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President Gerardine (Ged) Kearney
Secretary Dave Oliver

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

19 February 2014

Dear Sir/Madam

Proposed amendments to the Future of Financial Advice (FOFA) provisions in Part 7.7A of the Corporations Act 2001

The ACTU represents nearly 2 million working Australians and their families. Many more have their pay and conditions of employment shaped by the work of our affiliates.

The ACTU is a strong supporter of the FOFA reforms introduced by the previous government at the end of a long public debate, an exhaustive consultation process with industry and a comprehensive parliamentary process. A key reason for this support is that unions campaigned successfully for the introduction of compulsory superannuation contributions in 1992, as a result of which nearly every worker in Australia now has a superannuation account in relation to which they may seek to obtain financial advice.

Ensuring that the financial advice system protects the interests of consumers is a vital public policy issue. Appropriate consumer protections are necessary to support the goal of increased retirement income security and to maintain public confidence in the system.

In a context where government regulation requires that nearly every employee saves and invests for their future, but where the level of understanding across much of the population about how financial products and services operate is persistently low, it is incumbent on government to take steps to ensure that those who sell financial advice act in the best interests of their clients.

In the absence of such regulation public trust in the financial advice industry will remain low. Research shows that the majority of Australians do not trust financial advisors because they believe they prioritise their own interests over those of clients.[1]

[1] ASIC (2010) *Access to Financial Advice in Australia Report 224*, December.

This means savers and investors who may benefit from good quality advice may decide not to obtain it, resulting in poor quality choices and lower incomes than would otherwise be the case.

Furthermore, spending on advice that is not in clients' best interests, and for the availability of advice that is not actually utilised, represents an unproductive drain on our economy. It is wasted money that benefits financial advisors and the small number of companies whose products they promote, acting to divert expenditures away from other forms of consumption that would better help to support growth and employment in Australia.

In short, a failure to regulate financial advice appropriately disadvantages millions of individual savers and investors, and renders our national economy less efficient and productive.

The FOFA legislation that commenced on 1 July 2013 took a number of important steps in the direction of protecting the interests of millions of savers and investors, increasing public trust in the financial advice industry, and ensuring that the proportion of the national resources we collectively use to secure advice is allocated efficiently and effectively.

In particular, the FOFA legislation:

- Introduced a duty requiring that financial advice be in the best interests of the client;

- Prohibited sales commissions and other forms of conflicted remuneration for new clients;

- Required advisers to seek clients to opt-in to ongoing fee arrangements every two years;

- Prohibited sales commissions on life insurance inside super.

The amendments now being proposed by the present government will undo much of this positive change:

- Removing sections 961B(2)(g) and 961E of the Act will mean advisors will no longer be required to proactively consider the best interests of their clients;

- Exempting general advice from the ban on commissions will enable financial corporations to pay conflicted remuneration to advisors and other staff who recommend particular products via such advice;

- Removing the ‘opt-in’ requirement will mean advisors have more opportunities to charge for ongoing advice regardless of whether it is being demanded and delivered;

- Allowing commissions on insurance inside super will provide advisors with a strong incentive to recommend super products on the basis of the availability of such commissions rather than what is in the best interests of their clients.

Rather than seek to increase the efficiency, effectiveness and public standing of the financial advice industry, the government appears intent on implementing changes that will result in millions of Australians paying more for inappropriate advice. The financial benefits to advisors and the large financial corporations whose products they promote will be significantly outweighed by the costs to millions of Australian workers and our broader economy.

The ACTU therefore strongly opposes the government’s proposed changes to FOFA and recommends that the existing regulatory framework for financial advice remains in place.

We would welcome the opportunity to comment further on any of the issues raised in this letter.

Yours faithfully

Tim Lyons
Assistant Secretary