. Annuities are not covered under the definition of a basic banking product and thus the selling of annuities is not covered under this carve out.

172. An industry superannuation representative indicated that "78 per cent of customer facing staff at NAB have sales targets" and raised concerns that this created a risky environment where mis-selling of bank accounts and other simple banking products may take place.

173. A consumer superannuation representative notes that there should be "increased regulatory oversight" to determine whether there has been any potential mis-selling as a result of this amendment.

174. Treasury notes that ASIC continues to monitor activity in this space to ensure that current practices do not cause widespread consumer detriment.

Other issues

175. A consumer representative organisation raised concerns in relation to consumer credit insurance, stating that "we continue to see widespread damage driven by the commission driven selling of insurance, particularly consumer credit card insurance".

176. In the submission, the organisation indicated that in response to a survey, 28 percent of respondents believed obtaining consumer credit insurance (CCI) was mandatory when obtaining a credit card. The organisation therefore submitted that CCI is a complex product and should be subject to the best interests duty.

177. As CCI is not a basic banking product, it is not within the scope of this PIR, which is concerned with the carve-outs from the best interests duty and conflicted remuneration rules applying to basic banking products.

178. Concerns relating to CCI are currently being examined in the context of consultation on the proposed product intervention power and the design and distributor obligations.

Compliance Costs

179. Treasury has received no advice from stakeholders on any compliance costs related to this measure. The regulation preserved the status quo. This combined with the lack of stakeholder engagement on this issue imply that the compliance cost has been negligible on businesses. Treasury estimates that the only significant compliance cost would be training and awareness of the new regulation for staff.

180. The compliance costs, developed in consultation with stakeholders and agreed with the Office of Best Practice Regulation are:

Measure	Year One Cost	Ten Year Cumulative Cost	Ten Year Average Cost
The limited carve-out for basic banking products from the ban on conflicted remuneration and the 'best interests' duty	878,138.75	878,138.75	**87,813.88**

Whether the regulation has met its objectives

181. In assessing whether this regulation has met its objective, Treasury has had regard to whether there have been any unintended consequences associated with the regulation. Treasury has not received any evidence that the carve-out for basic banking products is not working as intended.

182. Treasury has also given consideration to potential impacts were the ban on conflicted remuneration and full best interests duty applied to personal advice provided in relation to basic banking products. Treasury considers that such a change would impose a significant cost on ADIs and their employees without a commensurate benefit to consumers.

183. Treasury therefore considers that the regulation should continue in its current form.

ACCESS TO SCALED ADVICE

- The initially announced FOFA package was intended to facilitate access to scaled advice.
- Scaled advice is financial advice which concerns a limited range of issues, this is opposed to 'holistic' advice which takes into account the entirety of a client's financial needs and situation.

PROBLEM

184. The original FOFA reforms attempted to facilitate the provision of limited or 'scaled' advice. As noted in paragraph 1.34 of the original explanatory memorandum for the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, the design of the best interests duty is intended to:

> *'accommodate the provision of limited advice (also referred to as 'scaled advice') that only looks at a specific issue (for example, single issue advice on retirement planning) and 'holistic' advice that looks at all the financial circumstances of the client. In some situations, the client might prefer to receive more targeted advice on a matter that is particularly concerning them rather than comprehensive advice. As long as the provider acts reasonably in this process and bases the decision to narrow the subject matter of the advice on the interests of the client, the provider will not be in breach of their obligation to act in the client's best interests. The scaling of advice by the provider must itself be in the client's best interests, especially since the client's instructions may at times be unclear or not appropriate for his or her circumstances.'*

185. Feedback on the original FOFA Bill highlighted that it was unclear whether the best interests duty facilitated access to scaled advice. Notwithstanding this, it was generally considered to be a minor problem.

186. However a number of stakeholders had raised the issue of their liability and responsibility in regards to scaled advice and the best interests duty. There appeared to be reluctance on the part of financial advisers to offer scaled advice and this was holding back the industry from providing an important service.

Why was Government action required?

187. As the lack of clarity regarding the application of the best interests duty to scaled advice represented a type of minor regulatory failure that arose under the FOFA legislation, government action was required to provide clarity.

Objectives of Government action

188. The objective of the previous government's action was to provide more clarity to industry that the best interests duty permitted the provision of scaled advice.

OPTIONS THAT WERE CONSIDERED

Chosen option

189. The chosen option was to insert a note into the Corporations Act stating that the best interests duty anticipates the use of scaled advice. The following note was inserted after subsection 961B(2) of the Corporations Act:

> *"The matters that must be provided under subsection (2) relate to the subject matter of the advice sought by the client and the circumstances of the client relevant to that subject matter (the client's relevant circumstances). That subject matter and the client's relevant circumstances may be broad or narrow, and so the subsection anticipates that a client may seek scaled advice and that the inquires made by the provider will be tailored to the advice sought."*

190. This reflected a view that the nature of the problem was only minor and the necessary clarity could be achieved through the insertion of a note, rather than amendment to the Corporations Act.

Alternative option: Amendment to Corporations Act

191. Under this option, there would have been an amendment to the Corporations Act to clarify that the regulatory obligations around the provision of personal advice were scalable and therefore the steps an adviser would need to take in order to comply with these requirements would depend on what was reasonable in the circumstances under which the advice is being provided. For example, a reasonable person would not consider a request for advice on a specific topic to require inquiries on matters outside of that topic.

192. This option was not selected as it was considered the necessary clarity could be achieved through the insertion of a note.

Baseline Case

193. The baseline case is the scenario prior to the insertion of the note where there was uncertainty regarding whether the best interests duty permitted advisers to provide scaled advice.

How the regulation was implemented

194. The government legislated a note to make it clear how the best interests duty was intended to apply in relation to scaled advice.

Impacts of the regulation

195. The regulation did not result in any compliance costs. It provided additional certainty to industry regarding the operation of the best interests duty in relation to scaled advice and in doing so, ensured that the FOFA reforms did not inadvertently restrict the provision of scaled advice. The regulation did not have any impacts on consumers and ensured that there was the same level of access to scaled advice, thereby maintaining consumer choice.

196. A submission from a superannuation organisation states that "inserting a note into the Corporations act stating that the best interests duty anticipates the use of scaled advice has met its objective".

197. Further, the submission notes that some funds are reporting an increase in uptake of scaled advice by 33 per cent since the introduction of the note. Clearly there is both a demand and a need for scaled advice which this reform has facilitated.

198. Another submission notes that one administrator has reported an average increase of 46,000 additional statements per year since 2012.

199. One superannuation stakeholder agrees that "the regulation should continue in its current form".

200. An industry financial planner stakeholder notes that further clarification is needed around how scaled advice applies to the provision of "robo-advice".

Compliance Costs

201. The feedback received during consultation has shown that, as expected, there were little to no compliance costs to businesses. Treasury estimates that the only significant compliance cost would be training and awareness of the new regulation for staff.

202. The compliance costs, developed in consultation with stakeholders and agreed with the Office of Best Practice Regulation are:

Measure	Year One Cost	Ten Year Cumulative Cost	Ten Year Average Cost
The clarification regarding access to scaled advice in the context of the 'best interests' duty	878,138.75	878,138.75	**87,813.88**

Whether the regulation has met its objectives

203. The regulation increased certainty for industry without any noticeable costs to industry or consumers. Treasury therefore considers that the regulation should continue in its current form.