COTA
For older Australians

SUBMISSION TO INQUIRY INTO CORPORATIONS AMENDMENT (STREAMLINING OF FUTURE OF FINANCIAL ADVICE) BILL 2014

Prepared by
National Policy Office

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COTA Australia

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INTRODUCTION

COTA Australia is the national policy vehicle of the eight State and Territory Councils on the Ageing (COTA) in NSW, Queensland, Tasmania, South Australia, Victoria, Western Australia, ACT and the Northern Territory.

COTA Australia has a focus on national policy issues from the perspective of older people as citizens and consumers and it seeks to promote, improve and protect the circumstances and wellbeing of older people in Australia. Our submissions always incorporate the views of our members developed through various consultation mechanisms.

COTA was a strong supporter of the FoFA reforms as we believed they offered the potential to ensure financial advice was in the interest of the consumer. Australians have quite low levels of financial literacy and therefore many do not have the knowledge to assess the advice they are getting to ensure it is the best option for them. In the past far too many financial advisors appear to have been looking after their own interest and maximising their commissions and third party payments rather than working in the interest of their consumers.

Many older people have been victims of poor financial advice both through major scandals such as the Storm collapse and perhaps more significantly over time, on a daily basis as they seek advice which they think is in their interest but sometimes is clearly not, and their financial position is not optimized.

As the superannuation system matures older people will be making more complex financial decisions that will directly affect their quality of life in retirement. This is compounded by a more 'user pays' environment, for example in aged care, in which choices made can have major financial consequences. Many need assistance with planning for retirement and also with how to maximise their incomes in retirement. Older people indicate to us that they have lost confidence in the financial planning industry and therefore many are not seeking professional advice with these important decisions.

The FOFA package was a compromise between consumer protection and the needs of industry. COTA understands the Government's desire to reduce unnecessary red tape and compliance costs as this might reduce the costs of getting advice. However we believe the Bill does not adequately address the potential costs and detriment to consumers of the proposed changes.

This submission looks at the three key components of the Bill that have been raised with us by older people:

- the best interest provisions
- the opt in provisions, and
- issues around conflicted remuneration.

ISSUES

Best interest provisions

One of the key reforms in FOFA was the move to require advice providers to demonstrate that they are acting in the best interest of their clients. Most consumers assume this is the case but as events such as the Storm collapse show this is not always true.

Subsection 961B92) of the Corporations Act lists the seven steps that a provider has to take to show they meet this requirement.

This Bill seeks to remove the last step in paragraph (g) which requires the provider to show "they have taken any other step (in addition to the six preceding ones) that ….would reasonably be regarded as being in the best interest of the client".

COTA believes this last step provides an important consumer protection as it covers situations which do not neatly fit into the six preceding steps. If this last step were to be removed the other six steps become a "tick a box" checklist and weaken the requirement for advisors to reflect in an overall sense on the advice they are giving and whether it would as a whole be considered in the client's best interest. The inclusion of paragraph (g) provides an extra degree of security for consumers that the advisor is acting for them.

COTA has significant concern about the practice of providing scaled advice as we believe many people do not understand the implications of not obtaining comprehensive advice. The suggestion that scaled advice could be facilitated by allowing consumers and providers to agree on the scope of such advice assumes there is an equal understanding of the implications of receiving limited advice. This is probably not the case for many people who may accept being provided with scaled advice because it is cheaper or more readily available, rather than because they have made an objective assessment of their need for advice. Some examples of scaled advice underline our concerns, such as a couple agreeing to receive advice on planning for retirement, without reference to any debts, when they had two real estate mortgages

However we accept that ultimately consumers should have the right to choose the type of the advice they are receiving.

The requirement on the provider to clearly explain to the client the consequences of having scaled rather than holistic, comprehensive advice needs tightening up. It needs to include some measure that indicates the client has understood the information they have been given.

Opt in

The requirement for consumers to renew their arrangement with their adviser every two years is an important consumer protection. We have heard many stories of people who have no contact with their adviser but the fees keep flowing to the advisor from the product vendors. The business model of putting all the effort into signing people up for advice and then never reviewing or being in contact again should be a thing of the past with this particular element of the original FOFA package. Winding back this provision allows this model to flourish.

The opt in provision helps to ensure that providers keep in contact with consumers, have up to date contact details and should trigger periodic reviews. It should also encourage consumers to look at their financial goals and seek updated advice when circumstances change. It may also give them the impetus to shop around for advice and therefore promote competition and potentially reduce the cost of advice. It may also give an opportunity for people who have taken scaled advice to move to getting more holistic advice.

COTA does not accept that this opt in model is onerous on providers or that it carries high compliance costs. From our discussions with a number of people in the financial advice industry it would appear that current industry best practice is to do regular reviews, and discussion of fees is part of such a review. The opt in provision is another way of ensuring that providers are continuing to act in the best interests of their clients and optimising the advice.

Conflicted remuneration for general advice

The issue of commissions and other forms of conflicted remuneration is one that comes up all the time from older people. The abolition of conflicted remuneration for personal advice is one of the most important components of the package in terms of building trust in the financial planning industry. We are pleased that the Government moved away from its original proposal to allow conflicted remuneration on all general advice.

One of our concerns with allowing conflicted remuneration is that many people do not understand the distinction between personal and general advice and so may be susceptible to strong selling techniques, for example from bank staff. They may purchase products that are not appropriate for them but which they believe "were recommended by my bank". We do not believe the protections outlined in the bill around the type of product and distinguishing between provision of personal and general advice are strong enough

The CHOICE research which showed 81 per cent of consumers were concerned about being sold complex products by bank tellers reflects feedback COTA has had from its members on this issue.

COTA wants to see a robust professional financial advice industry further develop in Australia, in which the regular provision of independent and comprehensive advice becomes the norm not the exception. This is one component of improving financial literacy among people who for the first time, due to compulsory superannuation, will have significant retirement assets but who are not familiar with financial services and products. Allowing conflicted remuneration for general advice will tend to skew incentives toward the provision of such advice rather than independent, comprehensive, fee based personal advice.

RECOMMENDATIONS

COTA wants to see the development of a robust independent financial advice industry in which all Australians have confidence. We believe that the proposed amendments significantly wind back the provisions of FOFA, would result in considerable consumer detriment, and would significantly undermine consumer trust and confidence in the financial advice industry if implemented.

Therefore COTA is recommending that the Government does not proceed with the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014.