



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

**Prepared by
National Policy Office**

September 2014

COTA Australia

Authorised by:
Ian Yates AM
Chief Executive
iyates@cota.org.au
0418 835 439

Prepared by:
Jo Root
National Policy Manager
COTA Australia
jroot@cota.org.au
02 6282 3436

COTA Australia
GPO Box 1583
Adelaide SA 5001
www.cota.org.au
08 8232 0422

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 believe they offered the potential to ensure financial advice was in the interest of the consumer. The FOFA package was a compromise between consumer protection and the needs of industry.

ISSUES

We put in a submission to the Committee when the Bill was first considered and appeared at one of the public hearings. Many of the provisions of this Bill were in the previous Bill and our position on them has not changed.

We are disappointed that the negotiations with the Palmer United Party and the Australian Motoring Enthusiasts Party has led to a Bill that significantly reduces consumer protections and does not address some of the fundamental concerns raised by many of the submissions to the previous Committee inquiry and reflected in the dissenting reports.

The additional amendments all address the Statement of Advice as outlined in the Explanatory Memorandum for the Bill i.e.:

- ***provide for additional disclosure and information in the Statement of Advice in relation to existing rights of the client and obligations of the provider of advice;***
- ***ensure that any instructions for further or varied advice from the client are: documented in writing; signed by the client; and acknowledged by the providing entity, or an individual acting on behalf of the providing entity;*** and
- ***require that the Statement of Advice be signed by both the provider of the advice and the client.***

In principle COTA has no objection to these amendments as they attempt to provide some additional safeguards for consumers.

However these amendments are deceptive for consumers because to obtain the government's support for them PUP had to agree to vote for removal of the fundamental consumer protections in the original FOFA legislation (even though these were a compromise). So these amendments would have had value if built on solid stone foundations, they are now severely diminished because they are built on the shifting sands resulting from removal of the catch all best interest protection and the allowance of conflicted remuneration and unprotected scaled advice.

We also have the following specific concern with the amendments around seeking further or varied advice. We support the provision in to require a written and signed copy of further or varied advice as this gives the consumer more control. However it seems to be significantly undermined by the provision outlined in 4.14 of the explanatory memorandum which states "the fact that the client does not sign a written copy of the instructions for that further or

varied advice is not evidence that the instructions have not been given.” We think many consumers would find this contradicts the intent and weakens the protection it might otherwise give them. This is not transparent and is likely to cause confusion.

RECOMMENDATIONS

COTA wants to see a robust independent financial advice industry in which all Australians have confidence. As we stated in our previous Submission and at the public hearing we believe that the original proposed amendments, later passed with PUP support, significantly wind back the provisions of FOFA, will lead to considerable consumer detriment and will significantly undermine consumer trust and confidence in the financial advice industry.

The amendments in this Bill do anything to change that position. They do not provide any additional consumer protections and so do not diminish the consumer detriment and will do nothing to help build trust in the financial advice industry because they create an impression of protection but are built on a severely diminished legal foundation.

Since the Committee initially reported, the Financial Systems Inquiry has released its Interim Report. In that report it makes a number of comments around the asymmetry of knowledge between consumers and providers of financial services and the need for improved standards for financial advice. We think many of its ideas are worth more consideration and that any changes to the FOFA requirements should be put on hold until the Inquiry brings down its final report and recommendations.

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

If the Government decides to proceed to make changes through regulation we recommend that there is adequate consultation on the draft regulations before they are implemented.