



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Corporations Amendment (Streamlining
of Future of Financial Advice) Bill 2014**

Second Reading

SPEECH

Wednesday, 19 March 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Wednesday, 19 March 2014
Page 2371
Questioner
Speaker Ciobo, Steven, MP

Source House
Proof No
Responder
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Mr CIOBO (Moncrieff—Parliamentary Secretary to the Treasurer) (10:02): I move:

That this bill be now read a second time.

Introduction

This bill makes a number of amendments to address the significant regulatory overreach imposed by the former government's Future of Financial Advice legislation, or FOFA as it is commonly known.

Unlike the opposition, the coalition government recognises the significant costs imposed on business and the broader community by poorly targeted, unnecessary and costly regulation.

That is why we have committed to reducing the compliance cost of red and green tape by \$1 billion per year.

This bill fulfils the government's election commitment to reduce the regulatory burden on the financial services industry.

The package of amendments contained in the bill will significantly reduce regulatory costs and provide greater certainty to industry in relation to their legal obligations.

This bill is aimed at clarifying the operation of FOFA to more effectively align the legislation with what was envisaged by the original parliamentary joint committee inquiry into financial products and services in Australia which was the genesis of the original FOFA legislation.

Research tells us that only 20 to 40 per cent of Australians seek financial advice. Australia's ageing population means it is vital that all Australians have access to affordable advice.

The amendments in this bill will place downward pressure on costs and ensure that consumers can better access affordable financial advice.

There has been a lot of scaremongering by the opposition, and others, that the government's amendments will weaken the consumer protections currently afforded under FOFA. This is not the case.

All of the essential protections of FOFA will stay, ensuring that consumers are protected from receiving poor financial advice.

The requirement that advisers must act in the best interests of their client will remain. Advisers will also need to provide appropriate advice, warn the client if advice is based on incomplete or inaccurate information, and prioritise the client's interest ahead of their own.

A ban on conflicted remuneration for benefits received in relation to personal advice will remain whilst allowing those advisers not providing personal advice to a client to more efficiently provide general advice.

Clients will also continue to receive information about the fees they are paying, including fee disclosure statements for clients who entered into arrangements post 1 July 2013.

The government has consulted extensively on the package of amendments. There is widespread support from industry stakeholders for these changes.

The package of amendments to FOFA will result in a significant reduction in the regulatory burden across industry and will assist both small businesses as well as larger institutional stakeholders.

The Department of the Treasury, in its regulation impact statement, estimated that the amendments would result in ongoing cost savings of approximately \$190 million per year with one-off implementation cost savings of around \$90 million.

The government believes that high quality, affordable financial advice should be within reach of all Australians and that a strong financial services industry, unburdened by excessive regulation, is essential to ensuring that Australians have access to affordable advice.

This package of amendments delivers these outcomes.

R repeals Day

The amendments to FOFA form part of the government's deregulation agenda.

The unnecessary and heavy regulatory burden imposed on industry has caused business costs to rapidly increase.

However, the government is taking action to make sure Australia's economy can make the most of opportunities and flourish in the years ahead.

We have a broad-ranging deregulation agenda, aimed at boosting productivity by reducing the regulatory burden on business.

Our goal is to restore certainty, predictability and effective and meaningful collaboration and consultation so that government policy serves to boost confidence, promote investment and encourage employment.

As part of the deregulation agenda, the government is overhauling the process for creating, implementing and reviewing new regulations.

An important part of the government's agenda is the setting aside of two parliamentary sitting days for repealing legislation each year.

This step will ensure that the parliament takes time each year to expressly consider the repeal of excessive, unnecessary or redundant legislation and any associated regulations.

Consistent with the government's view that the FOFA amendments will address the significant, and unnecessarily costly, regulatory overreach imposed by the former government, it is appropriate that they be considered as part of this first formal repeals day.

FOFA time line

Not only have opponents of these changes argued that the government has significantly weakened consumer protections; but there have also been calls that the amendments have been developed with undue haste.

It might therefore be interesting to note that these amendments were first identified by the coalition more than two years ago.

In February 2012, coalition members recommended 16 changes to FOFA in their dissenting report of the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the original FOFA bills.

The coalition then re-affirmed its commitment to make these changes in its July 2013 pre-election Policy to Boost Productivity and Reduce Regulation.

Since coming to power, the government has publicly canvassed these reforms on numerous occasions culminating in the announcement of the package by the Assistant Treasurer on 20 December 2013.

Draft regulations and legislation were then released for consultation in January 2014 for a three-week period, supplemented by a series of meetings with stakeholders.

Over 50 submissions to this latest consultation process were received from a range of stakeholders, including financial advisers, industry associations, consumer advocacy groups, training and consultant businesses, academics, law firms and individuals.

Key amendments

As I noted earlier, the government's changes to FOFA will reduce unnecessary regulatory burden on business and make advice more affordable without weakening consumer protections.

I wanted to briefly discuss several of the key changes being made by the government.

Best interests duty

One change which has attracted substantial attention is the amendment to the best interests duty.

Under the current law, advisers must satisfy seven steps in order to meet the best interests duty. The seventh step requires advisers to take any other step which would reasonably be regarded as being in the client's best interests. This step is also known as the 'catch-all' provision.

Industry has told us that the catch-all provision is unworkable as it creates uncertainty for advisers on how they can satisfy their best interests duty.

This bill seeks to remove this uncertainty from the law.

Let me be clear: this bill does not remove the requirement for advisers to act in the best interests of their clients.

Without the catch-all provision, the best interests duty will continue to ensure that an adviser is taking the necessary steps to properly consider the client's circumstances, to conduct reasonable investigations into products that would meet the client's objectives and needs, and to exercise judgment in formulating the advice for their client.

In addition, there are a number of other duties that an adviser must adhere to including that the advice is appropriate for the client and that the adviser must place their client's interests ahead of their own.

Scaled advice

Another important change to FOFA to support the delivery of affordable financial advice relates to better facilitating scaled advice.

Scaled advice refers to the provision of advice which is limited in scope to some extent; for example, advice on superannuation products rather than on a holistic financial plan.

We are told that the current legislation has resulted in increased costs and significant legal uncertainty for advisers, who do not feel that it truly allows them to provide scaled advice to their clients.

At the moment, an adviser may still need to investigate all of the client's relevant financial circumstances, even when advice is sought on a specific issue.

This bill will explicitly permit scaled advice. Advisers will be able to limit the scope of the advice to a particular area, as agreed with the client.

This reform will facilitate the ability for advisers to provide low-cost advice services and enable more consumers to access advice.

Importantly, the scaled advice provided on the specific topic must still have regard to the client's best interests and be appropriate for the client.

Removal of the opt-in requirement

FOFA currently requires all clients to renew their ongoing fee arrangement with their adviser every two years. This is known as the 'opt-in' requirement.

The requirement to obtain a client's agreement at least every two years to continue an ongoing fee arrangement adds an unnecessary layer of red tape.

This requirement offers very little consumer protection beyond that already afforded to clients and in any event, clients will still continue to have the ability to opt-out of their fee arrangements at any time.

Removing the opt-in requirement is an important step in winding back some of the unnecessary regulatory burden imposed on industry by the former government.

Fee Disclosure Statements

Fee disclosure is another area where FOFA went too far.

The government will remove the requirement to provide a yearly fee disclosure statement to clients who entered into their ongoing arrangement prior to 1 July 2013.

The requirement to prepare a fee disclosure statement for pre-1 July 2013 clients is expensive given that the age of many legacy systems often requires advisers to manually collate and review data.

Indeed, industry has estimated that it costs around twice as much to provide a fee disclosure statement to a pre-1 July 2013 client as it costs to provide one for a new client.

In removing this costly obligation, the government notes that these clients will continue to receive disclosure statements directly from superannuation trustees and product manufacturers that identify the fees paid to an adviser.

Of course, today's computer systems are specifically developed to prepare fee disclosure statements and can do so cost-effectively. As such, industry will continue to be required to provide post-1 July 2013 clients with a fee disclosure statement.

Over time, an increasing portion of clients will receive a fee disclosure statement.

General advice

The current ban on conflicted remuneration captures a far wider range of circumstances than was originally intended, and has resulted in significant compliance costs for industry.

For example, the ban captures employees involved in preparing and providing general advice (such as website designers or general information seminar providers) who are not in a product sales related area.

The government initially proposed to exempt all general advice from the ban on conflicted remuneration.

During the consultation process on the draft legislation, stakeholders raised concerns that consumers may not appreciate the difference between general and personal advice and that a broad exemption may create opportunities for regulatory arbitrage.

The government has listened to these concerns.

The bill limits the general advice exemption to employees only and under circumstances in which they have not provided personal advice to the client in the preceding 12-month period.

In addition ASIC has indicated that it will monitor the use of these provisions as they relate to general advice on complex products and will provide a report to the government in the next 12 to 18 months.

Life risk insurance

The last change I wanted to canvass today relates to life risk insurance arrangements.

This is another area in which the coalition government has responded to stakeholder feedback.

Through consultation on the proposed amendments and broader industry engagement, the government became aware that, while the industry as a whole is well capitalised and profitable, certain business lines within the industry are currently facing a number of challenges, which is raising concerns about the sustainability of some existing industry practices.

In light of these concerns, the government will undertake a separate process to engage with the life insurance industry on a broad range of issues affecting the sector.

In order to ensure that the industry's regulatory environment is not subject to further change while this process is underway, the government does not propose to progress any legislative amendments in this space at this time.

Associated Regulations

The government has signalled that it will implement the time sensitive measures contained in this bill through regulations to the extent legally possible.

The interim regulations (those made redundant by the legislative amendments) will be repealed following passage of the legislative amendments.

By adopting this approach, the government will provide certainty for all stakeholders on the timing of these amendments, thereby reducing regulatory costs and encouraging more affordable financial advice.

Consultation

I talked earlier about the extensive consultation undertaken by the coalition in the development of these amendments.

Whether it was through the initial deliberations of the parliamentary joint committee inquiry in 2009, the debate on the original FOFA bills in 2012, the release of the coalition's policy to boost productivity and reduce regulation in July 2013 prior to the election or the more recent consultation on the draft amendments, the government appreciates the input of all stakeholders.

The views received by all stakeholders have informed and shaped the final form of this bill.

I would like to thank all stakeholders for their valuable contribution into this process.

Conclusion

The bill fulfils the government's election commitment to unwind the regulatory overreach created by the FOFA legislation and provides certainty to the financial services industry.

This is just one of many steps the government is taking to repeal and amend costly and excessive regulations which are crippling Australian business.

In addition to listening to industry criticisms about regulatory costs and uncertainty with the current FOFA legislation, the government has also heard and addressed concerns raised by consumer advocates.

Advice will continue to be in the best interests of the client, conflicted remuneration structures that have the ability to influence advice will continue to be banned and consumers will continue to have access to high quality financial advice.

At the same time, unnecessary red tape which only serves to increase the costs faced by consumers will be removed.

I commend this bill to the House.

Debate adjourned.