



Boutique Financial Planning Principals Group Inc.

Submission to  
Senate Economics Legislation  
Committee

re

Corporations Amendment (Streamlining of  
Future of Financial Advice) Bill 2014

and

Corporations Amendment (Streamlining of  
Future of Financial Advice) Regulation 2014



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## The Boutique Financial Planning Principals Group

The BFP is a national, non profit association of like-minded, small Australian Financial Services Licensees (AFSLs) which are independently owned and non-aligned to financial institutions. The BFP was incorporated on 26th April 2002, formalising a monthly study meeting of boutique financial planners going back to 1996. The BFP now has around 85 principal members, with members in every state.

Members of the BFP must:

- Have their own AFSL to provide financial advice;
- Be providing ethical and professional financial planning advice which puts the client's interests first;
- Be independent and independently-owned, as defined in the BFP Constitution;
- Be practitioner members of the Financial Planning Association of Australia (FPA); and
- Have 20 or less Authorised Representatives.

The Mission of the BFPPG is to use our collective strength to improve financial planning for clients and financial planners by:

1. Sharing ideas and information between members — helping members in all areas of financial planning with emphasis on the particular vulnerabilities of small businesses in an industry where the majority are large businesses.
2. Fostering friendship between members and providing support to financial planning representatives seeking their own AFSL.
3. Communicating with the FPA — providing a united and strong boutique voice to the FPA and working with the FPA to promote the specific interests of boutique financial planners.
4. Communicating with regulators and government — providing a united and strong voice to regulators and government about matters that are consistent with the provision of client- focused as distinct from product-focused financial planning advice to the Australian public.
5. Promoting awareness and recognition — promoting the significant differences between boutique financial planners and institutionally aligned financial planners and the differences between “advice businesses” and “product sales businesses” to regulators, politicians and to the public.



## Summary

### Best Interest Obligations & Ongoing Fee Arrangements

The Boutique Financial Planning Principals Group (BFP) supports the government's proposals to reduce the compliance burden on small business, financial advisers and their clients.

In particular, FOFA provisions regarding the provision of Fee Disclosure Statements introduced a costly level of red tape that penalized financial advisers that were already providing information regarding services and fees. We propose further amendments removing the need to provide Fee Disclosure Statements in circumstances where the actual fees a client has paid have already been, or will be, disclosed to clients in other forms (eg invoices, regular reports).

### Conflicted Remuneration

Members of the BFP are also members of the Financial Planning Association and as such are subject to the FPA's Code of Professional Practice which bans the receipt of commissions from all financial products except life insurance.

However, the BFP acknowledges that this position is not reflected in the current legislation and that this Bill, insofar as it includes amendments in relation to basic banking, life insurance and general insurance products, simply clarifies the existing legal position that commissions are allowable.

As small business owners, BFP members recognise the rights of employers to determine how to remunerate employees, and as such understand that this is the context in which the Government is proposing to allow commission payments for general advice. The BFP has long argued that those working for financial product manufacturers (banks, insurers and super funds) in an information provision or sales role as employees and agents are not financial advisers, and should not be referred to as such.

While not in favour of any re-introduction of commission payments for investment and superannuation product sales, if it is to occur, it must be linked to the introduction of a workable legislative definition of independent financial advice so that consumers can properly identify whether they are dealing with an employee or agent of a financial product manufacturer or with a non-aligned professional financial planner.



## Best Interest Obligations

- Removal of the catch all provision.  
The BFP supports the removal of this provision for the reasons provided in the draft Explanatory Memorandum (EM).
- Facilitating Scaled Advice.  
The BFP supports the proposed amendments.
- Reduced Best Interests Obligation – Basic Banking Products and General Insurance.  
The BFP supports the proposed amendments.



## Ongoing Fee Arrangements

- Removal of the “opt in” requirement.  
The BFP supports the removal of this requirement for the reasons provided in the draft Explanatory Memorandum (EM).
- Changes to Fee Disclosure Statements (FDS).  
The BFP supports the proposal to make FDS’s prospective from 1 July 2013.

The BFP proposes further changes.

The Explanatory Memorandum for the Corporations Amendment (Future of Financial Advice) Bill 2011 stated:

(1) In Section 2.4 on page 19;

“ ..... in some situations clients of advisers that pay ongoing fees for financial advice receive little or no service. Of the clients that do receive a service for the fees they are paying, some are unaware of the precise magnitude of those fees....”

And

(2) In Section 2.6 on page 20;

“... initial disclosure requirement alone is not a guaranteed safeguard for clients that become disengaged after a number of years of ‘passively’ paying ongoing advice fees.”

The BFP agrees that clients should not be charged for services not rendered, and should be informed of the fees they are paying.

However, surely a client that is invoiced for those services, and pays the fee after receipt of that invoice, does not fall into the category of being “unaware of the magnitude of those fees”, or “disengaged”. In these circumstances a Fee Disclosure Statement is an unnecessary doubling up of information already provided.



Similarly, we note the government's intention to clarify that fees paid by the client via another party (eg via a platform operator), at the clear direction of the client and with the client's clear consent, are exempt from the ban on conflicted remuneration.

ASIC Regulatory Guide 148 requires platform operators to provide quarterly reports to clients which contain information about "all transactions during the quarter" and "the revenue and expenses of the investor", (RG148.118), as well as an audited Annual Report, and as a result these reports provide investors regular information about the quantum of fees paid to their adviser. Once again, an additional annual Fee Disclosure Statement provides no useful additional information assuming the platform operator continues to hold a "clear direction" from the client (without which it could not continue to make the payment).

We acknowledge that in some cases clients may have interests in multiple platforms, making it more difficult to establish the total of adviser fees being paid (or the total of administration, transaction or other fees). In these cases some materiality threshold could be applied, either as a percentage or \$ figure to ensure that if a substantial majority of the fees being paid have been disclosed in one report then no Fee Disclosure Statement is required.

Section 962G (2) provides that "The Regulations may provide that subsection (1) does not apply in a particular situation."

We therefore propose a new regulation 7.7A.10A made for subsection 962G(2) of the Act which states that subsection (1) of Section 962G does not apply in the situations referred to above.



## Conflicted Remuneration and Other Banned Remuneration

- General Advice.

As all BFP members are also members of the FPA they are bound by the FPA's Code of Professional Practice which prohibits the receipt of commissions in relation to investment and superannuation products.

As small business owners BFP members recognize that product manufacturers should be allowed, in a free market, to determine how to remunerate their sales force, and that it is common practice for sales people to be paid commissions and bonuses based on sales volumes.

The BFP has always believed that the FSR regime introduced in 2004 contained a structural flaw in allowing financial product manufacturers (banks, insurers and super funds) to "dress up" the provision of information regarding their products, and the selling of their products by employees, agents, or authorised representatives licensed through Australian Financial Service Licensees (AFSLs) owned by them, as "advice".

The disclosure provisions of FSR have failed to protect consumers from product mis-selling, and failed to ensure consumers understood that the "advice" they received may have been conflicted. There have been numerous surveys released in recent years highlighting that consumers receiving advice through AFSLs owned by product manufacturers thought they were dealing with "independent" advisers.

In submissions to ASIC, Treasury and the Parliamentary Joint Committee the BFP has consistently called for financial services legislation to be amended to ensure that;

- (1) The ownership of an adviser's licensee is to be fully disclosed on all marketing material, (which is a return to the position enunciated by ASIC Policy Statement 117, albeit slightly enhanced, which existed prior to the introduction of the current FSR legislation in 2004) and
- (2) There is a clear distinction made between financial product sales people (bank tellers, customer service officers, call centre employees, representatives of AFSLs owned by product manufacturers which limit the products that could be recommended) and non-aligned, independently owned financial advisory businesses.

We do not support the amendment reintroducing commission payments for general advice unless it is linked to the introduction of amendments which meet these objectives.



- Exemption for life risk insurance benefits.  
The BFP supports the proposed amendments.
- Execution Only Exemption  
The BFP supports the proposed amendments.
- Education and Training Exemption.  
The BFP supports the proposed amendments.
- Basic Banking Exemption.  
The BFP supports the proposed amendments.
- Ban on volume-based shelf space fees  
The BFP supports the proposed amendments.
- Client-pays exemption.  
The BFP supports the proposed amendments.
- “Mixed” Benefits.  
The BFP supports the proposed amendments.

## Corporations Amendment (Streamlining of Future of Financial Advice) Regulation 2014

The BFP supports the proposed amendments to the regulations, with the addition of the changes regarding exemptions from providing Fee Disclosure Statements referred to above.



## The Author

This submission was prepared by the Executive of the BFP with input from, and on behalf of, the members and represents the collective view of the BFP.

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