

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL
2011

DRAFT 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

Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
Act	<i>Corporations Act 2001</i>
ASIC	Australian Securities and Investments Commission
Bill	Corporations Amendment (Future of Financial Advice) Bill 2011
FOFA	Future of Financial Advice
Licence	Australian Financial Services Licence

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 make a number of changes to the application arrangements for the reforms. Under the revised arrangements, compliance with the FOFA reforms will be voluntarily from 1 July 2012 and mandatory from 1 July 2013.

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: The Government announced details of the revised application arrangements on 15 March 2012.

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

Chapter 1

Explanation of amendments

Outline of chapter

- 1.1 These amendments modify the application of the measures contained in Schedule 1 to the Corporations Amendment (Future of Financial Advice) Bill 2011 (the Bill).
- 1.2 Under the revised application arrangements, compliance with the requirements relating to ongoing fee arrangements will be voluntary from 1 July 2012 and mandatory from 1 July 2013.
- 1.3 The measures relating to the powers of the Australian Securities and Investments Commission (ASIC) and the anti-avoidance provisions will continue to apply from 1 July 2012. It is the intention that that anti-avoidance provisions will be able to apply to new arrangements entered into after 1 July 2012 without resulting in an unjust acquisition of property.

Application of ongoing fee arrangements requirements

- 1.4 The Bill proposes a new Division 3 in Part 7.7A of the *Corporations Act 2001* ('the Act'), introducing an obligation on licensees and representatives to renew ongoing fee arrangements with new clients (Subdivision B of Division 3) and enhanced disclosure of ongoing fee arrangements to existing clients (Subdivision C of Division 3).
- 1.5 The amendments propose changes to the application of Division 3 so that the requirements are voluntary from 1 July 2012 and mandatory from 1 July 2013. Under the amendments, the Division will apply from the 'application day' which is either (a) the day specified in a notice lodged with ASIC by a financial services licensee who is the recipient of the ongoing fees, or (b) if no notice is lodged, 1 July 2013.

Lodging notice with ASIC

- 1.6 The amendments to the Corporations Amendment (Future of Financial Advice) Bill 2011 propose a new Division 7 to Part 7.7A of the Act, introducing additional arrangements during the transition period.

1.7 Under the new Division 7, between 1 July 2012 and 30 June 2013 (the 'transition period'), a licensee may lodge a notice with ASIC that the obligations and prohibitions imposed under proposed Part 7.7A apply to the licensee and any person acting as a representative of the licensee. In addition, any other person subject to obligations under proposed Division 3 may also lodge a notice.

1.8 If a person elects to lodge a notice, Division 3 will apply from the date of lodgement. If the person does not lodge a notice during the transition period, the obligations will automatically apply from 1 July 2013.

1.9 If a licensee elects to lodge a notice with ASIC, all the prohibitions and obligations under Division 3 will apply to the licensee and all of the licensee's representatives. It is not possible for a licensee to elect to apply only a subset of Division 3 or only have Division 3 apply to a subset of its representatives. Individual representatives cannot lodge a notice, this must be done through their licensee.

1.10 Once a person has lodged a notice with ASIC, ASIC will publish a copy of the notice in the *Gazette*. In addition, the licensee must disclose to any person it has obligations to under Division 3 during the transition period that Part 7.7A applies to the licensee and its representatives. This is to ensure there is adequate information provided to clients in situations where a licensee elects to comply with Part 7.7A prior to the mandatory date.