

25 November 2011

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Sir/ Madam

### **INQUIRY INTO CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011**

CPA Australia, the Institute of Chartered Accountants in Australia, and the Institute of Public Accountants (the Joint Accounting Bodies) represent over 180,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

We welcome the opportunity to provide comment on the *Corporations Amendment (Future of Financial Advice) Bill 2011*.

The Joint Accounting Bodies support the introduction of a mandatory two year opt-in process, as an important pillar of the FoFA reforms.

This initiative will assist clients who are actively involved with their financial future assess whether the services they are receiving reflect value for money before they decide to renew an ongoing fee arrangement. It will also protect new clients who have become disengaged over time and clients who are not yet fully engaged in the client / financial planner relationship from paying ongoing fees where they receive little or no service.

We believe this protection mechanism should be afforded to both existing and new clients. However, the compromise of requiring the provision of an annual fee disclosure statement to all clients will assist in ensuring existing clients still have the opportunity to make an informed decision if they are receiving value for the ongoing fees they are being charged. This process will build greater trust and further develop the financial planning industry's progress towards being recognised as a profession.

Importantly, transparency and honesty are essential elements in a trusted relationship between a financial planner and a client. Implementing these mandatory ongoing disclosure requirements will ensure that these principles are upheld in all client engagements.

However, key to the success of these reforms will be that the prescribed form of these disclosure documents are clear, concise, and therefore effective. Further, an important element of this disclosure is to encourage proactive engagement by the client

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While the regulations may provide the particular information that may or may not be required in the statements, care must be taken to ensure that any prescribed information is not overly prescriptive or requires unnecessary detail. Ideally, the disclosure statements should be kept to a maximum of one A4 page and simply state the main services that have or will be provided during the disclosure period. It should not be used to list every contact, call or action for the relevant period. Keeping these disclosure documents simple and straightforward will ensure they remain a useful tool for clients and not become another excessive disclosure statement that results in the client becoming disengaged with planning for their financial future.

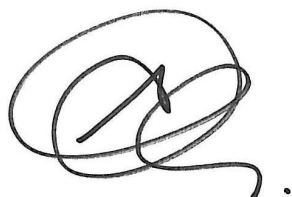
This reform is also an opportunity for those financial advisers who do not already regularly engage with their clients and seek their ongoing consent to charge advice fees to now demonstrate the real value of their advice. If the industry can begin to effectively communicate the benefit and value of seeking financial advice, the wider community will begin to understand these benefits and this may encourage more people to actively seek advice.

In regards to the specific requirements of the Bill, the key recommendations raised in our submission are as follows:

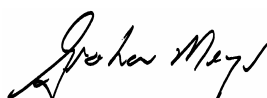
- Further guidance should be issued to clearly state whether commissions that are still permissible, such as a commission paid by a product provider to a financial adviser for a life insurance product, would be considered to be a fee paid by the client and as such would be required to be disclosed on the respective notices
- Remove subsection (f) from section 962H Fee disclosure statements, as the information it requires to be disclosed is speculative and may potentially confuse, rather than inform the consumer
- Section 962N should be amended to state where a client fails to renew an ongoing fee arrangement, the arrangement terminates at the end of the renewal period and the only further obligation of the financial adviser to the client is to ensure any existing payment arrangements are ceased within 30 days
- If a commission is considered to be a fee paid by the client and must be disclosed on the renewal notice and annual fee disclosure notice, then section 962Q must be reviewed to ensure there are not unintended consequences where a client does not actively renew the ongoing fee arrangement; and
- ASIC issue a practice statement which sets out how they intend to use the proposed powers and in particular, how they will interpret 'believe' and 'likely to contravene'.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller (CPA Australia) at [keddie.waller@cpaaustralia.com.au](mailto:keddie.waller@cpaaustralia.com.au), Hugh Elvy (the Institute) at [hugh.elvy@charteredaccountants.com.au](mailto:hugh.elvy@charteredaccountants.com.au) or Reece Agland (IPA) at [reece.agland@publicaccountants.org.au](mailto:reece.agland@publicaccountants.org.au).

Yours sincerely



**Alex Malley**  
Chief Executive Officer  
CPA Australia Ltd



**Graham Meyer**  
Chief Executive Officer  
Institute of Chartered  
Accountants in Australia



**Andrew Conway**  
Chief Executive Officer  
Institute of Public Accountants

## 1. Charging ongoing fees to clients

Our specific comments are as follows:

### Section 962A Ongoing fee arrangement

As stated in the Explanatory Memorandum to the FoFA Bill, the ongoing fee arrangement will apply to financial advisers in situations where they provide personal advice to a retail client, and the client pays a fee which does not relate to advice that has already been given at the time of the arrangement is entered into. The obligation to provide the compulsory disclosure and renewal notice will only apply where the ongoing fee will be charged for a period of 12 months or more.

However, clarity is required as to whether commissions that are still permissible, such as a commission paid by a product provider to a financial adviser for a life insurance product, would be considered to be a fee paid by the client and as such would be required to be disclosed on the respective notices.

#### Recommendation:

- **Further guidance should be issued to clearly state whether commissions that are still permissible, such as a commission paid by a product provider to a financial adviser for a life insurance product, would be considered to be a fee paid by the client and as such would be required to be disclosed on the respective notices.**

### Section 962H Fee disclosure statements

The Joint Accounting Bodies support a mandatory fee disclosure statement which clearly states the fees paid by the client in the previous 12 months, the services the client was entitled to and the services the client actually received.

We also support the inclusion of the anticipated fee for the following year as well as the details of the services the client is entitled to receive during this period. By including this level of detail it will assist the client to understand the fees and services they have received and make an informed decision if they wish to continue with these services for the following 12 months.

However, we do not support the requirement to include the details of the services the financial adviser anticipates the client will receive during the following 12 months. As well as being speculative, requiring the inclusion of this information will not assist the client in making an informed decision. Rather, it will potentially lead to confusion and excessive information being included in the fee disclosure statement.

The inclusion of the services the client was entitled to in the previous 12 months as well as the services the client actually received during this period, provides sufficient information to assist the client make a well informed decision if they wish to continue their ongoing fee arrangement with their financial adviser.

#### Recommendation:

- **Remove subsection (f) from section 962H Fee disclosure statements, as the information it requires to be disclosed is speculative and may potentially confuse, rather than inform the consumer.**

## **Section 962N If client does not notify fee recipient that client wishes to review.**

Currently this section states that where a client does not renew the ongoing fee arrangement, the arrangement terminates at the end of a further period of 30 days after the end of the renewal period for the arrangement.

We recommend that this section is redrafted to reflect the arrangement terminates at the end of the renewal period and further 30 days is only provided to ensure the financial adviser has appropriate time to cease any existing payment arrangements.

Further, as reflected in section 962Q, during this additional period the financial adviser should have no further obligations or duty to provide ongoing advice or services to the client with the exception of ensuring that any ongoing fee arrangements are ceased from an administrative perspective.

### **Recommendation:**

- **Section 962N should be amended to state where a client fails to renew an ongoing fee arrangement, the arrangement terminates at the end of the renewal period and the only further obligation of the financial adviser to the client is to ensure any existing payment arrangements are ceased within 30 days.**

## **Section 962Q Effect of termination**

The Joint Accounting Bodies support the specific inclusion of this section.

It provides certainty that where the ongoing provision of a service under an ongoing fee arrangement is dependent on the continued payment of an ongoing fee, that upon termination of the arrangement, the obligation to continue to provide the service also terminates.

However, following our earlier comments clarity is required to confirm if a commission paid by a product provider, for example in respect of life insurance, to a financial adviser would be considered a fee paid by the client. If a commission is considered to be a fee paid by the client, this effectively implies the financial adviser is obliged to continue to provide the ongoing advice and services for as long as the client retains the product despite the fact that the client may not actively renew the ongoing fee arrangement.

We do not believe that this is the intention of this section and recommend further consideration is given to ensuring a practical outcome.

### **Recommendation:**

- **If a commission is considered to be a fee paid by the client and must be disclosed on the renewal notice and annual fee disclosure notice, then section 962Q must be reviewed to ensure there are not unintended consequences where a client does not actively renew the ongoing fee arrangement.**

## **2. Enhancements to ASIC's licensing and banning powers**

The Joint Accounting Bodies believe that if ASIC is to be provided additional powers as set out in the draft legislation, that serious consideration be given to ensure that there are rigorous rules around ASIC's use of such powers. While we appreciate the difficulty that ASIC has where it believes a person may breach their requirements and limitations of the current law, it is also important that procedural fairness is protected.

Therefore, we are of the opinion that ASIC be required to set out in a practice statement how it intends to use the new powers. In particular, how ASIC will interpret 'believe' and 'likely to contravene'. These are broad terms and therefore have the capacity for misuse. While we believe that ASIC has no intention to misuse such powers, in order to generate confidence in the new system ASIC must set out how it will interpret the law and how it will implement them.

**Recommendation:**

- **ASIC issue a practice statement which sets out how they intend to use the proposed powers and in particular, how they will interpret 'believe' and 'likely to contravene'.**