



Australian Government
The Treasury



Extending the ban on conflicted remuneration for listed investment companies and trusts

Post-implementation review

July 2022

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Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: medialiaison@treasury.gov.au

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Introduction and background

On 21 May 2020 the former Treasurer, the Hon Josh Frydenberg MP, announced the removal of the exemption to the ban on conflicted remuneration for stamping fees paid in respect of listed investment companies (LICs) and listed investment trusts (LITs). The exemption to the ban would remain for trading companies, real estate investment trusts (REITs) and infrastructure entities.

On 4 June 2020, Treasury consulted on draft regulations to extend the ban on conflicted remuneration to stamping fees. On 29 June 2020, the *Corporations Amendment (Stamping Fee Exemption) Regulations 2020* (Stamping Fee Exemption Regulations) were made, taking effect from 1 July 2020.

The Office of Best Practice Regulation (OBPR) determined that this change was likely to have major regulatory impacts and that a regulation impact statement (RIS) was required. A RIS was not completed prior to the final decision being taken. The framework established by the Australian Government requires that where a RIS has not been assessed as adequate by OBPR prior to the final decision being taken, a post-implementation review (PIR) must be undertaken.

This PIR has been conducted in accordance with the Australian Government's regulatory impact analysis requirements.

Post-implementation review

What was the problem that the regulation was trying to solve?

What are stamping fees?

Stamping fees are upfront, one-off and volume-based commissions paid to Australian Financial Service (AFS) licensees or their representatives for their role in securing investors for capital raising, such as the initial public offering (IPO) of shares.¹ ASIC analysis of LIC and LIT issuances in the five years to 2019 found that 45 out of 51 paid stamping fees, with almost half paying a 1.5 per cent stamping fee and almost 30 per cent paying more.²

Stamping fees are considered a form of conflicted remuneration. The *Corporations Act 2001* (Corporations Act) defines conflicted remuneration as:

...any benefit, whether monetary or non-monetary, given to a financial services licensee, or a representative of a financial services licensee, who provides financial product advice to persons as retail clients that, because of the nature of the benefit or the circumstances in which it is given:

(a) could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to retail clients; or

(b) could reasonably be expected to influence the financial product advice given to retail clients by the licensee or representative.

Stamping fees have the potential to incentivise AFS licensees or their representatives to recommend a LIC or LIT to a client on the basis of increased remuneration, rather than on the features of the product and needs and interests of the client. This is known as ‘mis-selling’ and can result in poor consumer outcomes. Mis-selling can result in the consumer taking on additional risk in the investment relative to their risk profile and opportunity costs relating to the availability of a more suitable equivalent investment. As Commissioner Hayne noted in the Financial Services Royal Commission report:

the very hinge about which the conflicted remuneration provisions [in the Corporations Act] turn, is that the payment is one that “could reasonably be expected to influence the choice of financial product recommended to retail clients”.³

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- 1 Representatives of AFS licensees are often referred to as ‘financial advisers’, a broad terms that also covers titles like ‘stockbroker’.
 - 2 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption: response of the Australian Securities and Investments Commission*, 20 February 2020. Available at: https://treasury.gov.au/sites/default/files/2020-06/asic_submission.pdf
 - 3 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, 2019. Available at: <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>

What are LICs and LITs?

LICs and LITs are investment funds, incorporated as a company or trust, listed on the Australian Securities Exchange (ASX) and managed by an external or internal fund manager. They are closed-end, meaning they issue a fixed number of shares in an IPO, rather than issuing new shares or cancelling existing shares when investors enter or leave. Investors can buy and sell LIC and LIT shares on the ASX. LICs and LITs differ from other open-end investment vehicles like exchange traded funds (ETFs), where shares can be issued or cancelled depending on consumer demand.

What was the problem?

Advice provided to consumers by AFS licensees and their representatives can play an important role in how consumers decide to manage their money and invest. As such, it is crucial that this advice has integrity and comes from someone who is competent, trustworthy and acts in the best interests of the client. Prior to legislative changes in 2012, AFS licensees and their representatives were remunerated differently to other comparable professions that provide advice services to their clients, in that they could receive commissions from product providers for selling particular products. These commissions could be upfront or ongoing, and could often be a percentage of the funds under management.

Following the ban on conflicted remuneration for superannuation and ordinary investment products, financial advisers can only receive conflicted remuneration in limited circumstances, including for certain insurance products.⁴ Outside of these limited circumstances, there are a range of charging arrangements. Fees charged to consumers by advisers may be flat (as an hourly rate or an agreed dollar-based amount) or percentage-based (as a percentage of the client's investment portfolio).⁵ Either can be charged on a non-ongoing (often one-off) basis or under an ongoing fee arrangement and may be paid by the consumer directly or be deducted, with the consumer's consent, from a product held by the consumer (often a platform product or superannuation fund).⁶

The idea that conflicted remuneration can negatively affect an adviser's ability to give quality, unbiased advice to consumers has been considered in a number of settings, including in-depth inquiries. ASIC ran a Shadow Shopping exercise in 2011 which examined financial advice about retirement. This exercise identified many examples of advice geared towards selling financial products where advice fees were contingent on a commission – as noted, 'in some cases this was at the expense of optimal strategic advice'.⁷ However, the small sample (n=64) size did not allow for the drawing of definitive conclusions about the relationship between the model of remuneration and poor quality advice.⁸


4 Treasury, *Quality of Advice Review – Issues Paper*, March 2022. Available at: www.treasury.gov.au/sites/default/files/2022-03/c2022-259464-quality-of-advice-issues-paper_0.pdf

5 Treasury, *Quality of Advice Review – Issues Paper*.

6 Treasury, *Quality of Advice Review – Issues Paper*.

7 Australian Securities and Investments Commission, *Report 279 – Shadow shopping study of retirement advice*, March 2012. Available at: <https://download.asic.gov.au/media/1343876/rep279-published-27-March-2012.pdf>

8 Australian Securities and Investments Commission, *Report 279 – Shadow shopping study of retirement advice*.



Further, the 2009 Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into Financial Products and Services in Australia (PJC Inquiry), prompted by contemporary financial product and service provider collapses, examined:

- 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.⁹

The Committee received evidence from stakeholders that the regulatory arrangements in place at the time – like disclosure and conduct standards, and licensing systems – did not protect consumers from poor quality or inappropriate financial advice and its negative impacts. In 2006, ASIC undertook a Shadow Shopping exercise on financial advice in relation to superannuation which assessed 306 examples of advice provided to real consumers.¹⁰ ASIC submitted to the PJC Inquiry that this exercise suggested that unreasonable advice was six times more common where the adviser had an actual conflict of interest over remuneration.¹¹ Several stakeholders pointed to the example of Westpoint to illustrate that commissions can incentivise the selling of higher-risk products and result in catastrophic outcomes for consumers.¹² Westpoint operated a complex mezzanine finance investment scheme which paid upfront commissions to attract investors, including to financial advisers, that were as high

9 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009. Available at:

https://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf

10 Australian Securities and Investments Commission, *Report 69 – Shadow shopping survey on superannuation advice*, April 2006. Available at:

https://download.asic.gov.au/media/1347026/shadow_shop_report_2006.pdf

11 Australian Securities and Investments Commission, *Report 69 – Shadow shopping survey on superannuation advice*.

12 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*.

as 10 per cent.¹³ At the time of its collapse in January 2006, Westpoint owed \$388 million¹⁴ to between 3,000 and 4,000 investors.¹⁵ CHOICE also provided the Committee with a range of case studies that illustrated consumer perceptions of the impact of commissions on the quality and appropriateness of advice received.¹⁶ Following consideration of evidence presented, the Committee identified that ‘conflicts of interest caused by commission-based remuneration’ were not properly addressed by the existing disclosure and conduct standards.¹⁷ Among other outcomes, the PJC Inquiry recommended:

- the introduction of a fiduciary duty for financial advisers operating under an AFSL, requiring them to place their clients’ interests ahead of their own, and
- that the government consult with and support industry in developing the most appropriate mechanism to cease payments from financial product manufacturers to financial advisers (commissions).¹⁸

The 2012 Future of Financial Advice (FoFA) reforms, developed in response to the PJC Inquiry, implemented an obligation for financial advisers to act in the best interests of their clients (‘best interests’ duty) and a prospective ban on a range of conflicted remuneration structures in relation to the distribution of an advice about different retail investment products.¹⁹ As per the *Corporations Amendment (Further Future of Financial Advice Measures) Act* explanatory memorandum, the rationale for these changes was to more closely align the interests of advisers and their clients.²⁰

Stamping fees relating to interests in non-investment entities and infrastructure funds were originally carved out from the ban on conflicted remuneration in recognition of their facilitative role in capital raising, ensuring the economic activity of companies in the real economy would not be impacted by the reforms. In 2014, this exemption from the ban on conflicted remuneration was expanded to include LICs, LITs, and real estate investment trusts (REITs) on the basis that allowing some entities to pay stamping fees and not others created an inappropriate market distortion. Addressing this perceived distortion was the primary driver of that 2014 change, not addressing consumer harm caused by mis-selling.

13 Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, 16 August 2006. Available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Membership/asic/asic06/index

14 Australian Securities and Investments Commission, Westpoint, 29 April 2021. Available at: <https://asic.gov.au/about-asic/news-centre/key-matters/westpoint/>

15 Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission.

16 CHOICE, Submission by CHOICE to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Services and Products, August 2009. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2008-10/fps/submissions/sublist

17 Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into financial products and services in Australia.

18 Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into financial products and services in Australia.

19 Corporations Amendment (Future of Financial Advice) Act 2012.

20 Corporations Amendment (Further Future of Financial Advice Measures) Act 2012 – Explanatory Memorandum.

However, the nature of stamping fees as a form of conflicted remuneration has not changed. The Financial Services Royal Commission identified conflicts of interest arising from advisers' remuneration structures and argued that the remaining exemptions to the ban on conflicted remuneration were resulting in poor consumer outcomes.²¹ The payment of stamping fees to advisers still has the potential to incentivise recommending consumers invest in LICs and LITs, without appropriate regard to their features and characteristics and without appropriately considering the best interests duty and other legal obligations. As ASIC notes in its 2020 submission to Treasury on the stamping fee exemption:

Investors of LIC and LIT capital raisings are overwhelmingly retail. The distribution of the products typically occurs under personal or general advice models.²²

ASIC's analysis in that 2020 submission indicated that a significant proportion of LICs and LITs trade at a discount to full net tangible asset (NTA) value 'soon after issuance'.²³ Treasury analysis of ASX data on new admissions between January 2017 and June 2020 (prior to the extension of the ban on stamping fees) found that 23 of 29 newly admitted LICs and LITs²⁴ (more than 79 per cent) traded at a discount to NTA within six months²⁵ of listing.²⁶ This represents a real and calculable loss to investors who seek to exit their LIC or LIT investment. The continued issuing of LICs and LITs despite the ongoing discount to NTA indicated the potential for stamping fees to drive mis-selling on a financial incentive basis. Further, there also appears to be an inverse relationship between the quantum of stamping fees and LIC and LIT performance. ASIC analysis found that the LICs and LITs that paid lower (less than 1.5 per cent) or no stamping fees performed better than those paying higher stamping fees (above 1.5 per cent).²⁷ Stamping fees are ad valorem, which further incentivises advisers to maximise the number of clients buying and the amount invested in LICs and LITs.

Secondary to the issue of conflicted remuneration, stamping fees also create a distortion in the funds management market that puts financial advice firms that use fees-for-service models at a competitive disadvantage. Firms not receiving stamping fees compete against firms that can offer discounted pricing by supplementing revenue through stamping fee earnings. Investment products such as ETFs,

21 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*.

22 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

23 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

24 Treasury considered some publicly available NTA data reported for the 36 new LIC and LIT issuances in the period to be insufficient (less than four months of recorded data) and has excluded these entities from this analysis. Treasury has not considered firm-level data to determine which new issuances paid stamping fees and their value. ASIC did examine and report firm-level data in its 2020 submissions to Treasury, which has some overlap with the period considered here. In that analysis, more than 88 per cent of issuances involved the payment of stamping fees.

25 Building on ASIC's analysis in 2020 that a significant proportion of LICs and LITs traded at a discount 'soon after issuance', Treasury considered six months to be a reasonable period to capture this proposed temporal nature of discount to NTA.

26 Australian Securities Exchange, *ASX funds statistics: ASX Investment Products monthly update*. Available at: <https://www2.asx.com.au/issuers/investment-products/asx-funds-statistics>

27 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

exchange traded products and managed funds are likewise disadvantaged by their inability to pay stamping fees to reach retail investor networks.

These problems were a result of the 2014 decision to expand the exemption from the ban on conflicted remuneration to LIC and LIT stamping fees. Based on the nature and history of the issue described above, and the factors driving the need for government intervention discussed in the following section, Treasury is confident that these issues would re-emerge if the regulation was to be repealed.

Why was government action needed?

Regulation has long played a role in the removal of conflicted remuneration practices from the financial services industry, including the 2019 removal of grandfathering arrangements for particular commissions. In general, industries and actors that benefit from the payment or receipt of conflicted remuneration are unlikely to take independent action to remove such practices due to inherent financial interest.

While the 2012 FoFA reforms introduced a ‘best interests’ duty for financial advisers, evidence presented to the Financial Services Royal Commission demonstrated that this was not sufficient to mitigate conflicts of interest in the presence of a competing financial incentive. In 2018, ASIC conducted an examination of Australia’s largest banking and financial services institutions. In 75 per cent of the customer files reviewed as part of this examination the adviser did not demonstrate compliance with the best interests duty.²⁸ In 10 per cent of these non-compliant cases, ASIC assessed that customers were like to be ‘significantly worse off as a result of following the advice’.²⁹ In his report, Commissioner Hayne concluded:


[t]he interests of client, intermediary [e.g. AFS licensee or their representative] and provider of a product or service are not only different, they are opposed. An intermediary who seeks to ‘stand in more than one canoe’ cannot. Duty (to client) and (self) interest pull in opposite directions...experience shows that conflicts between duty and interest can seldom be managed; self-interest will almost always trump duty. The evidence given to the Commission showed how those who were acting for a client too often resolved conflicts between duty to the client, and the interests of the entity, adviser or intermediary, in favour of the interests of the entity, adviser or intermediary and against the interests of the client.³⁰

In the case of stamping fees, in the absence of government action, the payment of this conflicted remuneration was expected to continue and potentially compromise the quality of advice provided to

28 Australian Securities and Investments Commission, *Report 562 - Financial advice: Vertically integrated institutions and conflicts of interest*, January 2018. Available at: <https://download.asic.gov.au/media/4632718/rep-562-published-24-january-2018.pdf>

29 Australian Securities and Investments Commission, *Report 562 - Financial advice: Vertically integrated institutions and conflicts of interest*.

30 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*.



consumers. LIC and LIT issuers and distributors opposed, and continue to oppose, the extension of the ban on conflicted remuneration to stamping fees. Similarly, AFS licensees and their representatives would have little incentive to reject receipt of stamping fees while the exemption persisted. While prior to the ban on most forms of conflicted remuneration, some financial advice firms had a general policy of not accepting commissions and instead operated a fee-for-service model, this was not the industry norm without government intervention. For example, in ASIC's 2011 Shadow Shopping exercise, 78 per cent of the advice examples examined advice were delivered under a remuneration model that included commissions or fees that were based on a percentage of the client's assets or investments under advice.³¹

The exemption of stamping fees from the ban on conflicted remuneration was provided under law, meaning that government intervention was necessary to remove this exemption. Removing the exemption for this form of conflicted remuneration was required to protect consumer interests and reduce potential harm from conflicted advice, and level the playing field between participants in the funds management industry. The Explanatory Memorandum to the *Corporations Amendment (Stamping Fee Exemption) Regulations 2020* (Stamping Fee Exemption Regulations) summarises this neatly as:

The purpose of [the Regulations] is to prohibit the payment or receipt of stamping fees paid in respect of listed investment companies or listed investment trusts. This removes the incentive for financial services licensees or their representatives to mis-sell products to retail clients in order to increase their remuneration, resulting in poor consumer outcomes. It also ensures that licensees using fees for services models are not at a competitive disadvantage vis a vis licensees that receive stamping fees.

The need to appropriately protect consumers was considered by the previous government to be of greater importance than ensuring parity in capital raising and remuneration models between different types of listed investment entities, which had underpinned the 2014 decision to extend the exemption to the ban on stamping fees.

A contemporary media release from then-Treasurer the Hon Josh Frydenberg MP explained government action as addressing risks associated with the potential mis-selling of LICs and LITs and improving competition settings in the funds management industry. In this media release, the then-Treasurer also considered government intervention to be beneficial in providing clarity and long-term certainty to the industry and consumers, ensuring that:

*... stockbrokers, financial advisers and investment managers are clear about the regulatory settings that will apply in this area and investors can continue to invest with confidence in these products.*³²

31 Australian Securities and Investments Commission, *Report 279 – Shadow shopping study of retirement advice*.

32 The Hon Josh Frydenberg MP, *Government response to Treasury consultation on stamping fee exemption*, 21 May 2020. Available at: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/government-response-treasury-consultation-stamping>

Drawing on domestic and international evidence, government intervention was not expected to substantially undermine the viability of the LIC and LIT industry. Between 1 July 2013 and 11 December 2014, the stamping fee exemption did not apply to LICs, LITs and REITs. Based on a review of transactions from publicly available ASX reports and an examination of product disclosure statements and prospectuses during that time, industry moved to adopting a more transparent client directed payment approach.³³ During this 18-month period, Treasury identified 22 investment entity listings (of which three were LICs, nine were REITs) suggesting that capital raising by these entities had not been difficult without the exemption.³⁴ However, REITs were impacted by the reduced participation of retail investors as the sector was heavily reliant on broker channels and the payment of stamping fees to distribute the product.³⁵ ASIC analysis in 2020 (prior to the global economic impacts of the COVID-19 pandemic) found that in the United Kingdom (UK), where commissions are banned for LICs and LITs, there were 27 new issuances in the previous two years. At the time of analysis, the UK's LIC and LIT market was around six times the size of the Australian market (£200 billion).³⁶ ASIC considered the continued issuance of LICs and LITs in the UK reflected the 'underlying demand for these types of products' and that 'they can successfully launch without the need for commissions'.³⁷

What policy options were considered?

Treasury considered four options, from which Option 3 was chosen as the option which best addressed the policy issues identified above. Options 1 and 2 involved no intervention and a complete removal of the exemption respectively, while Option 4 was to introduce a cap on stamping fees payable by listed investment entities.

The four options were tested through the four-week public consultation announced on 27 January 2020, where the Government indicated that the consultation would inform its decision on whether to retain, remove or modify the stamping fee exemption.

Option 1 – Retain the existing stamping fee exemption

Under this considered option, the stamping fee exemption would remain unchanged. LICs and LITs could continue to pay AFS licensees or their representatives stamping fees for their role in securing investors for a capital raising. This option was favoured by stakeholders who utilised the stamping fee exemption. They submitted that stamping fees have been the traditional way that advisers have charged for work that analysed a potential offering and determined an appropriate recommendation for clients. Stamping fees are seen as an administratively efficient means of being able to aggregate and remunerate AFS licensees and stockbrokers for the work being done.

33 Treasury, *Regulation Impact Statement: Removal of the stamping fee exemption*, 15 June 2020. Available at: https://obpr.pmc.gov.au/sites/default/files/posts/2020/06/regulation_impact_statement_-_stamping_fee.pdf

34 Treasury, *Regulation Impact Statement: Removal of the stamping fee exemption*.

35 Treasury, *Regulation Impact Statement: Removal of the stamping fee exemption*.

36 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

37 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

Option 2 – Remove the stamping fee exemption for all listed entities

Option 2 required an amendment to the law to remove the stamping fee exemption from the general prohibition on conflicted remuneration. Stakeholders who supported this option argued that if stamping fees are to be removed then they should be removed across all types of investment entities given that stamping fees represent a conflict of interest and cause consumer detriment.

Option 3 – Removing the stamping fee exemption for certain listed investment entities

This option considered removing the stamping fee exemption only for listed investment entities where there is evidence of mis-selling potential and the related risk of consumer harm, balanced against the policy rationale for introducing the exemption in 2014. The consultation feedback indicated that there is evidence of mis-selling potential of LICs and LITs with related risks of consumer harm, evidence that was not presented with regard to REITs and infrastructure entities. In contrast to LICs and LITs, other listed investment entities generally have an underlying portfolio of assets limiting the total amount of capital that can be raised which moderates the potential amount that can be mis-sold. The level of institutional investor participation in these entities is also higher than for LICs and LITs, which raises the level of due diligence. As reported in the unassessed RIS developed by Treasury in 2020, data provided by the Property Council of Australia regarding REIT initial public offers on the ASX since 2016 indicated the median level of institutional participation was around 50 per cent for these investments.³⁸ Further, REITs and infrastructure entities also have capital raising activities that have a more direct impact on supporting economic activity in the real economy, a key rationale for introducing the original stamping fee exemption.

At the time of the initial consideration of extending the ban on conflicted remuneration in 2020, although there was much debate about the performance of LICs and LITs, the previous government considered the policy problem to be addressed was the risk of consumer harm associated with the potential mis-selling of these products to retail investors. This option was not premised on any performance analysis nor was it a reflection on the relative merits of certain investment vehicles or investment strategies. Both closed-end (e.g. LICs and LITs) and open-end vehicles (e.g. ETFs) are valid investment structures and investment strategy performance will perform to varying degrees over market cycles.

Option 4 – Modifying the existing stamping fee exemption

Option 4 considered introducing a cap on stamping fees payable by listed investment entities. Some stakeholders suggested maintaining but modifying the stamping fee exemption by imposing a maximum ceiling on any stamping fee payable by listed investment entities. The rationale was to prohibit charging stamping fees in excess of what is considered to be an acceptable range. An 'acceptable range' was not suggested by stakeholders and further consultation would have been required to determine the parameters. However, it is noted that from 2014 to 2019, close to half of

³⁸ Treasury, *Regulation Impact Statement: Removal of the stamping fee exemption*.

new LIC and LIT issuances (excluding conversions) paid 1.5 per cent in stamping fees, with around 22 per cent paying less and 30 per cent paying more.³⁹

Outcome after considering options

Option 3 was chosen as it best aligned with the objective of protecting consumers from poor outcomes related to mis-selling of products and levelling the playing field in the funds management industry. Option 3 was preferred to Option 2, as with the primary goal of ensuring enhanced protection for retail investors (rather than institutional or wholesale investors), it clearly targeted those products where there was an identified mis-selling potential for retail investors. In addition, this option did not impact capital raising activities for other listed investment entities that have a direct impact on supporting economic activity in the real economy. This was consistent with the rationale for the original exemption from the ban on conflicted remuneration for non-investment entities and infrastructure funds.

What have the impacts of regulation been?

On 21 May 2020 the former Government announced that as of 1 July 2020 the ban on conflicted remuneration would be extended to LICs and LITs. These changes were implemented via the Stamping Fee Exemption Regulations.

There have been several changes to the LIC and LIT market since the removal of the stamping fee exemption. Since July 2020, there have been five new listings of LICs and LITs on the ASX. Based on available ASX data, table 1 below presents new LIC and LIT admissions to the ASX since 2017.

Table 1 LIC and LIT ASX admissions, 2017-2022

Year	LIC and LIT admissions
2017	16
2018	12
2019	8
2020	1
2021	4
2022	0
Total	41

Figure 1 below presents the new LIC and LIT admissions in comparison to the total number of listed LICs and LITs between 2017 and 2022.

39 Australian Securities and Investments Commission, *Treasury consultation on stamping fee exemption*.

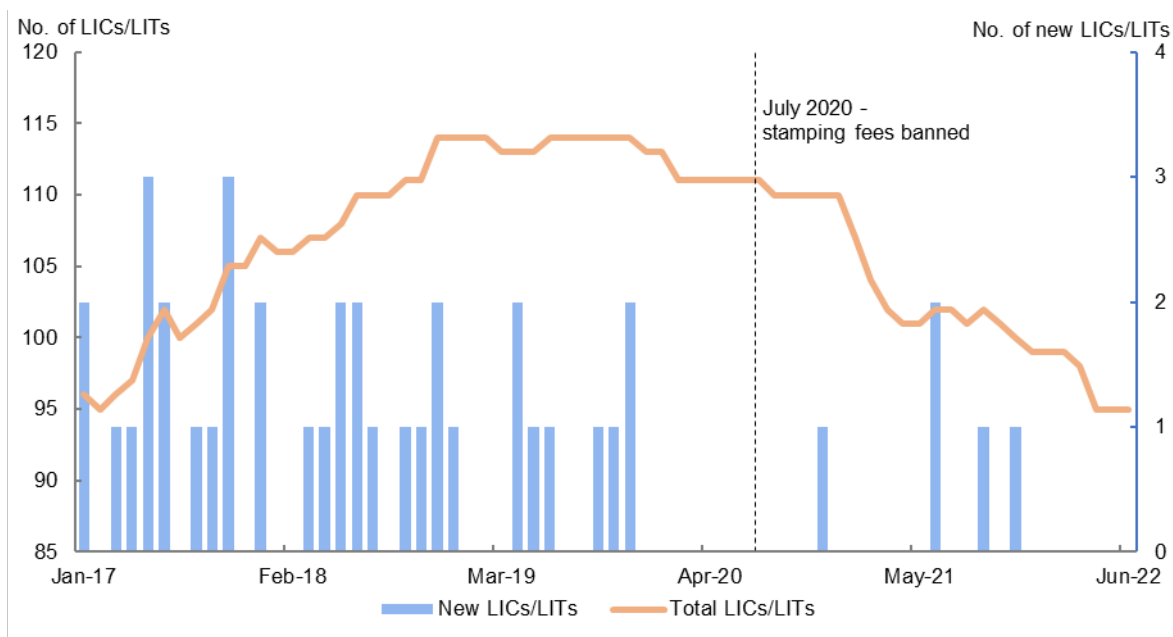
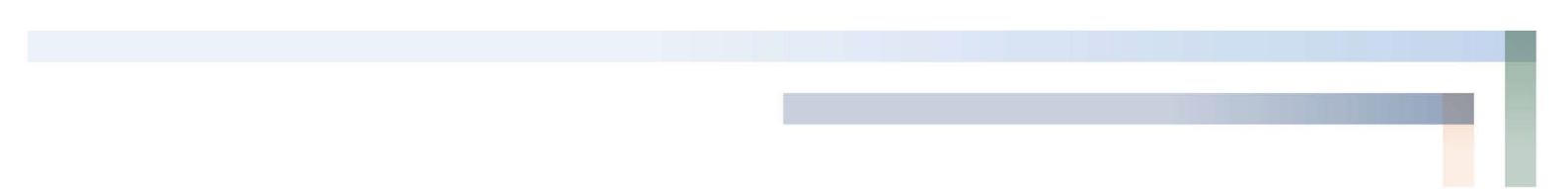


Figure 1 Admissions and total number of LICs and LITs, 2017-2022

Submissions from the Australian Shareholders Association (ASA), the Listed Investment Companies and Trusts (LICAT) Association, the Stockbrokers and Investment Advisers Association (SIAA) and the Australian Financial Markets Association (AFMA) noted the reduction in the number of LIC and LIT issuances since the removal of the exemption, describing this as an unintended consequence of the policy which has the effect of reducing investment options for consumers and reflects a reduction on support for LICs and LITs more generally.

However, based on the available data and the noting the limitations of a relatively small time period, new LIC and LIT listings were in decline prior to changes to the stamping fee exemption. The former Treasurer announced the previous government’s intention to extend the ban on stamping fees for LICs and LITs on 21 May 2020. In the five months directly preceding May 2020, there were no new LIC and LIT admissions to the ASX, indicating that IPOs were not in the pipeline even prior to the announcement of the ban’s extension. Similarly, when comparing single data points pre- and post-extension of the ban, it may appear that the existing number of LICs and LITs has reduced (e.g. from 111 in June 2020 to 95 in June 2022). However, considering the full range of available data, the number of LICs and LITs in January 2017 was 96, reaching a peak of 114 in November 2018 and then moving into a gradual decline from December 2019. As such, the change in the total number of LICs and LITs may be indicative of a natural cycle within the market.⁴⁰

40 Treasury has not included analysis on the proportion or quantum of discount to NTA. Given limitations with controlling for significant macroeconomic impacts, like the COVID-19 pandemic, that would likely affect NTA and the small sample size of LIC and LIT issuances following the extension of the ban on stamping fees, we did not consider any reasonable conclusions could be drawn from the available data. Ordinarily, an analysis of changes in the discount to NTA prior to and post-extension of the ban on stamping fees could be used to identify the presence of mis-selling. Given key structural differences, Treasury does not consider comparisons with open-ended investment vehicles, like ETFs, to be appropriate to identify mis-selling within the LIC and LIT market.



In addition, in attempting to draw a causal link between the regulation and the reduction in new LIC and LIT issuances and existing offerings, it is important to consider the impact of other relevant global factors, such as the ongoing effects of the COVID-19 pandemic and other macroeconomic factors, including those caused by geopolitical instability. For example, the contemporary media release from then-Treasurer the Hon Josh Frydenberg noted that new LIC capital raisings had ‘largely ceased since the inception of COVID-19’, prior to the extension of the ban.⁴¹ Within the confines of this targeted PIR, it is not possible to control for these confounding factors to isolate causation.


Further, it could be argued that a reduction in LIC and LIT issuances is not an unintended consequence of regulation, but a necessary correction in the market driven by the changes to increase consumer protections for retail investors. Without the incentive of stamping fees for advisers to push the product to consumers, it is possible that lower quality LIC and LIT offerings are unable to find a market. It is beyond the scope of this review, and may not be feasible, to identify and examine the individual circumstances driving the decisions to not bring forward new LIC or LIT offerings. Between June 2020 and June 2022, the number of exchange traded products (including ETFs) increased from 208 to 252, with an increase in market capitalisation from \$65.64 billion to \$119.04 billion.⁴² As these products do not attract stamping fees, it would be reasonable to attribute growth in this category to more organic consumer demand based on perceived performance. Even with a reduction in new and existing LICs and LITs, consumers are still able to access a range of closed- and open-end investment vehicles, depending on their needs and interests and (where relevant) based on advice that is free from the conflict generated by stamping fees.

Treasury considers that the minor reduction in new and existing LICs and LITs and its potential to represent fewer investment options for consumers, even if attributable to the regulatory change, is balanced against the need to remove conflicted remuneration and thus improve the quality of advice and protect against poor consumer outcomes. This was a stated objective of the regulation. Unfortunately, it is not possible to quantify the absence of poor consumer outcomes we expect has been generated by the regulation. There is no appropriate available data to quantify how consumers’ changed investment product choices, based on unconflicted advice, might have resulted in enhanced performance in relation to their financial objectives. As such, drawing definitive conclusions is beyond the capacity of this review. As indicated above, as at June 2022 there are still 95 LICs and LITs listed on the ASX. The intent of regulation was not to remove LICs and LITs as investment option for consumers, and this has not occurred. A market of good-quality investment products should be able to adjust and implement methods for raising capital that do not rely on the provision of conflicted remuneration to financial advisers.

In its submission, AFMA noted that its members had reported that the removal of stamping fees may have increased the cost of providing advice in cases where these were previously used to subsidise this cost for consumers. In the shift from a remuneration model based on commissions or other conflicted remuneration to a fee-for-service model, it is not unexpected that upfront fees to

41 The Hon Josh Frydenberg MP, *Government response to Treasury consultation on stamping fee exemption*.

42 Australian Securities Exchange, *ASX funds statistics: ASX Investment Products monthly update*.



consumers would increase. However, this does not indicate that the overall cost has increased, rather that it has shifted and become clearer to the consumer the actual price that is being paid.

ASIC incorporated the extension of the ban on conflicted remuneration to LIC and LIT stamping fees into its existing industry monitoring arrangements. ASIC recovers the cost of administering these regulations from relevant industry subsectors. ASIC's Cost Recovery Implementation Statement shows that between financial year 2019-2020 and 2020-2021 the total costs to be recovered from financial advisers increased.⁴³ However, this incorporates the implementation of other regulatory mechanisms, including following the Financial Services Royal Commission. As such, it is not possible to separate out the specific costs associated with expanded ASIC monitoring following the extension of the ban on conflicted remuneration to stamping fees.

Which stakeholders have been consulted for this review?

In conducting this PIR, Treasury released an online discussion paper for industry consultation between 28 June 2022 and 10 July 2022. This consultation process attracted seven written submissions and one verbal submission from the following stakeholders:

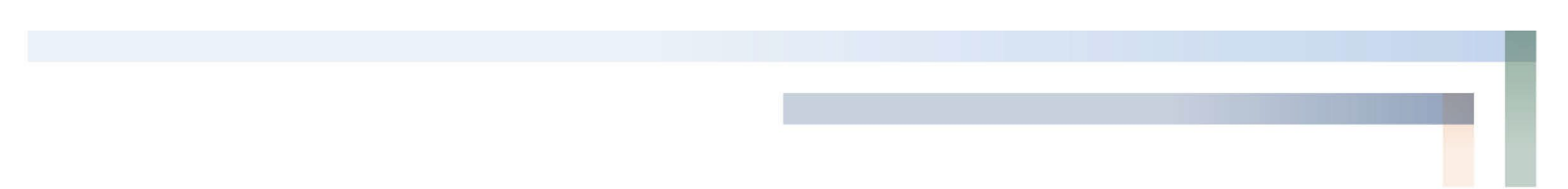
- ASA – a member-based industry body
- Confidential stakeholder
- LICAT Association – the industry body for LICs, LITs and their investors
- SIAA – the professional body for the stockbroking and investment advice industry
- VanEck – a funds management firm
- CHOICE – a consumer advocacy body
- Confidential stakeholder
- AFMA – member-based industry body

The ASA, LICAT Association, SIAA and AFMA submissions supported reinstating the exemption for LICs and LITs to pay stamping fees. These stakeholders noted the reduction in the number of LIC and LIT issuances since the removal of the exemption, describing this as an unintended consequence of the policy which has the effect of reducing investment options for consumers

VanEck's submission asserted that the removal of the stamping fee exemption had restored 'competitive neutrality' to the market by removing the financial incentive for advisers to recommend LICs and LITs to consumers over ETFs (which it considers have clear advantages over LICs and LITs).

CHOICE advanced the position that conflicted remuneration leads to conflicted advice, worse investment choices and poor consumer outcomes. It considers the presence of financial gain in the form of a stamping fee is always in conflict with the duty to the client. CHOICE is supportive of

⁴³ Australian Securities and Investments Commission, *Cost Recovery Implementation Statement: ASIC industry funding model (2020-21)*, November 2021. Available at: <https://download.asic.gov.au/media/mvlbm4cu/cris-asic-industry-funding-model-2020-21-published-11-november-2021.pdf>



consumers having access to a range of investment vehicles, including LICs and LITs, but does not support prioritising this access over protecting consumers' interests through the extension of the ban on conflicted remuneration.

Two stakeholders requested that their submissions remain confidential.

Non-confidential submissions are available online at: www.treasury.gov.au/consultation/c2022-291413

Has the regulation delivered a net benefit?

As outlined above, the inability to control for impacts of the COVID-19 pandemic and other macroeconomic factors on the market and the absence of appropriate available data to quantify consumer impacts limits the ability of this analysis to draw definitive conclusions about net benefit.

However, the regulation has certainly met its stated objective of removing a form of conflicted remuneration, which has well-grounded theoretical flow ons to the quality of advice and consumer outcomes. As a secondary outcome, it has also created a level playing field between advice firms previously receiving stamping fees and those which chose not to accept conflicted remuneration, removing the ability for the former firms to reduce their prices to consumers by supplementing their operating costs through stamping fees.

How was the regulation implemented and evaluated?

The change to extend the ban on conflicted remuneration to stamping fees paid in respect of LICs and LITs was implemented via the Stamping Fee Exemption Regulations. A comprehensive evaluation plan was not developed in 2020. The purpose of this PIR is to evaluate whether the implemented policy is operating as intended and is effectively and efficiently meeting the Government's objectives in addressing the original problem. ASIC continues to monitor industry's arrangements in relation to the ban on conflicted remuneration and will consider taking action where misconduct is identified.

In 2020, the former government did not consider that, on balance, extending the ban on conflicted remuneration to all listed investment entities (Option 2, discussed above) met its policy objectives. The Quality of Advice review, led by independent reviewer Ms Michelle Levy, is considering the remaining exemptions to the ban on conflicted remuneration, including stamping fees. The Quality of Advice review is due to report to the Government by 16 December 2022.

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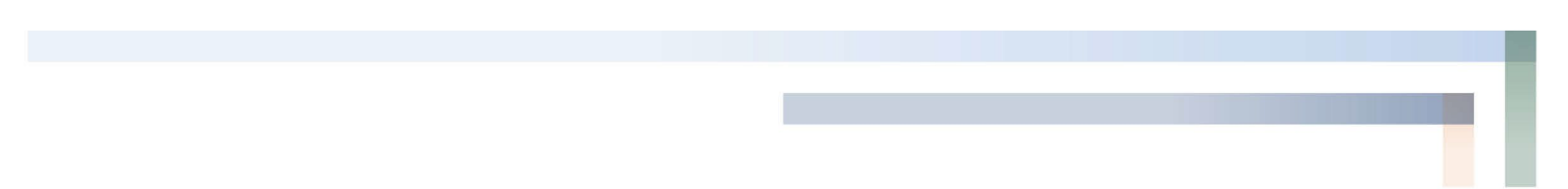
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