

## Summary of the Future of Financial Advice

The Assistant Treasurer and Minister for Financial Services and Superannuation, the honourable Bill Shorten MP has recently released an information pack on the Future of Financial Advice.

### Background

The *Future of Financial Advice* (FOFA) reforms represent a comprehensive Government response to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry (PJC Inquiry) into financial products and services, which was set up in the wake of the Storm Financial and Opus Prime collapses.

The FOFA reforms focus on improving the quality of financial advice and expanding the availability of more affordable forms of advice. The removal of regulatory barriers to the provision of different forms of advice will open up new markets for financial planners, helping them reach younger customers and those with less complex advice needs.

The Minister has stated that the key reforms will include a ban on conflicted remuneration structures, including commissions and volume payments on risk premiums in superannuation; a requirement for advisers to obtain client agreement to ongoing advice fees every two years and the expansion of limited advice.

Following an extensive consultation process and careful consideration, the Government has decided on these remaining areas, as well as providing further detail and clarity about how the announced reforms will operate. This is important for providing certainty, as we move forward with the FOFA arrangements and draft legislation implementing the reforms.

These reforms aim to ensure that Australians receive advice that is in their best interests, rather than being conflicted as a result of incentives or commissions offered to an adviser.

### Summary

The summary of the main elements of the FOFA reforms are outlined below.

#### 1. Ban on conflicted remuneration for risk insurance inside superannuation

- A ban on up-front and trailing commissions and similar payments for insurance within superannuation.
- Prospective from 1 July 2013.
- The ban does NOT apply to insurance arrangements outside of superannuation.

**TechConnect comment:** *This ban is not a surprise as it was flagged under the Government's Stronger Super review. However, it is still not clear what the Government actually means by prospective and whether the ban on commissions will apply to new insurance arrangements/contracts only and/or to new members under existing contracts post 1 July 2013. Advisers should note that these changes do not impact retail insurance arrangements outside of super.*

#### 2. Operation of 'opt-in' under the adviser charging regime

- Advisers will be required to have clients 'opt-in' for ongoing advice fees every two years.
- Prospective from 1 July 2012.
- Grandfathering to be subject to further consultation.



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**TechConnect comment:** *The industry super funds wanted a one year 'opt-in' and the Financial Services Council wanted a three year 'opt-in', so the Government split it down the middle and went for a two year 'opt-in'.*

*The actual operation of the 'opt-in' regime still remains uncertain but what is clear is it will result in increased red tape and costs to advisers. To help combat this dealer groups and product providers will seek to support advisers implement the 'opt-in' scheme. Concerns still exists regarding the adviser's ongoing liability in the event a client does not 'opt-in'. Expect more clarity in the draft legislation and further industry consultation on the extent of grandfathering existing arrangements.*

### 3. Ban on volume payments

- A ban on any form of payment relating to volume or sales targets from any financial services business, dealer groups, authorised representatives or advisers.
- All conflicted remuneration must cease, including volume rebates from platform providers to dealer groups.
- Anti-avoidance provisions will be created after further consultation with the industry. This will focus on arrangements such as equity share schemes or special purpose vehicles (for example white labels???) being used to circumvent the ban on volume-based payments.
- Applies from 1 July 2012.

**TechConnect comment:** *The Government has delivered on its previous promise to ban volume payments and rebates, however at this stage it does not prevent other payments (such as marketing, training or compliance allowances) to be paid by platform providers to dealer groups in arrears. The Government may include these types of payments within the anti-avoidance provisions but only time will tell.*

*The issue of rebates is problematic for the Government, particularly those paid from platform providers to dealer groups, because many dealer groups rely on these payments to cover administrative costs. Although this was strongly argued throughout the consultation process the Government appears to have decided in favour of a blanket ban. It is not clear what grandfathering will apply, particularly for those rebate contracts already exist between dealer groups and platform providers. They have suggested they will also consult on anti avoidance provisions, covering areas such as equity share schemes and special purpose vehicles. However, it is not clear on what they mean here, for example it could cover white label arrangements or vertically integrated platforms?.*

### 4. Ban on soft dollar benefits

- A ban on soft dollar benefits of \$300 or more (per benefit).
- The ban will be per benefit, however there will be an 'infrequent or irregular test for identical or similar benefits' to cover anti-avoidance schemes.
- The ban will not apply to benefits provided for the purposes of professional development and administrative IT services, providing certain criteria are met.
- Prospective from 1 July 2012.

**TechConnect comment:** *Just as the Australian dollar reaches an all time high against other currencies, conferences will be limited to Australian shores from 1 July 2012 (this means no more half day golf or skiing sessions). The continued tightening on soft dollar benefits comes as no surprise and dealer groups / platform providers will aim to ramp up the professional development offering to advisers.*

### 5. Statutory best interests duty

- There will be a statutory duty requiring financial advisers to act in the best interest of clients, above their own interest.
- The duty will require advisers to take reasonable steps to discharge the duty.
- Financial liability for any breach of the duty will lie with the dealer group, not the individual adviser, providing an incentive for dealer groups to facilitate compliance.
- Further consultation with industry will occur as part of developing legislation on this point.

**TechConnect comment:** *The financial liability of the breach of the duty will impact dealer groups, increasing costs and professional indemnity insurance. An error within the advice to a client (such as an error resulting in an excess contribution above the contribution caps) may not be captured under the statutory best interest duty. The duty to the client requires the financial advisers to act in the best interest of clients, above their own interest. It should also be noted that best interest duty is not the necessarily the same as providing the best advice.*

*The wider issue of approved product lists is still a concern. However, an adviser can still fulfil their advice obligations without providing a product recommendation. If a product recommendation is made, then the product must be in the best interest of the client. If a client seeks a product outside of the dealer group APL, then the client may ultimately pay for it via additional research costs subject to dealer group approval.*

### 6. Greater access to advice

- Introducing a new form of limited advice - scaled advice.
- Scaled advice aims to provide advice only on one area of an investor's needs, such as insurance or on a limited range of issues.
- Scaled advice can be provided by a range of providers, including superannuation trustees, financial planners and potentially accountants.
- ASIC intends to release a consultation paper that provides further details on this point.

**TechConnect comment:** *This is a concern even though ASIC will be releasing a consultation paper to deal with further details, this issue will need to be worked through carefully. Further consultation will determine the scope of intra fund advice offered by Trustees of superannuation funds and whether this will be a threat to a financial advisers business under the choice architecture model (incorporating via default funds).*

## 7. Accountants' licensing exemption

- Accountants will be able to consider a broad range of financial issues when advising clients, even though many accountants are not financial advisers.
- The Treasury, ASIC and the accounting bodies are currently working on these initiatives.

**TechConnect comment:** *This recognises the need for accountants to be able to provide scalable affordable advice to clients around strategy whilst avoiding holistic advice and actual financial product advice. This is good news for accountants but it raises concerns for the industry given that holistic advice will not be provided. It appears that accountants will be outside of the advice licensing and compliance regime that is required by financial advisers. However, the line between accountant and financial advisers continues to be blurred.*

## 8. Limited carve-out for basic products from the ban on certain conflicted remuneration structures and best interests duty

- There will be limited carve out for basic banking products where employees are advising and selling their employer's basic banking products.
- The carve-out cannot be relied upon by a fully fledged financial planner who is also an employee of an ADI where they provide advice on a combination of 'basic banking products' and more complex products.

**TechConnect comment:** *No surprises here.*

## 9. Restriction of the term financial planner/ adviser

- Treasury will provide the Government with a recommendation as to whether the terms 'financial adviser' and 'financial planner' should be defined in the Corporations Act and have its use restricted.

**TechConnect comment:** *It may be a positive move for the industry to be considered as a profession.*

## 10. Update on other areas of FOFA reforms

There are a number of other areas that the Government is currently consulting with the industry. These areas include:

- review of the classification of clients as wholesale or retail
- simplification of Financial Service Guides
- changes to ASIC's licensing and banning powers
- a statutory compensation scheme
- asset-based fees on geared investment amounts.

## Conclusion

Minister Shorten's announcement is disappointing in that it appears financial advisers will have to wear further red tape for what looks to be little value-add to the client. Many of the issues which need greater clarification are conspicuously absent, such as the extent of grandfathering and what does a prospective ban entail. The issue of scalable advice and the extent to which it will encroach on the services provided by financial advisers is worrying for advisers.

[Click here](#) to access a copy of the information pack on the Future of Financial Advice.

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