

Coalition Members Additional Comments

Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013

1.1 The Coalition strongly supports efforts to establish a deep and liquid corporate bond market. The Shadow Treasurer Joe Hockey has been calling on the government to take action to achieve that important economic and financial services policy objective since October 2010.

1.2 We note that it has taken the Treasurer nearly three years to bring forward legislation to help achieve a deep and liquid corporate bond market.

1.3 The Coalition will in the context of its Financial Systems Inquiry and as part of our commitment to reduce unnecessary red tape for business monitor the implementation of this legislation and pursue further improvements in government.

Enshrinement of terms financial planner/financial adviser

1.4 In relation to the proposed enshrinement of the terms financial planner and financial adviser in the Corporations Act, the Coalition notes that the government has attached this proposal to a completely unrelated Bill.

1.5 This change appears rushed, ad hoc and the government has not made the case this will make a positive difference.

1.6 The Coalition remains sceptical about this proposal though we will not oppose passage of the legislation.

1.7 Accountants are highly respected professionals without having the term 'accountant' enshrined in legislation.

1.8 Already now the only way anyone can provide financial advice is if they have an Australian Financial Services Licence (AFSL) through ASIC.

1.9 Providing financial advice without an appropriate AFSL is fraud now.

1.10 We cannot see how creating an additional offence achieves anything more in terms of consumer protection.

1.11 We also note that the terms ‘financial planner’ and ‘financial adviser’ can legitimately be used to describe business activities quite different to those envisaged by this legislation.

1.12 While the provisions are drafted on the assumption that these terms are only used in association with personal financial advice, they can equally be used in association with wholesale or corporate financial advice.

1.13 For example, an investment bank providing advice to the board and management of a corporate may reasonably describe itself as that corporate's ‘financial adviser’.

1.14 The following email exchange between Treasury and the committee secretariat further demonstrates the inanity and ineptitude of the government’s actions.

“The Secretariat’s understanding is correct.

To be able to use a restricted term, a person needs to hold an AFSL and provide personal advice in relation to designated financial products. Our earlier responses were meant to be read through the lens of the provision of *personal* advice but we could have made that clearer.

Specifically in relation to the Secretariat’s questions –

1a – licenced to provide personal advice to both retail and wholesale clients and therefore able to use a restricted term.

1b – not licenced to provide personal advice to either retail or wholesale clients and therefore unable to use a restricted term.

1c – not licenced to provide personal advice to wholesale clients and therefore unable to use a restricted term.

2 – Given that a relevant licence holder must be providing personal advice to be able to use the restricted term, a circumstance where only general advice was being provided would mean that the restricted term could not be used.

Questions from the Secretariat

The committee is seeking further clarification from Treasury about the interaction between **RG 2: 53** (ASIC Regulatory Guide 2) **and the bill 923C(2)** in relation to the application of restrictions on the terms ‘financial adviser’ and ‘financial planner’ as they might apply to persons working in the wholesale financial sector.

I asked you Question 1 this morning, but I include it here just to keep the questions and answers together.

The secretariat asked you Question 2 which is drawn from the Hansard record on 2 May and you replied that “The Bill does not restrict licensees providing advice to wholesale clients from using the restricted term.”

In addition one section in the Treasury answers to questions on notice stated that:

“the person is not providing advice to retail clients – able to call themselves a financial planner if licensed to provide advice to wholesale clients. The Bill does not restrict licensees providing advice to wholesale clients from using the restricted term.”

However, the committee is re-asking Question 2 with a specific additional element because the committee is keen to clarify **which categories** of licensees in the wholesale area are permitted to use the restricted terms, including whether those persons licenced to provide general financial product advice **Only** to wholesale clients would still be able to call themselves a financial adviser.

1. With specific regard to **RG 2: 53**, the secretariat is seeking clarification from Treasury that our understanding in the following **three** circumstances is correct:

If you are licenced to provide financial product advice, you would be operating under an AFSL and you **WOULD** be able to call yourself a financial adviser to both retail and wholesale clients;

If you are licenced to provide general financial product advice, you would be operating under an AFSL, but you would **NOT** be able to call yourself a financial adviser to either wholesale or retail clients because you are not authorised to provide personal financial advice; and

If you are licenced to provide general financial product advice **Only** to wholesale clients, you would be operating under an AFSL, but you would

NOT be able to call yourself a financial adviser to wholesale clients because you are not authorised to provide personal financial advice.

2. The secretariat would also like a specific answer from Treasury to the question posed by Mr Paul Fletcher about whether the person in question would be able to use the restricted terms **if** the person was licenced to provide general financial product advice **Only** to wholesale clients (RG 2:53(c)):

Mr FLETCHER: I suppose what I am wondering about is whether, for example, this provision would cover the business operations of an investment bank. For example, you can well imagine a CEO of a company that is getting advice about their capital allocation between debt and equity to say: 'This is Mr Smith from Goldman Sachs'—or Merrill Lynch or Deutsche Bank or any one of a whole bunch of other investment banks—'and he is my financial adviser'. I am wondering whether that language would now be prohibited if this legislation were to go through. (Hansard, 22 April 2013, Sydney, p. 25, question originally asked of the Association of Financial Advisers)".

1.15 Coalition members of the committee call on the government to draft the provisions of this Bill in a way such that legitimate use of these terms, by those who are not the intended target of this legislation, is not prevented.

1.16 We are not satisfied that the present drafting achieves this objective.

1.17 We are also concerned about the risk for further incremental increases in regulation as a consequence of this change in legislation.

1.18 The Coalition is committed to reducing unnecessary financial services red tape so we can put downward pressure on the cost of advice for consumers and help ensure that high quality advice is more available, accessible and affordable for all.

1.19 The Coalition is very supportive of efforts by organisations like the FPA, SPAA, AFA and others to lift professional and educational standards for financial planners/financial advisers.

1.20 We consider that such self-regulation by professional and industry associations is a more effective and more sustainable way to continue to lift standards in financial services related professions.

Are the terms to be enshrined the same or substantively different?

1.21 While most in the industry consider the two terms – ‘financial planner’ and ‘financial adviser’ – essentially interchangeable (ie only semantically different), other key stakeholders consider these terms to be substantively different. This was reinforced by the Financial Planning Association of Australia (FPA) testimony to the hearing of the Bill’s inquiry (Hansard, page 30):

Chair: ... In your view, is there a difference between financial advisers and financial planners?

Mr Rantall: That is a great question. We have a personal view around that as an organisation. We believe financial planners are more involved in a holistic approach to financial advice. We think financial advisers are more product advisers.

And:

...

Mr De Gori: I totally agree. I just want to put on the record that this is an issue that we are dealing with internationally, as Mark already mentioned. Other jurisdictions around the world are also dealing with the definition—the differences between 'financial adviser' and 'financial planner'. Some jurisdictions see them as interchangeable and others do not. This is a constant issue that we have been dealing with.

1.22 In fact, some of the key stakeholders in the industry (eg CPA Australia, Institute of Chartered Accountants Australia, and Deloitte – as Table 1 of page 5 of the FPA’s submission to the inquiry (Submission No. 5) attests) support the restriction of ‘financial planner’ but not ‘financial adviser’ – such are the differences perceived in the industry.

1.23 As such, there appears some disagreement within the industry as to whether the terms ‘financial planner’ and ‘financial adviser’ are, or can be, used interchangeably and, if not, where the dividing line between the two terms lies, and whether only ‘financial planner’ should be enshrined, or the more general term ‘financial adviser’ as well.

Regulation begets more regulation (and the need or demand for further fiddles)

1.24 Clearly, the dividing line in policy terms between what ought to be enshrined, and what ought not be, is difficult to agree upon, even within the industry.

1.25 Once a particular term(s) is enshrined, the industry will be open to future governments meddling with the definitions and/or introducing burdensome compliance arrangements to monitor any future requirements associated with the definition of a 'financial planner/adviser'.

1.26 In fact, some in the industry are already foreshadowing changes. According to Table 1 of page 5 of the FPA's submission, the Industry Super Network is quoted as saying that:

... the legislation should include regulation-making powers to provide flexibility in the future to identify additional requirements which would need to be met in order to make use of the restricted terms.

And:

... ensures it extends to the use of the terms when providing advice with online tools.

1.27 In addition, some have argued for mandatory sign-plating (eg of offices and business cards) to also be a requirement of this legislation (eg Association of Financial Advisers – page 21 of the hearing's Hansard).

1.28 The Coalition members of the committee caution that this should not be the first step towards more red tape and complexity – with the costs of business compliance being passed onto consumers for very little extra protection.

Concluding Remarks

1.29 Coalition members of the Committee make the following recommendations:

Recommendation 1:

That passage of the Bill be supported in relation to the corporate bonds-related measures and not be opposed in relation to the 'enshrinement provisions', while

giving a clear indication that any consequent incremental increases in related financial services red tape be resisted in the future.

Recommendation 2

That the government review the drafting of this legislation to ensure that the 'enshrinement' of the terms 'financial planner' and 'financial adviser' as proposed in this legislation does not prevent the current legitimate use of those terms by businesses involved in financial services unrelated to personal financial advice.

**Senator Sue Boyce
Deputy Chair**

Senator Mathias Cormann

Paul Fletcher MP

Tony Smith MP

