



15 November 2022

Ms Michelle Levy
Quality of Advice Review
The Treasury
Langton Cres
Parkes ACT 2600

Dear Ms Levy

Quality of Advice Review – Conflicted Remuneration

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the Quality of Advice Review proposals paper on conflicted remuneration (the paper).

The ABA understands the purpose of evaluating these proposals is to consider whether the current exceptions to the ban on conflicted remuneration are still required. The policy rationale for introducing exceptions here stems from the broad range of activities related to the provision of financial product advice being caught by the definition of conflicted remuneration under Division 4 of Part 7.7A of the *Corporations Act 2001*. We note that the review does not consider whether the list of exceptions should be expanded.

The ABA supports evaluating whether these exceptions should remain in effect, noting the policy rationale for many of the exceptions remain relevant. Below we make comment on three of the proposals that are raised in the paper – Proposals 1, 6 and 7.

Proposal 1 – General insurance

The ABA supports retaining the exception for benefits given in relation to general insurance and consumer credit insurance (**CCI**). We note the additional proposed requirement where advisers or intermediaries that provide personal advice to retail clients in relation to these products should obtain their client's informed consent, in writing, to receive a commission or other benefit in connection with the issue of the general insurance for CCI product.

As acknowledged in the paper, there are a number of existing and new requirements that exist to reduce the risks of conflict in the provision of advice, including anti-hawking, deferred sales, design and distribution (**DDO**) obligations and caps on commissions on CCI. These requirements are premised on the view that disclosure or consent do not provide sufficient protections and place the onus on business to ensure that they do not sell products that are unsuitable for the customer.

Given these measures designed to address some of the deficiencies of consent and improve customer protections, further consideration should be given to the details of the proposed consent requirement. For example, the 'in writing' requirement should ensure the implementation remains technology neutral so there is an avenue to seek consent through a variety of channels, including digital channels. Further consideration should also be given to the timing of consent (e.g. prior to issue rather than before personal advice) and the whether the requirement should not apply to renewals.

Recommendation: While supporting the proposal to retain these exceptions, further consideration should be given to the design of the proposed consent mechanism, particularly with newer reforms to protect consumers.

Proposal 6 - Benefits given to agents and employees of Authorised Deposit-Taking Institutions

The ABA supports this proposal to remove this exception, and we note this is consistent with the recommendations of the *Retail Banking Remuneration Review Final Report 2021*.



Proposal 7 - Removing exceptions not related to the provision of financial product advice

The ABA supports retaining the two exceptions for the issue or sale of a financial product (per paras 963B(1)(d)(i) and 963C(1)(e)(i) of the *Corporations Act*) and for dealing in a financial product on behalf of the client (reg 7.7A.12E). While both of these activities are not strictly related to the provision of financial advice, it is important to note that they were introduced because of the close links with advice and the breadth of the definition of conflicted remuneration, as not only benefits given directly for or in relation to advice will be caught within the prohibition if the receiver of the benefit provides advice.

In relation to reg 7.7A.12E we note this change was introduced to exempt fees paid by clients for financial services which are not covered in paragraph 963B(1)(d) of the Act.¹ We note that this rationale remains and is not resolved by any other provision including regulation 7.7A.12D, which does not cover fees paid by clients for dealing. Rather this regulation deals with the passing on of brokerage to other licensees and representatives.²

Removing this exception will likely make brokerage fees paid by clients conflicted remuneration, where a provider deals in financial products on behalf of a client and the dealer also provides advice. We do not support this outcome. Providers should be able to receive remuneration from customers for dealing services without concerns that such remuneration could be impugned on the grounds it could be seen as having influenced prior or subsequent advice. We would also support a broad carve-out for all benefits provided by a customer if this would simplify the drafting.

In a similar manner, the policy rationale for the exception on the issue or sale of a financial product continues to have relevance where the issue or sale is closely connected to the provision of the advice (even general advice). We note that a range of business models exist and there are likely to be firms and entities that rely on this exception to be able to receive remuneration for these dealing services. Further, we are unclear why any client paid fees should be subject to the conflicted remuneration ban.

Recommendation: The ABA recommends that both exceptions be retained. Alternatively, a broader exemption could be introduced for all benefits which are given or paid by a client in return for a financial service, whether that be for advice, issuing, selling or dealing.

Thank you for the opportunity to provide feedback. If you would like to discuss further, please do not hesitate to contact me at Prashant.ramkumar@ausbanking.org.au

Yours sincerely,

Prashant Ramkumar
Associate Policy Director,
Australian Banking Association

¹ See Corporations Amendment Regulation 2012 (No. 10) (Sli No 268 Of 2012) Explanatory Statement; Select Legislative Instrument 2012 No. 268. Accessed at http://classic.austlii.edu.au/au/legis/cth/num_reg_es/car201210n268o2012453.html

² The Explanatory Statement states (emphasis added): "Regulation 7.7A.12D prescribes the circumstance in which the payment of brokerage fees (transaction fees paid by clients to market participants for dealing in listed products on their behalf) **to representatives** is not conflicted remuneration."