



December 16<sup>th</sup>, 2011

Senate Standing Committee on Economics  
PO Box 6100,  
Parliament House  
Canberra ACT 2600  
Australia

Dear Sirs/Madams,

### **Submission on Tranches I and II of FOFA Legislation**

Our company and our advisers are supportive of the broad principles of FOFA. The objectives of FOFA are noble in their intent and indeed if those objectives were achieved, FOFA may well contribute positively to our community in the long term.

However, we are not at all convinced that the Bill, as placed before the Parliament, is sound, fair or indeed likely to achieve its' aims. In fact, we believe the Bill to be lacking clarity, flawed in principle, discriminatory in some facets and anti-competitive in sections.

### **Form of Our Submission**

Our submission focuses on the key elements of the two tranches, noting each, commenting on whether we agree or disagree with the thrust of each element and then explaining our views.

Please refer to the tables that are provided in the pages that follow.

### **Summary**

As described in the tables provided, we believe the legislation before the Parliament requires major amendments in order to pass the tests of fairness versus discrimination, promotion of competition and good public policy. We urge your committee to recommend such changes to the Parliament.

Yours faithfully,

**Peter Mancell**  
Managing Director  
FYG Planners Pty Ltd  
AFSL/ACL: 224543

## FOFA Legislation Submission

FOFA Legislation Key Elements	FYG Position	Supporting Comments
Best Interest Provisions - S961	FYG Agrees in principle with the concept of Best Interests	<p>However, we do not accept the exemptions provided for "Education" or "IT services". In our view these exemptions can only advantage large corporates with large budgets to spend on enticements and as such are discriminatory and anti-competitive.</p> <p>We also believe the Civil Penalties that can be applied to licensees discriminate against smaller, independently owned, licensees because it is not possible for the licensee to insure against such an event. Again here the large corporate, who can afford to budget for fines, are placed at a commercial advantage.</p>
Best Interest - S961 Exemptions for Basic Banking Products, General Insurance and Transaction Service	FYG Agrees in principle	We agree with exclusions for basic banking products, general insurance and transaction services such as stock broking.
Enhancing ASIC's Enforcement and Banning Powers S913 & S920	FYG Agrees in principle	In our view, these provisions are needed but ASIC also needs the resources to perform the role required in a timely and efficient manner. For too long, ASIC has been under resourced and as such, unable to undertake its industry surveillance to a standard required by the community.
Commission Ban on Investment Products S963	FYG Agrees in principle	We support the view that advisers should operate on a fee for service basis when recommending investment products to clients.
No Commission Ban on Individual Insurance Products S963	FYG Agrees in principle	We believe that Australia's underinsurance problem, and the resultant cost to the Commonwealths revenue base would only be worsened if individual insurance commissions were banned.
Commission Ban on Group Insurance through Superannuation S963	FYG does not agree with this provision	<p>Where an individual adviser firm has provided quality advice to an employer or employer group that has resulted in better cover or better acceptance terms or better premium rate being applied to fund members, then surely a financial reward for the service provided is justified.</p> <p>However, if commissions are to be banned from this class of insurance, then surely it is appropriate to ban all similar rewards, such as profit sharing from group policies...which are just a commission that is calculated after the fact, rather than at the outset.</p>

FOFA Legislation Key Elements	FYG Position	Supporting Comments
Ban on Asset Fees on Borrowed Funds S964	FYG agrees in principle, with reservations	We understand the government concerns that arose from Storm Financial, however, we believe this was effectively "a product failure" and would have been avoided had ASIC had the necessary resources.
Ban on Platform Shelf Space Fees S964	FYG agrees in principle	In our view, products that are made available on investment platforms should earn that right on merit and be based on investor demand.
Platform Rebates S963	FYG does not agree with some facets of this provision	<p>Where due to scale, a licensee has negotiated rebates that flow back directly to clients accounts, this should be specifically supported in the legislation. Such an outcome can only be good for the client.</p> <p>Sadly, at present the SIS legislation makes this impossible for superannuation funds, whether in accumulation or pension phase. SIS must be changed to allow such an outcome.</p> <p>In relation to the concept of grandfathering existing rebate arrangements, we believe to not grandfather would effectively alter existing contracts retrospectively, that in some cases these contracts may be many years old.</p> <p>We do however agree with the principle that all prospective contracts between licensees and platform operators should ban rebates that are paid to the licensee or the adviser.</p>
Ongoing Fees - Bi-Annual Opt-In S962	FYG does not agree with this provision	<p>Opt-In will add cost to the provision of financial advice for new clients who engage a financial adviser after 01/07/2012 (as proposed). As such those clients will either be disadvantaged relative to pre-existing clients or the adviser business incurs extra cost with no reward. Surely either way this is discriminatory against one party or the other.</p> <p>Secondly, by adding any extra cost to the adviser/client relationship (no matter what the quantum); surely this must make gaining access to advice for more Australians prohibitive and thus less likely.</p>

FOFA Legislation Key Elements	FYG Position	Supporting Comments
Ongoing Fees - Annual Fee Statements S962	FYG does not agree with this provision	Again this provision will add cost to the provision of financial advice and by adding any extra cost to the adviser/client relationship (no matter what the quantum); surely this must make the continued access to advice for Australian more prohibitive and thus less likely. And there is much evidence to show that members of the public with advisers are usually financially more successful than those without.
Ongoing Fees - Cancellation at Any Time S962	FYG Agrees in principle	Our firm has been promoting solely fee for service advice for over 10 years now and we have always believed in the clients right to choose to continue or cancel whenever they should wish. We see that this situation should continue as we believe the Australian public, with few exceptions, are capable of making informed decisions.
Ongoing Fees - Civil Penalties S1317	FYG does not agree with this provision	<p>The Civil Penalties included in the Bill are discriminatory and draconian by Australian and International Standards.</p> <p>Firstly, having researched other professions such as accountants, lawyers, doctors, we can find no evidence that any other profession in Australia faces similar Civil Penalties.</p> <p>Secondly, having sought the views of other experienced financial services participants, we can find no evidence of similar Civil Penalties Internationally.</p>
Civil Penalties – Licensees Only S1317	FYG does not agree with this provision	<p>The Bill before the Parliament provides a rogue adviser with a worst case outcome of being banned from the industry.</p> <p>However, irrespective of the thoroughness of a corporate licensee's compliance procedures, a licensee could face fines of up to \$250,000 for a single breach or \$1,000,000 for anti-avoidance schematic breaches.</p> <p>We cannot understand why "a rogue adviser" can be absolved from financial punishment and the licensee business could be bankrupted by a rogue adviser for behaviour that cannot be insured against.</p>
Best Interests Regulations - S961B (5)	FYG is extremely concerned with the uncertainty of this section	We do not believe the provisions to waive or vary the application of sections of the legislation by way of unknown regulations provides any certainty for licensees in the longer term.