Corporations Amendment (Future of Financial Advice) Bill 2011 and Explanatory Memorandum

9 | 12 | 2011

ANZ Submission to the Parliamentary Joint Committee into Corporations and Financial Services

ANZ

Corporations Amendment (Future of Financial Advice) Bill 2011

1. Background

ANZ provides wealth products and services through its business unit, ANZ Wealth, which encompasses a number of businesses including ANZ Private, OnePath, E*TRADE, ANZ Trustees, ANZ Investment Lending, Lenders Mortgage Insurance and Super Concepts.

These businesses provide a wide range of financial services and products including funds management, insurance, superannuation, online stock broking, trustee services, investment lending, self managed super fund administration and general wealth management.

ANZ also owns (wholly or partially) a number of financial advice groups. Each advice group is a separate business and has its own Australian Financial Services Licence (AFSL). Collectively, they represent over 10 percent (over 1,800) of Australia's financial advisers and include:

- ANZ Financial Planning (operating under the ANZ Banking Group AFSL);
- Financial Services Partners;
- Millennium3;
- RI Advice, and
- Sentry (37.5 percent owned by ANZ Wealth).

2. Executive Summary

ANZ welcomes the opportunity to comment on the Corporations Amendment (Future of Financial Advice Measures) Bill 2011 (referred to in this submission as the tranche one legislation) and its associated explanatory memorandum (EM).

ANZ has also contributed to the Financial Services Council (FSC) submission and support their comments on technical drafting issues. Our key concern with the policy is that the requirement for annual fee disclosure for clients should operate prospectively for new clients from 1 July 2012. This is discussed below.

ANZ also has concerns about the need for transitional arrangements to effectively enable the first and second tranches of the Future of Financial Advice (FoFA) legislation. In particular we emphasise the need:

- for industry to have sufficient time to implement new measures being introduced by this Bill and the related Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011; and
- to align the start date for certain FoFA reforms with the start date for the new MySuper regime to minimise the number of changes that are required to default superannuation products.

We propose that the Government stagger FoFA compliance deadlines so that they:

- take into consideration opportunities for industry to minimise costs associated with the reforms and the realistic timeframes in which they can be implemented;
- allow industry to leverage opportunities for efficiency improvements in implementing the reforms; and
- are applied in a way that delivers meaningful benefits to customers and minimises disruption to them.

ANZ believes that every opportunity should be made to increase the accessibility and affordability of financial advice to the community while ensuring appropriate consumer protection.

We support a strong financial advice industry but also recognise that there will be some in the community who are unable to avail themselves of advice from financial planners. We support the Government's efforts to ensure the financial needs of this part of the community are also met.

ANZ supports the Government's underlying objective of the Future of Financial Advice (FoFA) reforms to improve the quality of financial advice while building trust and confidence in the financial planning industry. We also support the focus on facilitating access to financial advice.

3. Annual Fee Disclosure Statements

Financial advisers will need to make significant adjustments to their businesses to accommodate the Future of Financial Advice reforms.

As such, the announcement by the Minister in his media release of 29 August 2011 that "the [two year] opt-in will apply to new clients from 1 July 2012" was a welcome development that would help advisers and fund managers to adapt to the new opt-in regime in a way that would minimise costs and disruption.

The Minister's media release was also supported by the draft bill and explanatory memorandum (EM) that were released on the same day which also gave effect to the opt-in applying to the charging of ongoing fees to clients where they had entered into ongoing fee arrangements on or after 1 July 2012.

The Corporations Amendment (Future of Financial Advice) Bill 2011 as introduced to the Parliament has limited the benefits of grandfathering – it will only now apply to the renewal notice to new clients from 1 July 2012 and does not apply to the fee disclosure requirements.

ANZ believes that in light of the significant changes that will impact on adviser businesses that both the new opt-in and fee disclosure requirements should operate prospectively to all new clients from 1 July 2012.

4. Anti-Avoidance Provisions

Division 6 (Section 965) of the Bill has provisions relating to anti-avoidance which were previously not subject to public consultation.

The current scope of the anti-avoidance provision is so broad as to create uncertainty. For example, the provisions are not limited to the provision of financial advice and, on our reading, appear to also apply to grandfathering arrangements (where they apply). We recommend that this section be reviewed so that these anomalies are addressed.

5. Transitional Arrangements

The main challenge in implementing the Future of Financial Advice reforms is the significant procedural and systems changes required to give effect to the reforms. This is complicated by the uncertainty around the final shape of the FoFA legislation and related regulations. Based on current timelines, the best case scenario is that the FoFA reform package is passed by Parliament in March 2012 with further regulations being made sometime in the first half of 2012.

If the current deadline of 1 July 2012 for the commencement of a significant portion of the reform package remains, this will leave industry with less than 4 months to fully comply with the new regime. Planning for systems changes at ANZ is currently proceeding based on our current knowledge and on assumed final legislative outcomes.

Our industry has evolved over the last 20 years and many fund managers still have substantial legacy systems and products that they need to manage while there are other current products that will fall into the legacy category as a result of the reforms. The reform implementation timeframe needs to be mindful that industry funds management systems often run on older mainframes that need careful re-programming so as to not undermine the stability and confidence of the super system.

As such, to make all necessary systems changes within a 4 month timeframe will be very difficult to achieve. We believe the FoFA package will pose an implementation challenge as significant as FSR.

When combined with the Government's broader regulatory reform programme including the reshaping of the superannuation system through the proposed introduction of MySuper, the SuperStream proposals which are intended to move the superannuation industry to a full ecommerce environment, new governance standards and other changes sponsored by regulators, the implementation challenges are even greater. A transition period of two years was provided for the implementation of FSR.

In view of the significant scale of the reform programme and the attendant operational risks involved in delivering information technology changes of this magnitude, ANZ believes the Government needs to significantly increase transitional arrangements so that industry can achieve orderly compliance with the new regime.

Under the section Transition pathway (below) we make proposals about how industry could meet "hard" 1 July 2012 deadlines on a number of issues while suggesting why on other issues it would be more appropriate for 1 July 2012 to operate as a "soft" compliance date where enforcement activity does not occur until one year after this date.

6. The Relationship Between FoFA and MySuper

The implementation of FoFA on July 2012 and MySuper on 2013 creates an operational impost for corporate super funds that will add significantly to the cost of the FoFA implementation. The required changes will become redundant with the advent of MySuper and will not add any real benefit to clients. The impacts of FOFA and MySuper on ANZ's default superannuation products is shown in diagrams A, B and C (respectively) at Attachment 1.

A delay in the implementation date of FoFA to 2013 to coincide with MySuper will eliminate this misalignment. Alternatively, relief provided for corporate super plans written before 1 July 2012 to accept new employee members (on a grandfathered basis) would also eliminate this issue.

We outline (below) the scope of the problem posed by the current misalignment of implementation deadlines. We also make proposals about how industry could meet "hard" 1 July 2012 deadlines on a number of issues while suggesting why on other issues it would be more appropriate for 1 July 2012 to operate as a "soft" compliance date where enforcement activity does not occur until one year after this date.

7. Alignment of FoFA and MySuper Compliance Deadlines

Implementation of FoFA from 1 July 2012 requires all new employer plans and all new employees joining new and existing employer plans to be directed into investment options with no in-built commissions. Existing plans and existing customers can continue to contribute to their existing employer plan and investment options as is (i.e. they are grandfathered).

As a result, superannuation providers will need to replicate many of the existing investment options (especially default options) they have on their menus. Over the past 20 years many providers have developed and offered many different types of default fund options. These include defaults designed by the Trustee, employer groups, employee groups and advisers.

Existing employer arrangements and the underlying systems will need to cater for both the old world and the new world post FoFA at once. This will not occur in the traditional single retail superannuation environment as existing commission products will be closed to new business and simply operate on a grandfathered basis. New customers will simply be placed into new world offerings.

In 2013, MySuper states that all existing members who contribute to a default fund (note many types of defaults exist) and do not make a choice, will have their SG contributions re-directed into a MySuper fund.

Since most members contribute into a default fund, and many default funds exist, this means that much of the replication work required to be built to continue to accept new members from 2012/2013 as the reforms are currently framed will be redundant post 2013, and therefore very expensive, for very little benefit or value.

This interim step will result in the industry having to invest significantly in new investment options that will not be required post 2013. This means that the FoFA / MySuper date misalignment will create unnecessary cost, risk and waste.

8. A Transition pathway

The table below summarises our recommended approach to ensuring FoFA compliance deadlines are framed in a way that minimise costs, enables industry to leverage efficiency opportunities and delivers meaningful benefits to customers:

Issue	**Compliance Date 1 July 2012**	**Compliance Date 1 July 2013**	**Reasoning**
Opt-In to advice fees	√ New clients from 1 July 2012.		The prospective nature of the opt-in gives industry additional time to implement the opt-in in an orderly manner

Issue	Compliance Date 1 July 2012	Compliance Date 1 July 2013	Reasoning
Annual Fee Disclosure	Only if this requirement becomes prospective for new clients from 1 July 2012	√ If the requirement does not become prospective for new clients only.	Implementation will have a significant systems impact. An additional 12 months enables business redesign.
New ASIC powers	√		
Soft dollar ban	√		Ready to implement from 1 July 2012
Ban conflicted remuneration as it applies to volume bonuses	√		Ready to implement from 1 July 2012
Ban on conflicted remuneration as it applies to workplace employer defaults	Soft compliance deadline (no enforcement activity for one year after 1 July 2012)	√ Hard compliance date from 1 July 2013. Enforcement occurs after this date.	The benefits for customers and the industry in aligning FoFA and MySuper compliance deadlines are outlined in detail above
Ban on conflicted remuneration as it applies to non corporate super (i.e. advised)	√		Ready to implement from 1 July 2012
Ban on conflicted remuneration as it affects ADIs		√ with a three month grace period on enforcement	Where the ban impacts on bank remuneration policies, the ban should be aligned from the beginning of a bank financial year to minimise disruption to employees and the need to implement significant system and process changes. ANZ's financial year would commence on 1 October 2012
Best Interest Duty	√ with a three month grace period on enforcement		Early adoption of the best interest duty will provide higher protections for consumers during the soft compliance period between 1 July 2012 and 1 July 2013 for some aspects of the ban on conflicted remuneration. A three month grace period on enforcement is requested in light of the final shape of the duty not being known and in recognition that systems changes will need to occur so that the duty is appropriately applied to adviser activities.

Issue	Compliance Date 1 July 2012	Compliance Date 1 July 2013	Reasoning
Ban on adviser commissions in group insurance arrangements		√	While the final shape of the ban is still not known a 1 July 2013 start date for the ban, consistent with earlier commitments by the Minister, is supported so as to provide industry with an appropriate timeframe to adjust to the new regime.

9. Timing of announcements to provide clarity on transitional arrangements

If industry is to take advantage of transitional arrangements to minimise costs and to maximise benefits to customers, clarity on any transitional arrangements is required sooner rather than later. ANZ has established a significant project that is working to implement the reforms. To meet the current implementation timetable, we need to make decisions about implementation (ie systems changes) and resource allocation by Christmas 2011.

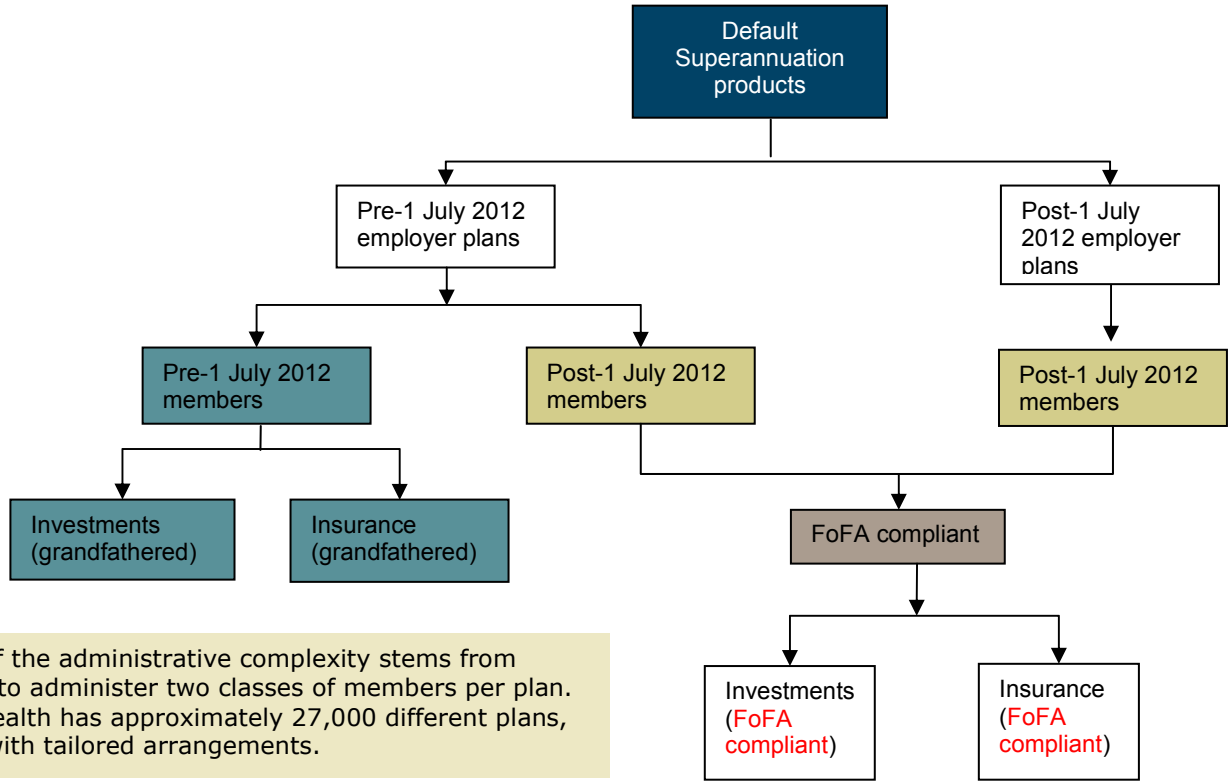
If we do not have certainty soon, will lose the opportunity to reduce the cost of the project and to realise other efficiency gains through the alignment of key FoFA and MySuper start days.

Any clarity that can be achieved from Government on the question of transition before Christmas 2011 would be greatly appreciated by ANZ.

We would appreciate any opportunity to address the Committee with regard to any of the issues we have raised in this submission.

ATTACHMENT 1 (see also section 6 The Relationship Between FoFA and MySuper)

Diagram A
FoFA Bill scenario -- Impact of Future of Financial Advice on default super funds



Much of the administrative complexity stems from having to administer two classes of members per plan. ANZ Wealth has approximately 27,000 different plans, many with tailored arrangements.

As at 1 July 2012:

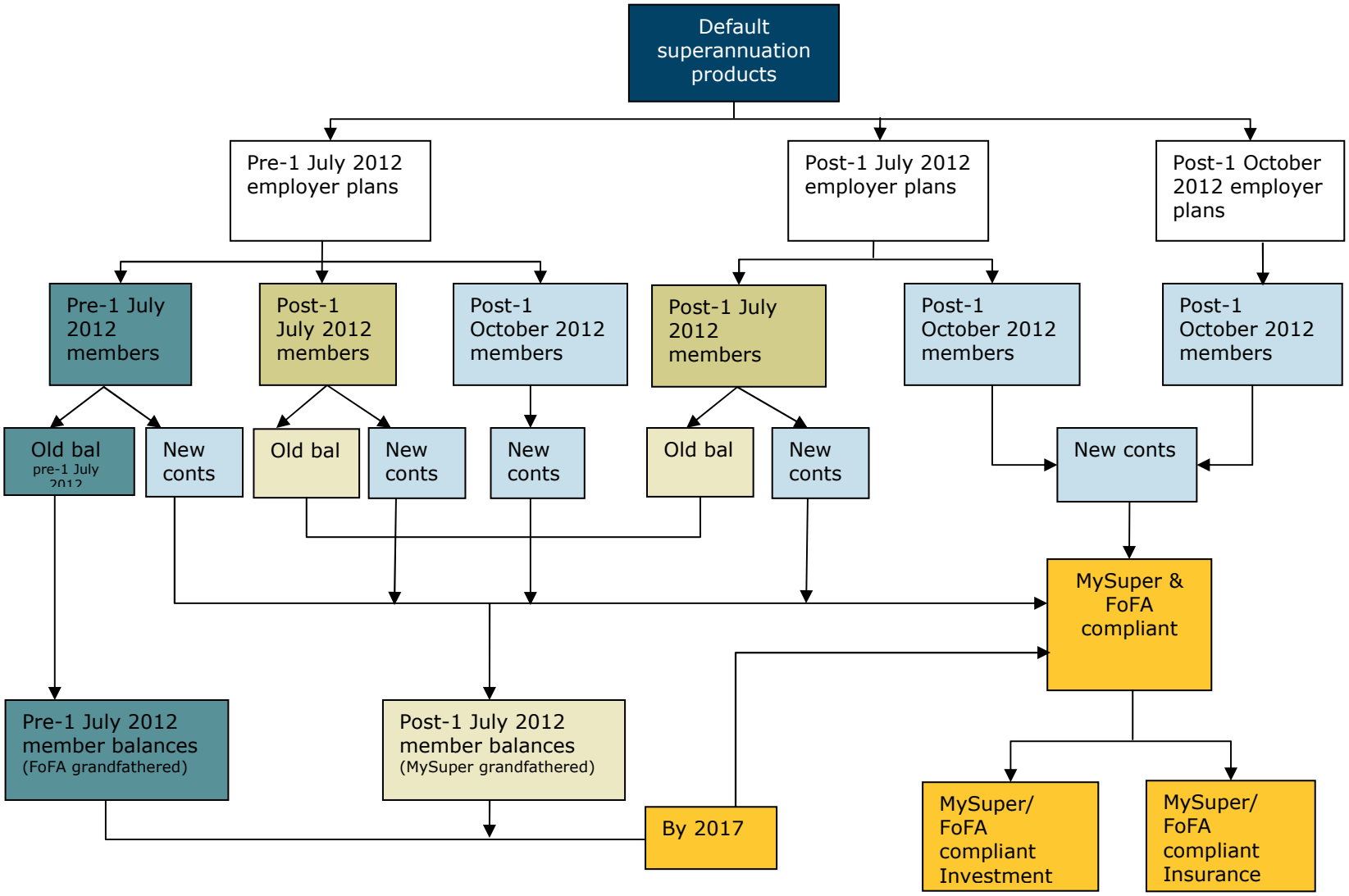
ANZ Wealth has five default superannuation products that will need to become FoFA compliant.

From 1 July 2012, ANZ Wealth's default superannuation products will have employer plans that are either:
* pre-1 July 2012 employer plans; or
* post-1 July 2012 employer plans.

Assuming pre-FoFA members may be grandfathered, we will end up with two classes of members for each pre-1 July 2012 employer plan.

All post-1 July 2012 plans should be FoFA compliant as all new members in those plans will also be post-1 July 2012 members.

Diagram B
MySuper Core Provisions Bill Scenario -- impact of MySuper on default super funds



As at 1 October 2013:

* There is likely to be three types of employer plans at the MySuper start date due to added complexity resulting from FoFA overlay.

* FoFA grandfathering likely to apply at "member" level. This could lead to three different classes of members. In FoFA's current form, members would end up being administered under different plans with potentially different tailored arrangements.

* MySuper grandfathering likely to apply at the "contributions" level. This would allow grandfathering of old balances until 2017, we could end up with pre-FoFA and post-FoFA balances treated differently. We could also have post-MySuper contributions being treated differently.

* ANZ Wealth has five default super offerings sitting under different registry systems. The complexities are likely to be multiplied several times.

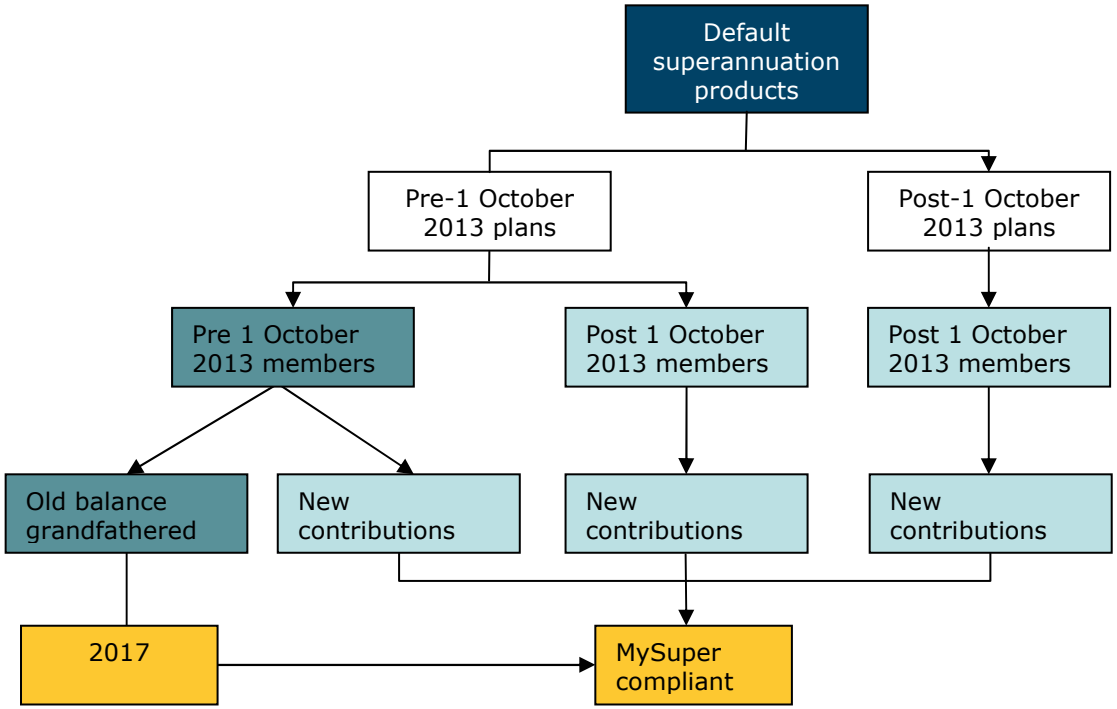
As at 1 July 2017:

By this time, all default super balances and contributions will have to be in a MySuper compliant product.

Diagram C
Proposed solution: Aligning FoFA and MySuper start dates

Proposal:

* As at 1 July 2012, grandfathering for FoFA will apply to personal super at the member level. However, grandfathering for default super products will apply at the "plan" level. This makes sense because contracts with advisers are typically made at the plan level for default super products.

* As at 1 October 2013, MySuper commences at the same time as FoFA. This means that new members within a plan will be subject to pre-determined remuneration arrangements under a MySuper. Existing members balances will be grandfathered, and new contributions will become MySuper compliant.

* All grandfathered balances will be transferred into a MySuper compliant environment by 2017.