

25 November 2011

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

**Email:** [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

**RE: Inquiry: *Corporations Amendment (Future of Financial Advice) Bill 2011***

Dear Sir/Madam,

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

In making its submissions to the Parliamentary Joint Committee on Corporations and Financial Services ("the Committee"), AIST confirms the following regarding the proposed Bill:

- AIST supports fee disclosure statements being provided to all ongoing clients, regardless of commencement.
- Where a client-base is sold to another provider, all affected clients should be provided with renewal notices.
- ASIC should provide guidance on the requirements of the fee disclosure statement and renewal notice.
- Additionally to the proposed reforms, we support an increase ASIC's auditing capabilities in line with the concerns raised in the recent ASIC Report 251.

AIST is supportive of the proposed reforms regarding ongoing fees for financial advice; however we have a few areas of concern in the Bill that we wish to raise. We also note that our understanding of the intent of this policy is to prevent clients being charged for ongoing advice that they do not receive.

## Note to this submission

Unless otherwise indicated, please note that all section and subsection numbers referred to throughout this submission refer to those used to number the proposed new or amended sections of the *Corporations Act 2001* (“the Act”) and not those of the Bill itself.

## Focus on individual providing advice

We support the focus of this Bill on the individual providing the advice, as well as the licensee or authorised representative. We are aware of the limitations as they presently are within the industry and agree that this will facilitate the aim of applying penalties to individuals where necessary.

## Section 962: Application of this division (Division 3)/section 962A: Ongoing fee arrangements

We note that in the proposed section 962, the proposed Division 3 is only to apply to ongoing fee arrangements which have not terminated for any reason. However, proposed section 962A clarifies that ongoing fee arrangements are only to apply where personal financial advice is provided to a person as a retail client.

This means that licensees will only need to comply with the legislation for “new” clients. Essentially, this allows for all current clients who are paying commissions to financial advisers and receiving no advice, to remain doing so. Further, even if they re-engage with their adviser there is no requirement for the licensee to provide a renewal notice as they will still not be considered as “new” clients. This does not seem a dramatic change from the status quo and not a great leap forward for the industry.

Ideally we would like to see these provisions set for all clients. However, understanding that commissions form a substantial part of current financial planning business’ revenue and cash flow, we would propose that if the legislation is to only be effective for “new” clients, then a transition period should be set (say five years) where commissions can continue. After this period, all clients would be covered under the legislative requirements, regardless of when they became a client. This would be consistent with the spirit of the MySuper initiative underpinning Stronger Super.

### **Additional note regarding fee descriptions in proposed section 962A**

AIST suggests that the word 'fee' be defined in the proposed section 960 to ensure that commissions (e.g. trail commissions and entry fee commissions on superannuation guarantee amounts) are also captured within this definition. This will avoid the exploitation of loopholes where one payment is disguised as another.

### **Section 962F: Client not liable to pay fee if this Division not complied with**

AIST would like to see the proposed section 962F(1) extended so that if a fee recipient on-sells their client-base then the purchaser must contact all clients purchased with a renewal notice. It is often these clients (usually classed as C or D class clients) which form the passive income of fee recipients. Clients are routinely unaware of who their new adviser is in this situation.

### **Section 962H: Fee disclosure statements**

AIST believes that fee disclosure statements and renewal notices should be de-coupled and at the very least the fee disclosure statement should be provided to every client who is being charged an ongoing fee or commission.

Further we would support ASIC-provided guidance on what the fee disclosure statement should look like and how the charges should be expressed as it is well established that a significant number of Australians are innumerate or are unable to understand percentage-based calculations. ASIC could also provide standard performance projection figures based on risk profile for the anticipated fees as many clients do not understand that fees are most often based on the quantum invested and increase as the quantum increases through contributions or investment performance. The statement should also include information on how the client can cease the payments and that it is their right to do so. Naturally, the statement should include the risks in doing so and the fact that doing so will mean the adviser is not obliged to provide advice.

## Enhancements to ASIC's licensing and banning powers

Overall, AIST is supportive of the enhanced licensing and banning powers that are proposed to be given to ASIC. ASIC has raised concerns about its ability to protect investors and we feel that the changes slated to improve the supervision of the financial services industry are critical to creating greater trust within the Australian community toward the sector and moving the financial planning industry further toward a profession.

Further, we support ASIC increasing its auditing capabilities of AFS licensees on the premise that these audits are based on improvement of the quality and appropriateness of advice to individuals. In the recently released *ASIC Report 251: Review of financial advice industry practice* which obtained information from the top 20 licensees, an area of concern was around advice audits (paragraph 21):

*"All participating licensees conducted some advice audits to examine the appropriateness of advice. One area of concern emerged where licensees did not select files for reviews at random (including within a risk-driven approach). We also saw evidence of some licensees notifying their advisers of the files to be reviewed prior to the audit taking place."*

With the promotion of scaled advice to improve access to advice, we believe that it is vital that ASIC works with industry to improve the take up of scaled advice, but also has the power to protect investors should an advisor or licensee abuse their privileges to provide this advice.

## Additional provisions

AIST supports all remaining provisions in this Bill.

If you have any further questions regarding this submission, please contact Tom Garcia, Policy and Regulatory Manager.

Yours sincerely

Fiona Reynolds  
**Chief Executive Officer**