



Alastair Kinloch
Director of Government Affairs
Unit 1G, 65 Canberra Avenue
Griffith ACT 2603 Australia
PO Box 3409
Manuka ACT 2603
Level 20, 33 Alfred Street
Sydney NSW 2000 Australia
Telephone 02 6295 2966
Facsimile 02 6295 2484
Sydney Office 02 9257 6175

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Senate Economics Committees, SG.64
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir,

Further issues to do with the grandfathering arrangements proposed in the Future of Financial Advice Bills 2011 as introduced into the Parliament.

In our recent discussions and meetings with Treasury members, AMP has been working through several examples where we believe the current drafting of the legislation has led to some uncertainty and ambiguity for the industry. This has the potential for unintended consequences and, as we have continued our review of the Bills, further issues have emerged.

An issue we have recently identified is related to the current proposals for grandfathering of existing arrangements and, in particular, arrangements when customers are moved because of a purchase, merger or corporate consolidation.

Of particular concern to AMP is the treatment of grandfathered arrangements for a life company if the business of that life company is transferred under a transfer effected under Part 9 of the Life Insurance Act. A related issue is the treatment of grandfathering if the business of a superannuation fund is transferred to another superannuation fund under successor fund arrangements.

In both of these transfer arrangements, we submit that any grandfathering available for pre-FOFA arrangements in the original life company or

superannuation fund, should be continued with the new life company or new trustee, after the transfer is complete.

In this respect, we note that the current FOFA bills do not allow for such “rollover relief”. Regulation making powers have been included in the relevant provisions in the second bill and we suggest that the regulation making power be used to allow ‘rollover relief’ in the circumstances above.

Current grandfathering proposals

Section 1528(1) of the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 currently provides that the conflicted remuneration provisions (ie sections 963 to 963L) do not apply to a benefit given to a financial services licensee (or representative of a financial services licensee) if the benefit is given ***under an arrangement entered into before 1 July 2012*** provided the benefits are not paid from a platform.

Although we understand the intention of this provision is that pre-FOFA arrangements such as trail commission will be grandfathered, the words highlighted above together with the fact that regulations (not yet released in draft form) may prescribe whether or not the grandfathering provision applies in particular situations, does not provide the industry with any certainty. Also, it is unclear why some payments will be grandfathered but if the very same payment is made from a platform, it will not be grandfathered.

If current insurance and superannuation commission arrangements are grandfathered for superannuation business and life companies, we submit that those grandfathering arrangements should equally apply to subsequent successor fund transfers of a superannuation business or any Part 9 transfer of life insurance business to another life company continue will apply. We submit that such transfers should be treated as a ‘rollover event’, such as in CGT legislation, so that any grandfathering of arrangements before the transfer can still be relied on after the transfer.

Our viewpoint comes from the recent purchase by AMP of the Australian and New Zealand business of AXA. We are in the process of integration and planning the future structure of the group. In an environment where corporate consolidation and reconstruction is common across this industry, the relief is essential.

As the current drafting is not clear on this situation, we believe that specific exclusions must be included to ensure that these types of arrangements continue to apply after any transfer.

On a further issue, the bills as currently drafted do not effectively ‘grandfather’ all existing arrangements as was announced in the Minister’s second reading speech on 24 November, 2011 where he stated:

“Finally, while these measures around remuneration are important, they represent a large change to the industry and to individual businesses. It is for this reason, that existing trail commission books will be ‘grandfathered’. This means that commissions from business entered into prior to the reforms can continue.”

However, the current drafting of item 1528 in the second FOFA bill, does not allow grandfathering of such commissions or other arrangements if they are paid from a platform.

All pre-FOFA arrangements should be grandfathered consistently with the announced intention.

In conclusion, AMP wishes to reaffirm its support for the principles underpinning these Bills and to restate its willingness to work with the Government to amend the drafting to ensure that the final legislation is in both the consumer and the national interest.

Yours sincerely,

Alastair Kinloch