
Associated
Advisory
Practices

Parliamentary Joint Committee on Corporations and Financial Services

Corporations Amendment (Future of Financial Advice) Bill 2011

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Associated Advisory Practices is a provider of professional standards (compliance), education and business development services to over 160 boutique financial planning AFSL holders across Australia.

Naturally, we were very concerned when we learnt that the proposed FoFA reforms such as the Opt-in requirement were not assessed as being adequate for the decision making stage and were found to be in breach of the requirements of the Office of Best Practice Regulation (OBPR).

It is our respectful view that the breach of the requirements of the OBPR severely undermines the spirit and effectiveness of the proposed reforms and draws into question why the government would continue to push ahead with these reforms.

We feel that the industry has been let down by the government in its handling of the FoFA reforms and that the government has either been careless in its approach to FoFA, or has deliberately played down the effects of FoFA on the industry.

For example, a media release from Rice Warner in September 2011 stated that its advice to Treasury was that Opt-in will only cost \$11 per client however that figure excludes implementation costs and any costs associated with other parts of the FoFA reforms. Bill Shorten's media release dated 29 August 2011 indicated the \$11 as quoted by RiceWarner would include set up costs and that "*Opt-in won't create a significant new impost for advisers who are in regular contact with their clients*".

On behalf of our members we would like to highlight the following points for consideration by the Parliamentary Joint Committee (PJC) on the proposed FoFA reforms.

1. Lack of Proper Consultation

- We have concerns over the piecemeal release of the FoFA reforms, with advisers increasingly worried about meeting the requirements of deep legislative changes that have not yet been finalised.

Commencement Date

- According to the Draft Bill, the financial advice industry must comply with FoFA requirements from 1 July 2012. With only two weeks for consultation with the release of each of the two tranches, this is insufficient time for discussion with industry that contains approximately 18,000 financial advisers (according to paragraph 2.40 of the Ripoll Report) to examine and address concerns.
- Furthermore, these are fundamental reforms and thus it is imperative to give those impacted across the industry a reasonable timeframe to get set and be prepared
- **Recommendation** – it is our recommendation that the operative date be postponed to no less than twelve months after the legislation receives assent to provide adequate time for implementation.

2. Uneven playing field

AAP is in possession of a letter from the office of the Hon Wayne Swan dated 21 July 2011. We draw your attention to the fourth paragraph which states:

"The Government has decided not to go as far as proposing a law against product issuers 'cross-subsidising the advice aspect of their businesses. The only way such a law could be effectively

implemented would be by forcing either the operational or structural separation of many financial institutions in Australia. Such a requirement would be extremely costly and disruptive for industry and may require the Government to pay compensation to companies affected in order for the law to be constitutionally valid. In recognition of possible conflicts of interest that could arise in situations where the licensee is also a product issuer, the proposed best interest duty will require licensees to have in place adequate arrangements in order to ensure that their representatives can comply with their obligations with the best interest duty."

It is our view that this will create an uneven playing field for boutique financial planning practices as:

- a) this is an outright admission that the proposed banning of conflicted remuneration will not be applicable to the large institutions because it is too difficult to implement and creates one set of rules for the large institutions and another set for boutique financial planners ;
- b) the Government has admitted that it would be required to "*pay compensation to companies affected in order to be constitutionally valid*". Based on that rationale we argue this would mean that for the proposed law to be constitutionally valid, the Government will have to pay compensation to boutique licensees that will also be affected and who will have to change their business models.
- c) platforms are not investment products but technology platforms that provide administration and reporting on investment products. This is something that we spent a great deal of time explaining to Dr Richard Sandlant (Treasury) during our meeting with him in October 2010 in Melbourne.

In addition to the above, it should be noted that the platform providers have basically two distribution arms, (a) the dealer groups that they own (bank and institutionally owned) and (b) the independent/boutique licensees. The dealer groups that are owned by the banks/institutions are cross subsidised by the platform as noted in the Hon Wayne Swan's letter, and a number of the independents/boutique licensees receive a 're-sellers' margin. However, what the proposed reforms will do is impact only the independents/boutiques.

3. Opt - in

- The implementation of 'Opt-in' will require consumers to sign a disclosure statement annually and Opt-in every two years – without doing so, the consumer will no longer be in a position to be notified or advised by their financial planner.
- We are concerned that the Bill does not address the consequences of the client not responding in time. Where a client does not respond to a renewal notice prior to the disclosure day, section 962K asserts that the arrangement is terminated. Should the client be simply a few days late in responding, this would imply that the adviser and client would need to agree to a totally new fee arrangement, which in reality could only be done by providing a new Statement of Advice. This is a very significant cost and imposition for a late response.
- Should the consumer not sign an advice renewal, they could be left without financial advice at their most vulnerable time – for example, pre-retirement and when markets are volatile.
- Treasury has confirmed that "Regulatory Impact Statements were prepared for the various other (FoFA) reforms (including Opt-In) but were not assessed as adequate for the decision-making stage". The Government has thus been issued with a 'non-compliance' notice by the OBPR in respect of FoFA 2011.

- Consequently, the OBPR has assessed the proposal as being non-compliant with the Australian Government's own best practice regulation requirements.

4. Annual Disclosure Statement

- The provision requiring retrospective fee disclosure statements for all existing clients was never discussed with the financial planning industry and we believe it to be an outrage that such a significant change was included in the Bill when tabled at Parliament without any proper prior consultation.
- In practice, investment product providers currently already issue fee statements. Accordingly, this is an unnecessary and significant administrative burden to both issuers and recipients.
- The inclusion of the annual disclosure statement will increase costs of providing advice; it will not assist in making advice more affordable or assist in making quality advice accessible to more people which according to the FoFA Information Pack is one of the aims of the FoFA reforms.

5. Best Interest Obligation

- While AAP is supportive of a best interest obligation for financial advisers and licensees in the Bill, it is our concern that the proposed best interest obligations are going to be difficult for many advisers to implement. The explanatory memorandum states that the steps set out in subsection 961B(2) are not intended to be "*an exhaustive or mechanical checklist*" and that an adviser may be able to demonstrate it has acted in the best interest of a client, "*without having recourse to subsection (2)*".
- It is our view that the revised best interest obligations will be very confusing and unworkable. While it may be easy to implement a best interest obligation in theory, it will in practice be very difficult to apply and will not provide an adviser with certainty that they have complied with their best interest obligations. In other words an adviser could demonstrate that they had regard to all the steps in section 961B(2) and still fail the best interest obligation.

6. Professional Development

- The second tranche of the Bill has sought to limit the ability for "professional development" conferences to be held offshore. The legislative explanatory memorandum makes clear that professional development must be conducted in Australia and New Zealand and that 75 per cent of the time must be spent on professional development.
- We believe that imposing domestic restriction on professional development will significantly limit access to international expertise and the ability to share information with peers on a global scale.
- In most instances advisers and licensees pay to attend professional development conferences, it is wrong to assume that product providers cover an attendee's cost even if the professional development was held in Australia or New Zealand.
- As far as we are aware this type of restriction is not imposed on any other sector or group in Australia, and does not lend itself conducive to the intent of raising standards of the financial services industry.

7. Soft Dollar Benefits

We ask the PJC to consider the overall impact on corporate sponsorship of large scale events if the banning of soft dollar benefits over \$300 is passed into law.

Yours sincerely

Associated Advisory Practices Ltd