



30 July, 2010

Regulatory Burdens: Business and Consumer Services  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

Dear Sir/Madam

**ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS: BUSINESS AND CONSUMER SERVICES:  
SUBMISSION ON DRAFT REPORT**

Thank you for the opportunity to make some comments on the draft report, dated June 2010.

Our comments relate to the following parts of the draft:

- Part 2.3, Consultation and implementation processes;
- Part 2.6, Streamlining of processes (Licensing of superannuation trustees and training requirements for simple financial services products);
- Part 2.7, Product rationalisation; and
- Part 4.5, Insolvency Practitioners.

**Part 2.3: Consultation and implementation processes**

The Corporations and Financial Services Division (the Division) appreciates the importance of consultation in formulating advice to the Government so that policy objectives can be met with a minimum of regulatory burden and unintended consequences. The Division is continually engaged in consultation processes on the various projects that it is managing.

Consultations on policy proposals may be broad, such as written submissions responding to discussion papers, or targeted, such as round table discussions with a small number of stakeholders or the confidential release of draft legislation to technical experts. The Division is well aware of, and seeks to comply with, consultation principles in Best Practice Regulation Handbook to the greatest extent possible. However, the method the Government uses at different stages of the policy development process needs to factor in the time available and other constraints on the process, including sensitivities.

There will usually be different views about the merits or otherwise of a particular policy option which are genuinely and reasonably held. The fact that the views of some stakeholders were not accepted by the Government does not necessarily support a conclusion that the consultation process was flawed – consultation does not guarantee consensus.

Part 2.3 includes case studies of a number of consultation processes that the Division managed. The examples are used to support a conclusion in Part 2.4 that *'The concerns raised by some finance industry organisations (ABA, IFSA, AFSA) in the previous section confirm that the consultation principles in box 2.1 have not always been followed by some government departments and agencies'*.

We are concerned that the current draft leaves the impression that the processes in the case examples were seriously flawed as a result of the actions or inactions of this Division. This is not a balanced picture.

Listed below are some factors that we think should be considered for inclusion to balance the presentation of industry concerns in the draft report.

*National Consumer Credit Protection Package – a concern by IFSA about confidentiality restrictions*

Although we do not disagree that compliance with the confidentiality requirements at some stages of the process was less convenient than it otherwise would have been, we do not believe it prejudiced the quality of the outcomes achieved. Indeed, industry has praised the process as “responsive, co-operative and flexible”.

*“Finance industry participants have been unanimous in their praise of the way the Australian Securities and Investments Commission and Treasury have handled negotiations in the lead-up to the launch of the national consumer credit regime, describing them as responsive, co-operative and flexible in their dealings with industry”<sup>1</sup>*

The implementation stage of this project has been an overwhelming success. Over 14,000 credit service providers had been registered by the regulator, the Australian Securities and Investments Commission (ASIC) at the time of the commencement of the National Credit Regime on 1 July 2010. A change to the regulatory framework of such a magnitude could not have gone so smoothly were it not for the very extensive, ongoing and constructive consultations with all stakeholder groups that occurred throughout the development of the reforms.

Finally, we note that whether or not confidentiality restrictions apply to any given consultation is not a decision of the Department. The impression left by the language quoted above in Part 2.4 suggests otherwise.

*Long-term superannuation reporting – a concern raised by IFSA about lack of communication with industry*

The primary concern is that there was insufficient time provided for industry consultation before the regulations were made in March 2009. This is an example of a situation where consultations were confined by time constraints, due to the need for regulations to apply to fund members’ reports for the 09-10 financial year. Nevertheless, stakeholders were consulted, including on draft regulations, as much as possible within the time available and several changes proposed during the process were adopted.

*Short-selling disclosure regulation – a concern raised by IFSA about ‘crucial technical aspects.. neither addressed or responded to’*

As part of the consultation process on the draft regulations concerned, IFSA provided a submission. All of the concerns raised in IFSA’s submission were considered before the regulations were finalised. Of the four technical points raised by IFSA, one was addressed by a change in the regulations.

We note that when consulting on draft provisions, there will almost invariably be suggestions for changing the draft made by various stakeholders. Often the suggestions of different stakeholders go in different directions. It is neither feasible nor appropriate to fully disclose to stakeholders the details of advice provided to Government on the merits or otherwise of the various proposals. On this occasion Treasury considered that the points raised were made clearly and did not seek any further discussion about them, nor did IFSA. The fact that all of a stakeholders’ suggestions are not ultimately taken up is, with respect, a questionable foundation to support a conclusion that the process is an example of poor consultation.

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<sup>1</sup> Article in *Banking Day* dated 1 July 2010, see <http://www.bankingday.com/>

*Product disclosure statements regulation – a general concern by ASFA that PDS costs are high, and a specific concern by the ABA that the new short form PDSs may increase compliance costs*

There were extensive consultations with industry representative groups during the course of developing the short form PDS proposal. Draft regulations and commentary was released for public comment. The Industry and Consumer Advisory Panel, formed to assist the Financial Services Working Group, met 14 times. There was ample opportunity for concerns about the costs of the proposal to be raised and ABA concerns were aired, but were not uniformly held. The transitional arrangements were developed with minimising costs in mind. Further information about the background to this issue is set out in paragraphs 82-88 of the Regulation Impact Statement accompanying the relevant regulations, being the *Corporations Amendment Regulations 2010 (No. 5)*, which includes references to an industry survey on costs.

We note that one of the key industry groups, ASFA, said the following about the measure:

*“Funds will be able to implement the changes in a cost-effective way with appropriate consumer research within the two-year transition period to June 2012, according to ASFA.”<sup>2</sup>*

## **Part 2.7, Product rationalisation**

Treasury has undertaken extensive work on this project with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority. Whether and when the reform in this area ultimately proceeds, and in what form, is a decision for the Government taking into consideration all relevant factors.

## **Part 4.5, Insolvency Practitioners**

In respect of the recommendations contained in Part 4.5 of the draft report, we note that a number of submissions to the Senate Economics Committee Inquiry into Liquidators and Administrators have referred to the differences that exist between the personal and corporate insolvency practitioner regulation regimes. The Inquiry is due to report by 31 August 2010, following which consideration will be given to any findings and recommendations by the Committee on these issues.

Yours sincerely

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<sup>2</sup> 24 June 2010, ‘ASFA welcomes short form PDS regulations’, article in SuperReview, <http://www.superreview.com.au/article/ASFA-welcomes-short-form-PDS-regulations/519360.aspx>