

**Senate Standing Committee on Economics**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**Treasury Portfolio**  
Budget Estimates  
4 – 6 June 2013

**Question: BET 5**

**Topic: Tax Agents Services Act**

**Hansard Page: Tuesday 4 June 2013, Page 84-85**

**Senator CORMANN asked:**

**Senator CORMANN:** ...Obviously there is a risk that, as of 1 July 2013, a lot of people are going to be noncompliant, given we are in a situation where people will have fewer than two weeks to get themselves compliant with a law that has not even passed the parliament yet. How would ASIC deal with that circumstance?

**Mr Kell:** It is not in our interests to take a very technical approach to that. We will be facilitative. We want to make sure that people can comply with the law, and that is why we are in discussions around how we can modify our regulatory guide on best interests to accommodate the way that industry wants to work with these new requirements.

**Senator CORMANN:** It puts all of the power on the government's side and all of the risk on the individual financial service professionals' side, doesn't it?

**Mr Kell:** From ASIC's perspective, it is certainly not an area where we plan to go out and target people on 1 July. This is an area where we want to make sure that the industry can operate effectively under the new law, and that is why we are undertaking—

**Senator CORMANN:** So, even though the new law is supposed to come into effect from 1 July 2013, you are telling us that you are not going to enforce the law from 1 July 2013. From when will you be strictly enforcing the new law which the government says will come into effect on 1 July 2013?

**Mr Kell:** The approach that we have taken to the changes to the financial services laws more generally around FOFA is what we have characterised as a facilitative approach. If we find people who are making genuine efforts to comply but there are systems issues that are making that difficult, it is not in our interests to come down hard. If we find people who are deliberately flouting the law and engaging in conduct that harms consumers, then we will apply the law very rigorously.

**Senator CORMANN:** With all due respect, though, you cannot compare it to the situation with FOFA. With FOFA there was a delay in the so-called hard implementation to 1 July 2013. Instead of pressing ahead with implementation from 1 July 2012, the government made a formal change to that and essentially legislated a soft implementation date of 1 July 2012 and a hard implementation date of 1 July 2013. This is a very different circumstance. What you are saying, effectively, is that people should trust you and rely on the fact that you will not be enforcing the law from 1 July 2013 in relation to the changes to the Tax Agent Services Act, even though the government is legislating exactly that as we speak.

**Mr Kell:** I would suggest that ASIC will be in a better position to provide a perspective on that within a very short period of time, once we have clarified how this is going to work through our regulatory guide—and that is what we are currently doing in consultation with the industry.

**Senator CORMANN:** Have you done any analysis on the impacts on professional indemnity insurance of those changes?

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**Mr Kell:** Not that I am aware of, no.

**Senator CORMANN:** Are you aware of any cost-benefit analysis or any proper assessment of the impact of the regulatory changes in relation to this?

**Mr Kell:** In relation to professional indemnity insurance?

**Senator CORMANN:** No, in relation to the changes to the tax agent—

**Mr Kell:** It is typically not ASIC's role to conduct that sort of cost-benefit analysis. I cannot tell you whether other agencies have done it.

**Senator CORMANN:** But you have not been asked to provide input into a cost-benefit analysis of these changes?

**Mr Kell:** I would have to take that on notice to confirm whether we were or were not.

**Answer:**

**Has ASIC been asked to provide input into a cost-benefit analysis of these changes (TASA)?**

No. However, we note that Treasury has prepared a Regulatory Impact Statement (RIS) which is attached to the EM to the Bill.