

**TREASURY EXECUTIVE MINUTE**Minute No.  
1013287

3 December 2010

Assistant Treasurer and Minister for Financial Services and Superannuation  
 cc: Deputy Prime Minister and Treasurer

**CONSULTATION ON THE FUTURE OF FINANCIAL ADVICE REFORMS**

**Timing:** No deadline.

**Recommendation:**

- That you note this briefing regarding consultation on the Future of Financial Advice (FOFA) reforms.

**Noted**

Signature: .....

...../...../2010

**KEY POINTS**

- As outlined in Executive Minute 2010/2689 and subsequent discussions with your Office, the second meeting of the FOFA Peak Advisory Group (PCG) took place on 19 November 2010.
  - The PCG is made up of industry stakeholders, Treasury and ASIC and provides advice to Government on the implementation of the FOFA reforms.
- The focus of the meeting was to drill down into the issues identified at the October meeting. Some of the main issues discussed include:
  - Whether advisors should be personally liable for breaches of the best interests duty and when the duty should be triggered.
  - Numerous issues around the design of the annual renewal (opt-in) policy, including contingencies that might apply in the event that a client is unresponsive.
  - How to best eliminate conflicts arising from volume-based bonuses paid from platform providers to financial advisory dealer groups
  - The best way to increase access to more cost effective financial advice.
- For further discussion on issues arising out of the consultation, as well as a timeline for next steps, see Additional Information. The next peak consultation group meeting is on 13 December 2010.

Contact Officer:

Ext:

Manager  
 Financial Services Taskforce Unit

## ADDITIONAL INFORMATION

### Best Interests Duty

- The discussion around the best interests duty focused on three aspects of the duty:
  - *Whether advisers should be personally liable for breaches:* For most of the regulatory requirements in relation to providing financial advice, the Australian Financial Services Licensee (or the authorised representative) that employed the individual adviser is accountable for any breaches. Individual advisers are not personally liable. There was discussion at the meeting as to whether a similar approach should be followed in relation to the best interests duty.

s47C

- *When the duty should be triggered:* This issue relates to whether an adviser should only have to comply with the duty when providing personal advice to clients or whether it should cover a broader range of activities.

s47C

- *Definition of the duty:*

s47C

There was discussion at the meeting about defining the duty so that advisers must have proper regard to the interests and the client and give priority to those interests.

s47C

### Annual Renewal Notice (Opt-in)

- The PCG meeting included a session on opt-in. Treasury sought information on four key matters in relation to the design of the policy:

s47C

s47C p 3 and 4

s47C & s22 - p 5

6  
s22 - p 6