BT Financial Group

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Senate
Parliament House
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Dear Senator

BT Financial Group submission to Private Member's Bill on Grandfathered Payments

BT Financial Group (BTFG) welcomes the opportunity make this submission in relation to the draft Private Member's Bill, the Corporations Amendment (Ending Conflicted Remuneration in Financial Advice) Bill 2018 (the draft Bill).

Background to grandfathered payments

The Future of Financial Advice (FoFA) reforms implemented a prospective ban on conflicted remuneration. Part 7.7A, Division 4 of the *Corporations Act 2001* defines conflicted remuneration, and that there are a range of different types of benefits that could reasonably be expected to influence the provision of financial advice or the choice of financial product recommended to retail clients.

An exception to the conflicted remuneration regime was the provision or receipt of benefits under grandfathered arrangements. Grandfathering applies to payments that are both paid and received by a range of parties in the financial services industry, including financial advisers, group licensees and platform operators.

The provision of benefits to a financial services licensee or a representative of a financial services licensee under arrangements entered prior to 1 July 2013 were grandfathered, permitting the ongoing payment and receipt of conflicted remuneration in relation to financial products held by clients who first acquired an interest in the product prior to 1 July 2014.

Grandfathering was also available for benefits that were provided under a remuneration arrangement between an employer and employee. Where the benefit is not paid in accordance with an enterprise agreement or other industrial instrument, a benefit that would otherwise be conflicted remuneration could be paid under a remuneration arrangement in relation to a period that ends before 1 July 2015.

The relevant grandfathering provisions were set out in sections 1528, 1529, 1530 and1531 of the *Corporations Act 2001* (Corporations Act).

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BTFG's announcement on grandfathering

BTFG announced in June 2018 that its salaried advisers would cease receiving grandfathered payments such as commissions in respect of BT products.[1] BTFG also committed that the value of these grandfathered payments would be credited back to the accounts held in respect of customers of the BT advisers.

140,000 BT advised customers, operating through the Westpac, St.George, Bank of Melbourne and BankSA networks, will benefit from this announcement.

To reflect the scale of the project, BTFG identified 55 different types of payments that existed over 12 different IT systems that we would be required to cease to implement our announcement.

BTFG anticipates that, should the draft Bill be legislated, it would materially simplify the removal of grandfathered payments from the financial services industry as changes could be implemented at the 'source', being product manufacturers, rather than by platforms and advisers themselves. This would significantly reduce the cost of implementing these reforms.

Current payment of grandfathering

It was believed that all categories of grandfathered payments in place prior to 1 July 2013 would be phased out over the medium term, and would provide a natural adjustment period in which the industry would change their business models.[2] Grandfathered payments, however, have endured for longer than the industry expected.[3]

BT Financial Group (BTFG) is concerned that the further continuation of grandfathered payments may adversely affect customers, including:

- Grandfathered payments may influence the advice provided to customers by creating an ongoing incentive to keep customers in pre-FoFA products, rather than switch to a contemporary products; and
- Superannuation funds and platform operators continue to be subject to pre-existing contractual arrangements for grandfathered payments. This may influence the commercial decisions of those companies, including both their products' structural arrangements and their relationships with advisers.

It is therefore clear that, in the absence of a noticeable decline in grandfathered payments, it is appropriate to implement a clear pathway for the cessation of grandfathered payments.

BTFG therefore submits that it is in the best interests of customers in all categories of grandfathered payments covered by ss1528 – 1531 of the Corporations Act to be subject to 'sun setting' arrangements, as provided for in the draft Bill.

[1] https://www.bt.com.au/about-bt/media-centre/media-releases/archives/2018/media-release.html
[2] Background Paper 24, Financial Services Royal Commission at 39
[3] Background Paper 24, Financial Services Royal Commission at 39

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BTFG anticipates that sun setting arrangements would provide an opportunity for advisers to provide advice, prior to the sunset date, on contemporary products that may be suitable.

The result of this is that the total value of grandfathered payments that will cease on the sunset date would likely be reasonably small as the bulk of grandfathered payment may cease prior to this date as customers are advised to exit pre-FoFA products.

Date of sun setting

BTFG notes there are a range of opinions in the industry on the date by which grandfathered payments should be subject to sun setting arrangements. For example, the Financial Planning Association has proposed a three year transition period, whilst the Association of Superannuation Funds of Australia has proposed a one year transition. The Australian Bankers Association and the Financial Services Council have publicly supported legislation to sunset grandfathered payments but not proposed a date.

When considering an appropriate timeframe to sunset grandfathered payments BTFG recommends that you consider the commencement of other reforms in the industry, including new education standards set by the Financial Adviser Standards and Ethics Authority. Further, there may be external factors that may influence whether a customer is better off in a pre-FoFA product or a contemporary product, including any tax consequences as a result of switching products and grandfathered social security treatment of some products, which need to be taken into account during the sunset period.

By releasing the draft Bill for consultation you have provided parties an opportunity to provide detail on their concerns. We recommend you allow this feedback to inform the final sunset date.

Proposed rebate of grandfathered payments after sunset date

BTFG supports the proposed requirement to return to customers the value of the payment that is subject to a grandfathering arrangement. We note that the drafting provides adequate flexibility for product manufacturers and platform operators to implement these changes in a manner that suits their business, whilst also ensuring that customers fully benefit from the reforms.

BTFG submits that it is important, should grandfathering be subject to sun setting, for customers to enjoy the full benefit of the reform. BTFG is concerned that if the value of the payment is not returned to a customer it may be retained by the product manufacturer or platform operator and leave customers no better off.

BTFG submits that the policy intent could be strengthened and better achieved by making the proposed section 963M a civil penalty provision.

BTFG notes that if customers exit pre-FoFA products and join contemporary products prior to the sunset date then there will not be payments to return to customers, as contemporary products are free of conflicted remuneration. This materially simplifies implementation and is expected to reduce implementation costs for the industry.

BTFG therefore supports the proposed section 963M on the basis that it is both necessary and appropriately drafted.