

Dissenting Report by Labor Senators

1.1 Labor Senators oppose these amendments to the Corporations Act, rejecting the ever-evolving reasons being presented, rejecting all assertions that they will reduce compliance costs, and rejecting the ongoing attacks on the consumer protections that enhance the professionalism of the financial advice industry.

1.2 This is the second time in six months that the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 has been brought before the Senate Economics Legislation Committee, and in this time the Abbott government has only widened the chasm between those who will profit directly from the changes, and a broad alliance of consumer groups, pensioners, superannuation industry associations, financial academics, and certified professional financial advisors arguing that the amendments repeal basic consumer protections and will allow conflicted remuneration to return the financial advice industry. The amendments in this bill—different from the earlier version presented to the committee in March—do not address our underlying concerns.

1.3 Labor Senators note many submissions to the Senate Economics Legislation Committee remain critical of the government's amendments, and emphasise the widespread concern that the new Statement of Advice (SOA) provisions offer no protection to consumers while increasing the burden on providers of advice.

1.4 Labor Senators also note that no Regulation Impact Statement (RIS) has been provided for these amendments, nor for the earlier version referred in March. The claims that have been made in submissions about the cost of compliance have not been quantified by ASIC or any other Australian government agency.

1.5 Labor Senators began debating the government's proposals to amend the Corporations Act back in December, when former Assistant Treasurer, Senator Sinodinos, introduced an exposure draft to reduce consumer protections contained in Part 7.7 of the Corporations Act, and began repeating a daily Question Time charade about reducing cost, reducing compliance costs, and reducing the cost of advice. In time, Senator Cormann replaced Senator Sinodinos. But as more and more community groups began criticising the government's proposals, the government's rhetoric changed and they began an extraordinary fallacious pivot—suggesting that the broad alliance of pensioner groups, consumer advocates, academics, superannuation industry associations, and certified financial planners were somehow being orchestrated by union affiliated industry superannuation funds. In the Senate on 9 July, Senator Cormann ignored questions about protecting consumers, and pivoted his answers to suggest that the Labor Party were acting on behalf of the interest of the union dominated industry funds. In the disallowance debate on 15 July, Senator Cormann suggested that the Labor government had used FoFA 'to push agendas on behalf of their friends in union dominated industry funds'. He goes on, one can only assume facetiously, to suggest 'I know that Labor wanted me

to rush the tabling of the regulations in the Senate so that there was even more pressure on new senators to deal with a whole range of issues'.

1.6 During the last Senate Economics Legislation Committee inquiry hearing (22 May 2014, Canberra), we heard the then committee chair, Senator Bushby repeatedly assert that clause 961B(2)(g) was presenting some sort of liability risk to professional financial planners, but this proposition has never been confirmed in any hearings, submissions, or in any private meetings. Multiple submissions reiterate that the introduction of the clause has not increased insurance liability premiums in the financial advice industry.

1.7 Labor Senators were left as perplexed as many in the government's own benches as Senator Cormann read from a letter to appease the Member for Fairfax in the Senate Chamber on 15 July, agreeing to amend provisions already contained in Part 7.7 of the Corporation Act, that a Statement of Advice be signed by the client. SOAs are not binding contracts, and a signature is only required to acknowledge receipt of the SOA document. A signature does not confirm acceptance or agreement of the SOA. In their submission, the National Insurance Brokers Association (NIBA) state that the requirement for a client to sign an SOA acknowledging receipt 'seems unlikely to have any significant end benefit for the customer whilst increasing compliance costs'.¹ In their (joint) submission, CPA Australia and Chartered Accountants Australia and New Zealand state that:

There have been previous examples where clients have been requested by their financial adviser to sign the statement of advice to acknowledge the SOA. One such example was Storm Financial, where on reflection it was evident that many clients did not understand the advice they were provided, despite the fact in some circumstances they had signed every page of the SOA.²

1.8 Labor Senators have been subjected the government's rhetoric about balancing consumer protections whilst ensuring affordability, but it is clear that requiring a signed SOA does neither. It does not increase consumer protection, and many submissions argue it needlessly complicates the process.

1.9 Labor Senators oppose the alacrity with which these amendments have been introduced. They do not have broad support and the government has already introduced changes removing basic consumer protections by regulation. There is no urgency to introduce poorly considered amendments to the Corporations Act.

1.10 With the government's Financial System Inquiry (FSI) expected to report later in the year, and with both the financial advice industry and the corporate regulator, the Australian Securities and Investments Commission, remaining under intense scrutiny and pressure—from parliament, press, and the public—to demonstrate that

1 *Submission 3*, p. 9.

2 *Submission 10*, p. 7.

they will not allow unscrupulous advisors to prey on unsuspecting Australians, as they have in the past, Labor Senators urge the government to withdraw these amendments and work to bridge the widening chasm between the two sides.

1.11 Labor Senators point to the numerous sections of the Chair's report reiterating the above points.

Senator Sam Dastyari
Deputy Chair

