

The Committee Secretary  
Corporations and Financial Services - Parliamentary Joint Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
Via email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

19<sup>th</sup> December 2011

Re: Parliamentary Joint Committee (PJC) on the Future of Financial Advice (FOFA)

Dear Secretary

I am a financial planner and have been a practitioner in the industry for over 40 years. I believe strongly in the requirement to raise the level and quality of financial advice across the industry.

Our dealer group is Australian Financial Services Ltd (AFS) - AFSL 297239. AFS is independently owned by a network of financial advisers.

I was an inaugural director of the Self Managed Superannuation Professionals' Association and I was the only financial planner on that board at the time. My objective in that role was to assist in raising the level of education and professionalism in the industry. I am a Self Managed Superannuation Specialist SSA™.

My Practice in Perth WA has a strong SMSF client base as well as a large Corporate Superannuation Company client base consisting of over 40 companies in turn representing over 4,000 members. My submission will generally focus on the Corporate Superannuation bias of the business which gives me the greatest concern regarding the Bill before Parliament.

### **PJC to review first and second Bill together**

My first comment relates to the observation that the first Bill and second Bill should be indivisible in terms of the overarching reforms proposed that have sweeping ramifications for our industry and realistically should be dealt with by the PJC en globo.

### **Opt-in Flawed**

There is no other precedence I know of that requires consumers to Opt-in periodically for services. There is sufficient opportunity for clients to opt-out and they may choose to do so at any time throughout the relationship. The proposed opt-in will add an unnecessary administrative burden to my business to implement. I can assure you it will cost more than \$11 as suggested by an independent report from Rice Warner. Even if the cost was \$11, that would cost my practice approx. \$44,000 which I can ill-afford.

### **Unintended consequences of Opt-in**

Many clients of ours may have long absences from home, or may have temporary overseas work commitments lasting many months or be incapacitated and suffering long term illnesses whilst domiciled in a high care facility. The proposal that clients must opt-in within 30 days of receiving their 'renewal advice' could result in clients missing that deadline and deemed to have 'opted out'. The unintended consequences of that is that

they will be in limbo and we will not be able to provide them advice without starting the whole client engagement and 'know your client' evaluation all over again which will be costly and result in unnecessary red-tape. The elderly and infirm clients may not have notified our office of long term periods away from home and they are the most vulnerable in this respect. Picture also the grey nomads driving their caravans around Australia and may be out of touch for months on end only to come home and contact our office to be declined advice as they had been deemed to have opted-out.

### **Differentiation between Retail Client and Corporate Client**

There needs to be clarity around this definition. We do not regard a Corporate Super Client as a retail client; therefore they should be quarantined from the large proportion of FOFA reforms. We have contractual arrangements in place with the Corporate Clients that require us to provide a service level measured by key performance indicators in terms of the services we provide which are vastly different than retail clients. In terms of Corporate Super we regard the client as the Company that engaged our services and not each individual member of the corporate super fund. This needs clarification and accordingly a grandfathering provision should apply to preserve the existing contractual arrangements in place with Corporate Super clients.

### **Is FOFA potentially in breach of Section 51 (xxxi) of the Federal Constitution?**

The contractual nature of a service agreement with a Corporate Super Fund is a different relationship than that of a retail client.

This needs consideration. Does the PJC's terms of reference provide scope to request the Solicitor-General to form an opinion of a potential constitutional breach? In case law there will be, in the essential sense, an acquisition of a proprietary right if the existing contractual arrangements are disturbed. Suitable compensation is likely to be required and that could have significant ramifications for the Government. The term *class action* springs to mind.

### **How does Corporate Super work and why does it require unique consideration in FOFA reforms?**

Perhaps I may illustrate an example of a real-life Corporate Superannuation client arrangement?

Our firm tendered amongst four other financial planning firms for a high profile and publicly recognised global oil and gas company's Corporate Superannuation fund solution for their Australian division.

The company operates in remote and high risk operational conditions including fly-in fly out workers to an oil rig within Australian waters.

We undertook significant research and recommended a Corporate Superannuation default fund for the company. Corporate Superannuation funds generally have wholesale fees and charges and group life insurance benefits are also at wholesale cost.

Individual members of this company would have been ineligible for a retail superannuation solution that included automatic levels of life insurance as the insurance underwriter would have declined them due to the high risk of the industry compounded by the risk of accident/death of helicopter fly-in fly-out operations to the oil rigs.

We managed to source a Corporate Superannuation solution that not only had wholesale fees and charges but provided generous automatic levels of life insurance cover for the members. At the time no other solution was available to us and the Company accepted our recommendations.

We provided a Statement of Advice and included the required fee and commission disclosures and were awarded the contract of services after a rigorous review by the Company's in house legal team.

We provide ongoing member service, education, advice and claims support when insurance claims arise. The company is happy with the level of service and the members receive a wholesale fund and generous insurance cover where they otherwise would have struggled to find a solution. It is only fair that we can derive our income from this fund (including insurance commissions) having specifically recommended a solution and having a contractual service arrangement in place. The contractual service arrangement also requires us to assist in the fulfilment of the requirements under the Superannuation Industry Supervision Act by ensuring the company establishes and continues to convene Superannuation Policy Committee meetings.

#### **How can I service the Corporate Superannuation Fund in a FOFA environment?**

We provide a substantial amount of member servicing to Corporate Super members. Again, if I may illustrate a potential dilemma with the following example:

If opt-in were allowed at individual member level in a Corporate Superannuation fund I would have to stand with a clip board in hand at each member seminar and check who has opted in and who hasn't and then disallow a member who has opted out in attending the seminar. This would cause embarrassment to the company for the services that I have agreed to. What if one of the members was on an extended period of employment on the oil rig and unable to receive correspondence that required an opt-in within 30 days? Later that member wishes to attend a seminar and is refused entry to an educative session as he was inadvertently 'opted-out' under the proposed regime.

This is simply unworkable and Corporate Superannuation needs to be quarantined from this legislation and existing arrangements in place appropriately grandfathered.

#### **Why didn't the FOFA Bill get the tick from the Office of Best Government Regulation (OBGR)?**

We strongly argue that we have proprietary rights in existing contractual arrangements that is likely to be in breach of Section 51 (xxxii) of the Constitution if FOFA reforms as proposed are passed. In my opinion The Regulatory Impact Statement requires an assessment from OBGR in respect of a potential constitutional breach.

I would be available for further input if required by the Committee.

Kind regards

Brian Williams