



As widely expected, the **Bill to End Grandfathered Conflicted Remuneration** passed through the Senate last night. This means it will become Law and the payment and receipt of Grandfathered payments, including commissions will be banned effective 1 January 2021.

For clarity, because there has been so much misinformation and misleading commentary on this issue, this does not refer to commission payments on Life Insurance Products (except for insurance inside superannuation that is implemented through a group life policy). Life insurance commissions are a separate issue. It predominantly relates to payments on Investment and Superannuation products that were grandfathered as a result of FoFA in 2013. It also includes a ban on any remaining use of asset-based fees on investments funded by borrowed money.

To say that we are disappointed in the process, or more lack of due process, on this issue is an understatement. We recognise Grandfathering does not impact all advisers and indeed many see it as a blight on our industry that needs to be removed. We also recognise that banning grandfathered conflicted remuneration will remove another of the layers of opaqueness that fuels negative perceptions of financial advice.

However, the outcome will be devastating for some advisers, particularly those, who in good faith borrowed money to kick start or grow their client base, and now will not have time to review their clients whilst trying to maintain an income to repay a loan on an asset that now has no value.

At the end of the day, and in this case late into the evening, the Bill passed through the Senate, unopposed. This means that there was no perceived political value to any major party or independent in seeking to stop or delay the Bill. The overarching view is that this is a recommendation of the Royal Commission and therefore it will happen. It does not help that it is on the back of a fairly simplified narrative that this is merely stopping payments to advisers who aren't servicing their clients.

This narrative came out of the Royal Commission and has been influenced by ASIC and its quest to remove all conflicted remuneration. There were no complaints tabled during the

Royal Commission hearings where clients were disadvantaged by Grandfathered commissions and certainly no hearings that focussed on any advice related issues. There certainly was no assessment of the size of the issue, the client implications or the broader impact of removing grandfathering.

This was exemplified in a recent PJC hearing. James Shipton, the chairman of ASIC was questioned as to why ASIC did not provide the Royal Commission with more detail on the extent of grandfathering and the complexity and impact of banning it. One response was provided that they had reached their word limit and therefore there was no more room in the submission. The reality is that the 7 May 2018 ASIC submission was 32 pages long, yet the stated limit was 35 pages. Further to that, Commissioner Hayne noted that requests for longer submissions would be considered if there was a good reason. Neither did ASIC choose to set out the complexity or the implications of a ban in a later submission, following the Superannuation round.

This is just one example of the many flaws in this entire process. No client complaints, no Regulatory Impact Statement, no informed debate on the consequences of a blanket ban in a very short timeframe.

The result in the short term will be devastating for some advisers and their businesses. Irrespective of your stance on grandfathering, spare a thought for those colleagues. They have acted in good faith and within the law and while many will adapt and survive, for others it will turn their lives upside down, if it hasn't already done so.

The bigger consequence, however, will be the hundreds and thousands of clients who will now be unable to access affordable financial advice. In many cases it will just not be viable for the adviser to undertake a review and convert a client to a fee for service arrangement. Many thousands of clients will now be left without an adviser, so the next phone call when they receive a letter from Centrelink, or want simple information, will have to go to the institution that is providing the product. And the answer in most cases will be we don't deal in that information, or "sorry we can't give advice".

In the lead up to the debate the AFA advocated strongly against the significant unintended impacts of the Bill, and firmly put our industry position forward to members of the Government, Opposition and crossbench.

As a result, while ultimately the legislation was not opposed, there is now new interest from the crossbench and members of Parliament to watch the implementation of this legislation more closely.

Yesterday, Senator James Paterson, Chair of the Parliamentary Joint Committee on Corporations and Financial Services heard from the industry and spoke about the unintended consequences from the Royal Commission which is now on record in the Senate.

“It is vitally important, when we engage in such extensive and considerable change, that we ensure that the intended objectives are being met and achieved.

“Similarly, there will also be a review of the regulators' actions at the same time. That is because one of the findings of the royal commission was that not only did our financial institutions fail us; our regulators failed us, and our oversight mechanisms for our regulators were insufficient and inadequate. The new oversight mechanisms that the government is establishing, including an expert financial regulator for our other regulators, will be able to conduct a review of their conduct.

“Finally, many of us in this place have received representations from the industry about this change. They have revolved around a couple of concerns. One is the time line for this change and the other is the impact of these changes on customers who might not otherwise be able to afford up-front financial advice and may have to pay out of pocket to do that. I don't doubt the sincerity of the industry in raising these concerns with the government .”

So where to from here?

Obviously, the Bill has to receive Royal Assent, but that is a mere process. The Government has already instructed ASIC to monitor the industry to the extent that it is ceasing payments and passing back the benefits to clients, in advance of the date of the ban. This commenced effective 1 July this year, so has already started happening. For simplicity, at all levels, from Government to product provider, this means to stop paying the adviser first and think about how the rebating is to apply.

So, our first insistence is that where a product provider ceases the payment of the commission in advance of the effective date of the ban, they must, and we stress, must pass on the full benefit to the client. This does not mean “where practicable”, or “generally”, it means all commissions, volume and shelf space payments. Ceasing these payments must be to the benefit of the client. Otherwise, why are we doing this?

Secondly, Banks who have loaned money to advisers using grandfathered commissions as security, need to be flexible and understanding with advisers who are impacted. If their due diligence didn't identify a future issue with grandfathered remuneration, then the small business adviser would likewise be challenged in anticipating this outcome. Indeed, the ABA was one of the parties calling for a ban on grandfathering in their Royal Commission submission.

The Government in its statement talked about an outcome for clients to be moved to more competitive products, however in this instance there may be implications around CGT liabilities and Centrelink grandfathering. We need to see guidance from the Government as to how clients can be upgraded without being negatively impacted. We are disappointed at

the complete lack of guidance that has been made available to financial advisers. The AFA has prepared a [decision tree flow chart](#) to assist advisers to understand what action they need to take. We call on other stakeholders to provide guidance and assistance.

There are further recommendations from the Royal Commission that we are focussed on, which is one of the reasons Phil Anderson and I are in Canberra this week. The Grandfathering issue passed without due process and consultation. We are hopeful that future recommendations such as Annual Opt-In and the ASIC review of Life Insurance commissions will have a far greater deal of consultation and industry comment.

Please contact us on 02 9267 4003 or email us at policy@afa.asn.au if you have any questions.

Kind regards,

Philip Kewin

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