SMSF Professionals'
Association of Australia Ltd
ABN 67 103 739 617

SPAA House
Level 1
366 King William Street
Adelaide SA 5000
T 1300 779 096
F +61 8 8212 5993
E enquiries@spaa.asn.au

www.spaa.asn.au

7 December 2011

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Email: corporations.joint@aph.gov.au

Corporations Amendment (Future of Financial Advice) Bill 2011

The Self Managed Super Fund Professionals' Association of Australia (SPAA) welcomes the opportunity to provide comments to the Parliamentary Joint Committee (the committee) on the Corporations Amendment (Future of Financial Advice) Bill 2011 (the Bill).

SPAA is the peak professional body representing the self managed superannuation fund (SMSF) sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners, actuaries and other professionals.

SPAA has previously provided submissions to Treasury on the issue of renewal notices. In those submissions, SPAA argued against a statutory imposed opt-in regime on the basis that the banning of commissions and the charging of fees on a fee for service basis will appropriately align value with the fees being charged. This remains SPAA's view.

SPAA has reviewed the Bill and the Explanatory Memorandum (EM) and provides comments in relation to the proposed amendments to the *Corporations Act 2001* listed in the table below.

Proposed amendment to the Corporations Act	SPAA comments
962D – Application of subdivision.	This subdivision only applies where the client has not been provided with *personal advice* as a retail client before the commencing day. To avoid uncertainty, the term "personal advice" should be replaced with the term "financial product advice". The term "financial product advice" is defined in the Act to mean financial product advice where there is a recommendation or statement of opinion that: • Is intended to influence a person or persons in making a decision in relation to a particular financial product or

	class of financial product or an interest therein • Could reasonably be regarded as being intended to have such an influence • Is not exempt from being a financial service.
962F – Arrangement terminates if fee disclosure statements not complied with	This subdivision and the EM states that the fee arrangement terminates if section 962G (the disclosure obligation) has not been complied with. It is not entirely clear in this subdivision whether or not the fee recipient's legal obligation to continue to provide the service also terminates at that time. If the services provided along with the legal obligation of the fee recipient does cease at this time, the client may not always be aware that the arrangement has in fact been terminated (given that they may not always be aware that the fee recipient has breached their fee disclosure obligations). To avoid doubt, a new clause should be inserted in this subdivision to make it clear that irrespective of whether the fee recipient has complied with section 962G, their obligation to provide the services continues unless the client has terminated the arrangement in accordance with section 962E.
962H – Fee disclosure statements	A *fee disclosure statement* is defined as a statement in writing that includes the information required under subsection 962H(2). The information required in a fee disclosure statement includes the amount of each ongoing fee paid under the arrangement by the client in the 12 months immediately preceding the disclosure day. It must also include the amount of each ongoing fee that the fee recipient anticipates the client will pay under the arrangement in the 12 months beginning on the disclosure day. The requirement to disclosure ongoing fees received will, in many instances, require the aggregation of fees received from a number of different services providers. The associated reporting and administration complexities, and the time required to perform this task, should not be underestimated. In many instances it will not be possible to complete this task within 30 days of the disclosure day as required under section 962G. SPAA notes that under section 1017D, superannuation entities are only required to provide members with a periodic statement, which includes information about fees and charges, within 6 months of the disclosure date. Furthermore, in many instances where asset based fees apply, the requirement to estimate fees over the next 12 months will require the use of investment performance assumptions which

	may vary significantly across the industry. Therefore, for the same client, there may be a significant difference in the anticipated ongoing fees disclosed by one fee recipient compared to another fee recipient. In addition, unexpected changes in the client circumstance may mean the anticipated fees will be an unreliable indicator of the actual fees paid by the client. To overcome these concerns and to reduce the administration burden of having to aggregated fees at a point of time, the definition of a fee disclosure statement in subsection 962H(2) should be amended by removing the requirement to provide anticipated fees that the client will pay over the next 12 months. In addition, Financial Services Licensees should be given longer than 30 days from the disclosure date to provide a fee disclosure statement.
962L, 962N – Renewal notice day and renewal period	The ***renewal period*** for an ongoing fee arrangement is a period of 30 days beginning on the day on which the current fee recipient in relation to the arrangement gives the client a renewal notice in relation to the arrangement. If the client does not notify the current fee recipient in relation to the ongoing fee arrangement in writing within the renewal period, the arrangement terminates at the end of a further period of 30 days after the end of the renewal period for the arrangement. The effect of these provisions is that the client must notify the fee recipient within 60 days of receiving the renewal notice irrespective of when the renewal notice was received. In other words, even if the client receives the renewal notice well before the second anniversary of the day on which the arrangement was entered in to (or was renewed), the client must still respond to the fee recipient within 60 days of receiving the notice or risk the arrangement being terminated. Therefore, issuing a renewal notice early will have the effect of reducing the 2 year opt-in period for both the client and the fee recipient. This provision appears to be counterintuitive in that it discourages, and arguably penalises, a fee recipient who chooses to plan ahead and provide clients with more time to consider and respond to the fee recipient's renewal notice. To overcome this issue, section 962N should be amended by commencing the 60 day period from the later of: • the date of the second anniversary date , or • the day the renewal notice is given to the client.

We would be pleased to provide you with any further information in support of our submission.

Mrs. Andrea Slattery
Chief Executive Officer

Mr. Peter Burgess
Technical Director

Yours sincerely

Andrea Slattery
CEO