



**Submission to the Inquiry  
into Provisions of the  
Corporations Amendment  
(Streamlining of Future of  
Financial Advice) Bill 2014**

April 2014

**National Seniors**

Australia

## About National Seniors Australia

National Seniors is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with 200,000 individual fee-paying members and is the fourth largest in the world.

**We give our members a voice** – we listen and represent our members' views to governments, business and the community on the issues of concern to the over-50s.

**We keep our members informed** – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

**We provide a world of opportunity** – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

**We help our members save** – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and tours and provide our members with affordable, quality insurance to suit their needs.

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## Recommendations

**Removing the need for clients to renew their ongoing fee arrangement with their adviser every two years (also known as the ‘opt-in’ requirement);**

1. National Seniors recommends: That the opt-in requirement is retained.

**Making the requirement for advisers to provide a fee disclosure statement only applicable to clients who entered into their arrangement after 1 July 2013;**

2. National Seniors recommends: That the annual fee disclosure statements be provided to all clients regardless of when they entered into their arrangements.

**Removing paragraph 961B(2)(g), the ‘catch-all’ provision, from the list of steps advice providers may take in order to satisfy the best interests obligation;**

3. National Seniors recommends: That the “Catch All Provision” Section 961B(2)(g) is retained.

**Better facilitating the provision of scaled advice; and**

4. National Seniors recommends: That advisers are compelled to take into account their clients’ individual circumstances when they deliver scaled advice.

**Providing a targeted exemption for general advice from the ban on conflicted remuneration in certain circumstances.**

5. National Seniors recommends: That advisers must be free of any real or perceived bias at all times regardless of what type of advice they are providing to clients.

**Given the ongoing debate surrounding the impact of the proposed reforms:**

6. National Seniors recommends: That the reforms be implemented for 3-5 years to determine costs/savings of the original reforms.

## Introduction

National Seniors supports the implementation of the unabridged Future of Financial Advice (FOFA) reforms as a necessary response to the devastating financial losses experienced by older Australians as a result of poor financial advice and a recent string of corporate collapses.

As a result of collapses such as Storm Financial, consumers hold a low view of financial advisers, with only 25 per cent regarding them as ethical and honest.<sup>1</sup> This mistrust results in Australians not seeking financial advice when it could be beneficial for them to do so. The original unabridged FOFA reforms would go some way in re-instilling confidence in the industry.

National Seniors believes that the proposed amendments to the original FOFA legislation will: remove essential consumer protection measures and expose older Australians to greater risk and uncertainty; heighten mistrust of financial advisers; and remove legislative provisions that embed standards of professional behaviour, transparency and accountability expected in advanced economies.

The amendments will also erode financial benefits associated with the original FOFA legislation. Rice Warner modelling predicts that by 2027 the reforms, as originally intended, would boost private savings by \$144 billion, double the provision of financial advice, and reduce the average cost of advice from \$2,046 to \$1,163.<sup>2</sup> It is concerning that the government has not released for public scrutiny their analysis contesting Rice Warner's modelling and their contrary claim that the original FOFA reforms will increase the cost of the provision of financial advice.

To determine the full impact of the original FOFA reforms, specifically cost on consumers, National Seniors recommends that the reforms are implemented for 3-5 years before any amendments are made.

Finally, independent legal analysis, commissioned by National Seniors concludes that, overall, the amendments represent a major detriment to consumers.<sup>3</sup> The proposed amendments will more than likely:

- Compromise the independence of advice and information given to consumers;
- Cost consumers more in fees, commissions or other charges;
- Reduce the amount, quality and frequency of provisions of information to consumers; and
- Reduce or mitigate the rights of consumers to claim for their investment losses when appropriate.<sup>4</sup>

Any claimed cost savings for consumers resulting from the scaling back of the FOFA legislation will be eroded by the increased risk and loss of certainty, understanding and awareness.

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<sup>1</sup> Roy Morgan Research (2014) *Do finance professionals need an image overhaul?* Roy Morgan.

<sup>2</sup> Rice Warner Actuaries (2013) *The financial advice industry post FoFA* Industry Super Network..

<sup>3</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia.

<sup>4</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia.

## Removing the need for clients to renew their ongoing fee arrangement with their adviser every two years (also known as the 'opt-in' requirement)

### ***Recommendation 1: That the opt-in requirement is retained.***

The proposed removal of the requirement to obtain a client's agreement to charge an ongoing fee and the subsequent ability for any ongoing fee arrangement to continue to exist unless terminated by either the client or the adviser is unacceptable and clearly inequitable. It places the burden on the less informed party in the financial advice contract – namely the consumer.

Removing the opt-in requirement pushes the obligation onto consumers to externally monitor the performance of their portfolio and the appropriateness of their current services and fee structure. It is clear that advisers are far better equipped than consumers are to perform this task.<sup>5</sup>

Without the opt-in requirement most consumers will remain inactive. Unaware of the services they are receiving and the associated fees and charges, they will not have the opportunity to determine if they are receiving value for money.

It is a bizarre situation that the Government is proposing to subject the provision of financial advice to less stringent renewal notice requirements than are applied to general insurance arrangements. The Government has implemented legislation which regulates bi-annual and annual renewal notices for general insurance policies, including penalties for failure to comply with disclosure requirements and notification time frames<sup>6</sup>. National Seniors believes that the risks to consumer wellbeing are equally as great within the financial advice sector as they are within the insurance sector. Therefore at a minimum the same level of renewal notice and disclosure obligations should be applied to the provision of financial advice as is applied to insurance arrangements.

In addition to direct consumer protection, the opt-in requirement sends a message to financial advisers to refocus on consumer engagement. This is essential as Australian consumers have a traditionally low level of engagement with financial matters<sup>7</sup>. This lack of consumer engagement can result in inadequate investment decisions. The implementation of the original opt-in requirement will move a step closer to increasing consumer understanding and engagement within financial matters.

The mandatory requirement for advisers and clients to agree and renew the ongoing fee arrangements every two years would ensure that consumers have the opportunity to ask questions regarding the performance of their investments, the appropriateness of the services provided and their fees structure. If the current law was maintained, advisers would be incentivized to adequately inform and engage their clients to ensure that clients renew their service and fee agreement with the adviser.

Without the opt-in requirement National Seniors believes that advisers have no incentive to keep their clients informed as the fee agreement is automatically renewed with no requirement to attain the client's agreement. The arrangement will significantly compromise the ability of consumers to attain useful information required for decision making and result in major consumer detriment with consumers continuing to pay for services they do not want or need.

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<sup>5</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia.

<sup>6</sup> Insurance Contracts Act 1984.

<sup>7</sup> Australian Securities and Investments Commission (2010) *Access to financial advice in Australia* Australian Government.

## **Making the requirement for advisers to provide a fee disclosure statement only applicable to clients who entered into their arrangement after 1 July 2013**

***Recommendation 2: That the annual fee disclosure statements be provided to all clients regardless of when they entered into their arrangements.***

Annual fee disclosure statements allow consumers to view all the fees they have paid over the past 12 months and the services they receive for those fees in a format which is accessible and easy to understand, thus empowering consumers to make informed investment decisions. Unless annual fee disclosure statements are provided to all consumers, investors will have no way of knowing how much they've paid to product providers and advisers and if the advice received represents value for money.

The proposed amendment will only guarantee adequate disclosure for consumers who entered into financial advice arrangements after 1 July 2013. This time-based discrimination will affect many older consumers denying them a fundamental benefit of the FOFA reforms and resulting in pre 1 July 2013 consumers receiving a significantly reduced and less useful level of disclosure.

One of the key objectives of the FOFA reforms is to improve the trust and confidence of Australian retail investors in the financial services sector<sup>8</sup>. Trust can only be improved if a more efficient market is created and efficiency requires the market to be as fully informed as possible. The provision of annual fee disclosure statements will contribute to the creation of an efficient market for the provision of financial advice by increasing consumer trust which will ultimately benefit all consumers and financial advisers.

The majority of financial advisers already have the information required to develop annual fee disclosure reports therefore it would not be difficult for the adviser to create such reports<sup>9</sup>. However, it is difficult, if not impossible, for consumers to determine this information for themselves. National Seniors believes that if the annual fee disclosure statement requirements are limited to post 1 July 2013 consumers, pre 1 July 2013 consumer disclosure will continue to be at the discretion of the financial adviser. This increases the likelihood of a reduction in the amount, quality and frequency of information resulting in major consumer detriment.

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<sup>8</sup> Commonwealth Treasury (2014) *Future of Financial Advice* Australian Government.

<sup>9</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia.

## Removing paragraph 961B(2)(g), the ‘catch-all’ provision, from the list of steps an advice providers may take in order to satisfy the best interests obligation

**Recommendation 3:** *That the “Catch All Provision” Section 961B(2)(g) is retained.*

The proposed amendment to remove section 961B(2)(g) which states that providers must prove that they have taken any other steps that, at the time of the advice is provided, would reasonably be regarded as being in the best interest of clients, given the clients relevant circumstances will reduce the advisers’ responsibility to act in the best interest of the clients and allow advisers to hide behind a tick box exercise of a limited list of actions.

The replacement clause which has been proposed ... *financial situation and needs of the client that are disclosed to the provider by the client* unreasonably pushes the responsibility back on to consumers and will provide financial advisers with a convenient deferral of responsibility limiting the ability of consumers to claim for their investment losses. In addition, Section 961B(2)(g) currently allows the FOFA legislation to not be overly prescriptive. If section 961B(2)(g) is removed, additional steps will be required within the legislation to ensure that all possible actions are taken to guarantee that advisers act in the best interests of their clients.

The additional ‘catch all’ obligation within section 961B(2)(g) is the only difference between the FOFA best interest obligation and the old pre-FOFA reasonable basis requirement<sup>10</sup>. Therefore National Seniors believes the implementation of section 961B(2)(g) is fundamental to ensure that the objectives of the FOFA reforms are achieved. If section 961B(2)(g) is removed consumers are likely to suffer major consumer detriment including a reduction in the right to claim for their investment losses when appropriate.

## Better facilitating the provision of scaled advice

**Recommendation 4:** *That advisers are compelled to take into account their clients’ individual circumstances when they deliver scaled advice.*

The proposed amendment to remove the obligation on advisers to take into account their client’s individual circumstances when they deliver scaled advice shifts the responsibility from the adviser back to consumers to assess scaled advice in the light of their individual circumstances.

The amendment ignores the fact that consumers will always be the less powerful and less informed party when agreement is formed on the scope of any scaled advice. Removing this requirement allows advisers to ignore key financial information they have about the client’s circumstances and no longer obligates advisers to investigate fully the client’s objectives, financial situation and needs.<sup>11</sup>

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<sup>10</sup> Dr Paul O’Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia

<sup>11</sup> Dr Paul O’Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia



The amendment may result in lower up front cost for scaled advice in the short term resulting from the consumer's inability to recognize and request advice which considers all relevant information<sup>12</sup>. In the long term, scaled advice whose scope has been agreed to in ignorance and which does not consider all relevant financial information is more likely to result in negative investment outcomes. Consumers would then pay a very high price for their discounted scaled advice through less than optimal investment returns and potentially significant financial losses.

Some consumers may then have to pay for additional financial advice to attempt to mitigate losses experienced as a result of original inappropriately scaled financial advice.

National Seniors also believes that it is essential for advisers to consider if the scaled advice under consideration by the client is in the best interest of the client. The proposed scaled advice amendment and the previously discussed best interest duty in section 961B(2)(g) removes the adviser's obligation and incentive to do so, significantly comprising the quality of financial advice provided to consumers and likely to result in major financial detriment.

## **Providing a targeted exemption for general advice from the ban on conflicted remuneration in certain circumstances**

***Recommendation 5: That advisers must be free of any real or perceived bias at all times regardless of what type of advice they are providing to clients.***

Commissions by their nature have the ability to influence advisers and create a conflict between advisers providing the most appropriate advice to the client and securing personal financial incentives from commission payments. At their worst, inappropriate arrangements for commissions can lead to the collapses of large companies and result in consumers losing millions of dollars in savings. ASIC indicates that conflicts of interest embedded in financial advice distribution and remuneration, that lead to poor quality and inappropriate advice, are the heart of this problem.<sup>13</sup>

National Seniors believes that consumers and the wider financial market must be protected from the detrimental impact of commissions on all levels of advice. A larger number of consumers receive general advice opposed to personal financial advice.

More and more consumers will receive their investment product information from general rather than personal advice, including advice received directly from the product issuers (which may be provided directly from bank and credit union tellers) bypassing the traditional personal advice provided by financial advice providers<sup>14</sup>. National Seniors believes that providing a general exemption on the ban on conflicted remuneration will result in reduced quality of advice provided to consumers leading to major consumer detriment.

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<sup>12</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia

<sup>13</sup> ASIC (2013) *Commonwealth Financial Planning Limited and related matters Senate inquiry into the performance of the Australian Securities and Investments Commission* Australian Government. .

<sup>14</sup> Dr Paul O'Shea (2014) *The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment* National Seniors Australia.

## Conclusion

National Seniors appreciates the opportunity to provide a submission into the Senate Inquiry into the provision of Corporations Amendment (Streamlining of Future Financial Advice) Bill 2014. Any cost savings for consumers resulting from the scaling back of the FOFA legislation will be eroded by increased risk and loss of certainty, understanding and awareness.

Without independent, publicly-available analysis to the contrary, the original FOFA reforms are expected to reduce the cost of the provision of financial advice and increase the quantity of advice provided, boosting the financial sector while ensuring high levels of consumer protection. The amendments proposed by government will jeopardise these benefits.

The amendments also have the potential to allow financial advisers to behave more like product salesmen which was how many operated in the pre-FOFA days of conflicted remuneration.<sup>15</sup> Without the full implementation of the FOFA reforms, the original objective of the FOFA reforms cannot be achieved thereby perpetuating the potential for financial advice scandals, inappropriate conflicted advice and negative consumer outcomes.

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<sup>15</sup> Dr Paul O'Shea (2014) The Proposed Amendments to the Future of Financial Advice Reforms: The Potential For Consumer Detriment  
National Seniors Australia