

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL
2011

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

(Circulated by the authority of the
Minister for Financial Services and Superannuation, the Hon Bill Shorten MP)

Table of contents

Glossary	1
General outline and financial impact	2
Chapter 1 Explanation of amendments	3
Chapter 2 Statement of compatibility with human rights.....	5

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Bill	Corporations Amendment (Future of Financial Advice) Bill 2011
Corporations Act	<i>Corporations Act 2001</i>
FOFA	Future of Financial Advice
Licence	Australian Financial Services Licence
PJC	Parliamentary Joint Committee on Corporations and Financial Services

General outline and financial impact

Outline

On 13 October 2011, the Australian Government introduced the Corporations Amendment (Future of Financial Advice) Bill 2011 into the Australian Parliament. Together with the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, the Bill implements the Government's Future of Financial Advice ('FOFA') reforms.

These amendments changes to the application of the ongoing fee arrangement and renewal notice provisions to ensure these measures apply only to the extent necessary.

Date of effect: The amendments to the Bill commence at the same time as the remainder of the Bill on 1 July 2012.

Proposal announced: On 26 April 2010, the then Minister for Financial Services, Superannuation and Corporate Law, the Hon Chris Bowen MP, announced the FOFA reforms. On 28 April 2011, further detail on the operation of the FOFA reforms was announced by the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon Bill Shorten MP.

Financial impact: This Bill has no significant financial impact on Commonwealth expenditure or revenue.

Human rights implications: The amendments to the Corporations Amendment (Future of Financial Advice) Bill 2011 do not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.1 to 2.4.

Chapter 1

Explanation of amendments

Outline of chapter

1.1 Schedule 1 to the Corporations Amendment (Future of Financial Advice) Bill 2011 (the Bill) amends the *Corporations Act 2011* (Corporations Act) to require financial advisers (persons who hold a licence with an authorisation to provide financial product advice or their representatives) to obtain their retail clients' agreement in order to charge them ongoing fees for financial advice and to provide their clients with annual disclosure of fees charged and services provided. [*Schedule 1, item 10, division 3*]

1.2 These amendments make minor changes to enable ASIC to provide relief from the opt-in obligations provided fee recipients are bound by an ASIC-approved code of conduct.

Charging ongoing fees to clients

1.3 Where an ongoing financial advice relationship exists between an adviser (the 'fee recipient') and a retail client which involves the charging of an ongoing advice fee (however described), the Bill requires the fee recipient to discharge two separate (albeit intertwined) obligations.

- (i) Disclosure obligation: In order to continue charging an ongoing fee for a period longer than 12 months, the fee recipient must provide a fee disclosure statement to the client outlining fee and service information relevant to the client.
- (ii) Renewal notice obligation: In order to continue charging an ongoing fee for a period longer than 24 months, the fee recipient must provide both a fee disclosure statement and a renewal notice to the client.

1.4 The amendments includes a new provision to exempt the application of 96K (the requirement to send a renewal notice) if ASIC is satisfied that the person is bound by a code of professional conduct approved by ASIC for the purposes of the section. [*Schedule 1, item 10, division 3, s962CA*]

1.5 A code of conduct is approved by ASIC for the purposes of the section if it is approved under section 1101A, and ASIC is satisfied the code of conduct obviates the need to be bound by the opt-in requirement. The exemption must be in writing and ASIC must publish notice of it in the *Gazette*. *[Schedule 1, item 10, division 3, s962CA]*

Chapter 2

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Corporations Amendment (Future of Financial Advice) Bill 2011

2.1 The amendments to the Corporations Amendment (Future of Financial Advice) Bill 2011 are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.1 The amendments to the Bill make minor changes to enable ASIC to provide relief from the opt-in obligations provided fee recipients are bound by an ASIC-approved code of conduct.

Human rights implications

2.2 The amendments to the Bill do not engage any of the applicable rights or freedoms.

Conclusion

2.3 The amendments to Bill are compatible with human rights as they do not raise any human rights issues.