

Dissenting Report by Australian Greens

1.1 The Australian Greens do not support the recommendations of the majority report to the inquiry into the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014.

1.2 As canvassed by the report, the debate and consultation around FOFA has been ongoing since 2010. The FOFA reforms passed both houses with amendments and received royal assent on 27 June 2012.

1.3 The aim of the FOFA measures were to:

Improve the quality of financial advice while bundling trust and confidence in the financial advice industry through enhanced standards which align the interest of the advisor with the client and reduced conflicts of interest.¹

1.4 The Coalition Government has introduced amendments to this legislation arguing that compliance costs and unnecessary red tape are driving costs of financial advice too high.

1.5 Based on submissions and evidence in the public hearing, the Australian Greens believe that this push is being primarily driven by large financial services companies, banks and their lobby groups such as the Australian Bankers' Association and the Financial Services Council.

1.6 Evidence from Ms Tate representing the Australian Bankers' Association at the hearing indicated that they thought their lobbying had been successful:

Senator WHISH-WILSON: One thing I know corporations are really good at doing is managing risk. They are always forward-looking and they are always incorporating these things into their decision making. You have not changed your compliance, from what I am understanding now, because you obviously have an expectation that these laws are going to be changed for you.

Ms Tate: We do have an expectation, because we had bipartisan support prior to the last election that these things would happen. If they do not happen, it just means that expedited and fast changes need to be made.

Senator WHISH-WILSON: In what sense was it bipartisan? Well, tripartisan would be a better word to use. Was that formal? Do you have records of these conversations?

Ms Tate: With the former government, we had been talking with Treasury about having changes made via the regulations to sort this out. The current

1 See Replacement Explanatory Memorandum, Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, General Outline, p. 3.

government is on record publicly as saying that they were sorting these things out.²

1.7 Through their submissions and the evidence given at the hearing, some of the financial services industry indicated that they believed there were high costs to themselves and consumers from the existing FOFA reforms. Other groups such as CHOICE and National Seniors emphasised the importance of balancing any costs with the importance of protecting consumers.

1.8 In relation to conflicted remuneration on general advice, the Australian Greens support the view of the Financial Planning Association of Australia who stated at the public hearing that:

We are extremely wary of general advice business models which encourage a complementary sales model of financial product issuance and distribution. The conflicted remuneration which drives these business models poses a real risk of product mis-selling to retail investors and was rightly banned by the future of financial advice reforms.³

1.9 This is the view we support because of the necessary cultural changes that are underway in the financial services industry. The committee inquiry heard a number of witnesses outline the toxic culture that existed in some areas of the industry. Recent media stories and other Senate inquiries have also heard evidence of a culture that does not respect clients and their goals.

1.10 The Australian Greens believe incentives that lead to conflicted remuneration (including commissions and other elements of a bonus culture) should remain banned as an incentive which in some cases has driven illegal behaviour and unethical culture within some financial services organisations (notably larger financial organisations).

1.11 In relation to the other proposed amendments, the Greens spoke to a number of smaller financial planners prior to the inquiry and acknowledge that feedback on the suite of amendments was mixed. We acknowledge concerns by some smaller financial planners around 'potential' uncertainty from the "catch all provision" and higher compliance costs from various other FOFA reforms (such as opt-in clauses) but we feel that these need to be carefully weighted against expected benefits to both consumers of financial services and the financial services industry.

1.12 The Australian Greens believe it is difficult to gauge the accuracy of the projected costs put forward by the industry because the current legislation has not been in place for very long. Following a defined amount of time, an independent review of all potential costs (including compliance, lost business, opportunity costs, costs of advice, access to affordable advice) and potential benefits (increased trust in

2 *Committee Hansard*, 22 May 2014, p. 80.

3 Mr Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 May 2014, p. 19.

financial industry, increase in Australians accessing advice, increased provision of fee for service advice versus general advice and stability of the financial sector) should be conducted.

1.13 The view of some stakeholders was that not enough time had elapsed to make a judgement on the previous government's reforms at this stage.

1.14 The Committee should take the opportunity to make recommendations to the Government about the benchmarks and parameters for this review.

1.15 It was disappointing that during the conduct of the hearing the Government's line of questioning particularly targeted the conduct of Industry Super Funds, something that was outside the inquiry's scope.

1.16 The Greens feel that it is too early to consider such amendments that seem designed to protect the profits of larger financial services companies, given obvious dangers to consumers (reflected in very recent scandals) and the need to transition the financial services industry towards increased consumer confidence and improved uptake of financial services and towards the provision of personal advice over general advice.

Recommendation 1

1.17 The Senate should not pass the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014.

Recommendation 2

1.18 An independent review of the effectiveness of the legislation should be established after 5 years.

Senator Peter Whish-Wilson
Senator for Tasmania

