

Mr Bernie Ripoll MP
Parliament House
Canberra ACT

31 January 2012

Dear Mr Ripoll

At the PJC hearing on 23rd January 2012 Senator Corman asked Prof Joanna Bird who was representing consumers groups about the disclosure statement which he said “by all accounts, based on the evidence we have had from others today, this whole proposition of a retrospective annual fee disclosure statement came out of nowhere right at the end of the process when the legislation was introduced into the parliament in September or October. Is that good process? ...”

The idea of an annual disclosure notice was first discussed at a peak consultation group (PCG) meeting led by Treasury’s Geoff Miller on 24 January last year. In response to the industry’s concerns about annual opt-in consumer groups suggested that if opt-in was required every two years instead of annually then it would be reasonable for consumers to be told the amount they had paid in fees for services in the intervening year.

It was raised and supported as a good faith attempt by those who strongly supported annual opt-in to find a way to meet the industry’s concerns about an annual measure.

The idea was subsequently adopted by the Government and announced by Assistant Treasurer’s in his statement on 28 April 2010. See page 7.

“2.2 OPERATION OF ‘OPT-IN’ UNDER THE ADVISER CHARGING REGIME^[1]

- The announced FOFA reforms included a compulsory annual renewal ‘opt-in’ requirement where an ongoing advice fee is to be charged to a client. At that time the Government announced that it would consult on the implementation of opt-in, including the period after which the initial advice was given that it would apply.
- The policy reflects the need to ensure that advisers do not charge ongoing, open-ended fees where the client is receiving little or no service. It also empowers clients that are receiving an ongoing
- After extensive consultation with stakeholders, the Government has decided to amend the opt-in policy, so that retail clients will have to agree (by opting in) to ongoing advice fees every two years from 1 July 2012.
- **This will be supplemented by an intervening annual disclosure notice to be provided to the client detailing fee and service information for the previous and forthcoming year, informing the client of their right to ‘opt-out’ at any point in time to an ongoing advice contract.**

In addition on 29 August 2011 in announcing the draft legislation the Minister said in his press release: “The ‘opt-in’ measure requires a financial adviser or planner to send a renewal (‘opt-in’) notice every two years to new clients, **as well as an annual fee disclosure statement to all clients.**”^[2]

This makes it clear that opt-in was intended for new clients and disclosure for all clients. I won't repeat here the arguments for compelling the industry to tell consumers how much they have paid for services (extraordinary though it is that the industry doesn't as a matter of course does this) but I just want to clarify that the disclosure provision neither came out of "nowhere" nor came "right at the end of the process".

Consistent with the Minister's statements the disclosure notice was provided for the in draft bill, although it did not apply to all clients as the Minister's press release had indicated.

Consequently this was amended so that the measure applies as it was intended and consistent with the Government's announcements going back to April last year.

Sincerely,

Jenni Mack

Chair - CHOICE



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