



Association of
Financial Advisers

Future of Financial Advice Bill

Key Recommended
Amendments and Impacts

6 March, 2012

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Re : Future of Financial Advice Bills

Dear Members and Senators,

FoFA is the biggest change to the Industry in a generation and now that the PJC has reported, (with a dissenting report) we are seeking your support to amend the legislation that includes elements that are anti-consumer, anti-adviser and anti small business.

The key test for FoFA, which the AFA has continued to support, has always been:

1. improved transparency and
2. increased access to advice.

Our view is that FoFA, as it is currently drafted, delivers neither. Minister Shorten has stated on a number of occasions that FoFA is a growth strategy for the financial advice industry and also that there is broad industry support for FoFA. In fact the financial services industry has many concerns with the current draft of this legislation, much of which has been recognised and addressed in the Coalition's dissenting report.

Set out in the table below are our major concerns and recommendations for amending the legislation.

Issue	Amendment Sought	Rationale for Removal	Impact of leaving unchanged
1. Removal of Retrospective Fee Disclosure Requirements	<ul style="list-style-type: none">• Delete sections 962R and 962S.	<ul style="list-style-type: none">• This is a retrospective requirement infringing on existing contractual arrangements.• This information is already provided by the product providers.• Due to the inclusion of legacy products and systems this will be extremely costly.	<ul style="list-style-type: none">• Huge cost burden to Industry for information consumers already receive.• The FSC has estimated implementation costs of \$700m, and have suggested that the cost per client for fee disclosure will be halved if it only involves new clients and summary information. Inevitably these costs will be passed on to consumers.
2. Removal of the Opt-In Obligation	<ul style="list-style-type: none">• Delete sections 962K, 962L, 962M, 962N, 962P and 962Q.• Remove references to deleted sections, Opt-In or renewal in sections 960, 962F and 1317.	<ul style="list-style-type: none">• The introduction of the Best Interests Duty and the Ban on Conflicted Remuneration address any factors that may have driven this issue.• This is an unnecessary red tape requirement that is not reflected in any other industry or country.• Unintentional failure to Opt-In poses a potential risk for clients as they may miss out on the receipt of adviser initiated important advice.	<ul style="list-style-type: none">• Increased costs to consumers (Approx \$120 per client per annum).• Access to advice will reduce as advisers reposition their offer up market.• Clients in the Regions will suffer most.• Better to strengthen opt out provisions.

Issue	Amendment Sought	Rationale for Change	Impact of leaving unchanged
3. Improve the clarity and certainty with the Best Interests Duty	<ul style="list-style-type: none"> • Delete sections 961B(2)(g) and 961E. 	<ul style="list-style-type: none"> • Whilst the AFA supports the best interests duty, we seek improved clarity and certainty for advisers. • Section 961B(2) defines a set of steps that are comprehensive and designed to provide guidance to advisers, yet then allows in 961B(2)(g) for any other steps that would reasonably be regarded as being in the best interests of the client. If there are further steps, then they should be included in the legislation, not left as a point of confusion. • Improved guidance is required with respect to what is “reasonably apparent” and what is a “reasonable investigation”. 	<ul style="list-style-type: none"> • Section 961B(2)(g) creates uncertainty, that will eventually need to be tested in the courts. • Uncertainty with respect to the best interests duty is likely to result in an increase in Professional Indemnity premiums.
4. Adequately ensure that the Ban on Conflicted Remuneration is not applied retrospectively	<ul style="list-style-type: none"> • Delete section 1528(1)(b) and 1528(2). • In section 1528(3) change “other circumstances in which that Division applies, or does not apply” to the words “other circumstances in which that Division does not apply” • Addition of a specific clause that states the transitional arrangements will continue in the context of the sale of a financial advice business or book of clients. 	<ul style="list-style-type: none"> • The government has given repeated commitments that the legislation will not be applied retrospectively, however the transitional arrangements fundamentally fail to ensure this. • Retrospective application of the ban on conflicted remuneration is likely to result in the acquisition of property rights on other than just terms (a breach of the constitution). The onus should not rest with the adviser or financial services business to prove that there has been a breach of their property rights (refer Law Council of Australia submission). • The legislation should allow an adviser to sell their business or a book of clients without triggering a retrospective loss of property rights. 	<ul style="list-style-type: none"> • Uncertainty in relation to the application of the transitional arrangements will negatively impact upon the value of advice practices.

Issue	Amendment Sought	Rationale for Change	Impact of leaving unchanged
5. Delay commencement until the Industry can be prepared.	<ul style="list-style-type: none"> • Delay commencement until 1 July 2013. 	<ul style="list-style-type: none"> • FoFA involves significant and expensive changes. This will involve significant system changes and adviser training. • Rushed implementation will result in mistakes and inefficiency. • Given the ongoing legislative uncertainty, 1 July 2012 is now impossible. 	<ul style="list-style-type: none"> • Financial services businesses are already spending significant amounts of money in preparing for something that is uncertain. Not enabling a delay will result in significant wastage. • Without a delay in commencement, the industry will not be prepared and consumer outcomes will be suboptimal.

We look forward to discussing this with you in greater detail.

On behalf of all our members, and particularly our members who reside in your electorate, we thank you for your consideration of this important matter.

Regards,



Brad Fox
National President
Association of Financial Advisers



Richard Klipin
Chief Executive Officer
Association of Financial Advisers