Parliamentary Joint Committee on Corporations and Financial Services

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

May 2013

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

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Abbreviations

ABA	Australian Bankers' Association
ACFS	Australian Centre for Financial Studies
AFA	Australian Financial Advisers
AFSL	Australian Financial Services Licence
AIST	Australian Institute of Superannuation Trustees
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
BBSW	Bank Bill Swap rate
CGS	Commonwealth Government Securities
COAG	Council of Australian Governments
Corporations Act	*Corporations Act 2001*
CPD	Continuing Professional Development
EM	Explanatory Memorandum
FHSA	First Home Saver Account
FOFA	Future of Financial Advice
FPA	Financial Planning Association of Australia
ICAA	Institute of Chartered Accountants Australia
IOSCO	International Organization of Securities Commissions
NAB	National Australia Bank
SPAA	SMSF Professionals' Association of Australia

Chapter 1

Introduction and conduct of the inquiry

1.1 On 21 March 2013, the House of Representatives Selection Committee referred the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013 to this committee for inquiry and report.

1.2 The bill proposes legislative amendments to the *Corporations Act 2001* (the Corporations Act) which include:

- streamlining the disclosure regime for simple corporate bonds;
- changing directors' civil liability provisions in respect to simple corporate bonds issued to retail investors;
- clarifying the application of directors' defences in respect to misleading and deceptive statements and omissions in disclosure documents relating to simple corporate bonds issued to retail investors; and
- restricting the use of the terms 'financial planner' and 'financial adviser'.

1.3 The bill has two distinct schedules which relate to:

- simple corporate bonds (Schedule 1); and
- the use of the expressions 'financial planner' and 'financial adviser' (Schedule 2).

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website inviting submissions from interested parties by 19 April 2013. The committee also wrote directly to a range of stakeholders to invite submissions.

1.5 The committee received 15 submissions, which are listed in Appendix 1. Seven of the submissions commented on Schedule 1, and 14 commented on Schedule 2.

1.6 The committee conducted a public hearing in Sydney on 22 April 2013. The hearing was structured so that the two schedules were dealt with separately. A list of the witnesses can be found in Appendix 2.

1.7 The committee also received answers to several questions on notice from Treasury and from the Financial Planning Association of Australia. These answers are contained in Appendix 3 and can also be viewed on the committee's website.

1.8 The committee thanks the individuals and organisations that provided evidence to the inquiry.

Financial impact

1.9 According to the Explanatory memorandum (EM), there is no financial impact from the bill.

Structure of the report

1.10 Given that the two schedules are distinct, chapter two of this report deals with Schedule 1 and the matters relating to simple corporate bonds. The amendments relating to the terms 'financial planner' and 'financial adviser' in Schedule 2 are covered in chapter three.

1.11 When references are made to the bill or support for the bill in chapters two and three, the reference is to Schedule 1 or 2 of the bill respectively, not to the bill in its entirety.

Chapter 2

Schedule 1—Simple corporate bonds

2.1 This chapter begins with an overview and background on the operation of Schedule 1 of the bill, followed by submitters' views on the proposed amendments.

2.2 As noted in the previous chapter, Schedule 1 amends the disclosure regime for simple corporate bonds, changes directors' civil liability provisions in respect to simple corporate bonds issued to retail investors, and clarifies the application of directors' defences in respect to misleading and deceptive statements and omissions in disclosure documents relating to offers of all securities.

2.3 Schedule 1, Part 1 of the bill would amend the Corporations Act by:

- introducing a new disclosure regime;
- facilitating parallel trading between wholesale and retail markets; and
- changing the civil liability provisions in respect to corporate bonds issued to retail investors.

2.4 Schedule 1, Part 2 of the bill proposes amendments to the 'reasonable steps' obligations relating to false or misleading statements.

Background and context of the amendments

2.5 The requirements for issuing corporate bonds into the retail market differ from those pertaining to the wholesale market in terms of both disclosure and liability provisions.

2.6 A retail corporate bond is a bond that is issued to investors that include retail clients. A wholesale corporate bond issue excludes retail investors.[1]

2.7 The wholesale market caters to sophisticated professional investors. Under the Corporations Act, listed entities are required to adhere to a regime of continuous disclosure[2] under Listing Rule 3.1 and 3.1A.

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1 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 4, http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/2011/Development%20of%20the%20Retail%20Corporate%20Bond%20Market%20Streamlining%20Disclosure%20and%20Liability%20Requirements/Key%20Documents/PDF/Retail_Corporate%20Bonds_DP.ashx (accessed 9 April 2013).

2 *Corporations Act 2001*, ss. 674(2).

2.8 Listing Rule 3.1 is given statutory force in subsection 674(2) of the Corporations Act and is policed by the Australian Securities Exchange (ASX) and the Australian Securities and Investments Commission (ASIC). Entities are liable for both criminal and civil penalties if they breach Listing Rule 3.1. Officers of the entity have civil liability for a breach of continuous disclosure under subsection 674(2A) of the Corporations Act. Criminal liability may also be incurred under section 1309 of the Corporations Act if an officer or employee 'gives, or authorises or permits the giving of, materially false or misleading information to ASX under Listing Rule 3.1'.[3]

2.9 Under the continuous disclosure regime, sophisticated investors are deemed to have sufficient information and possess sufficient resources to evaluate investments. Consequently, there is no requirement for an entity wishing to issue bonds into the wholesale market to prepare a disclosure document.[4]

2.10 By contrast, the Corporations Act currently requires that an entity wishing to issue bonds into the retail market prepare a full disclosure document or prospectus. A full prospectus must disclose:

> …all of the information that investors and their professional advisors may reasonably require to make an informed assessment of:
>
> - the rights and liabilities attaching to the securities offered; and
> - the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue the securities.[5]

2.11 The Corporations Act contains provisions relating to both civil and criminal liability in relation to false and misleading statements and omissions from documents. The civil liability regime is laid out in Chapter 6D of the Corporations Act and criminal liability is covered in Part 9.4 of the Corporations Act.

2.12 Section 728 of Part 6D.3 of the Corporations Act details the civil liability offences relating to a misleading or deceptive statement in, or omission from, a disclosure document.[6] Section 729 of the Corporations Act sets out those persons who may be liable for compensation in the event of a misstatement in, or omission from, a disclosure document. This includes all current and proposed directors of the entity. Furthermore, a person who suffers loss or damage because of a contravention in a disclosure document is able to claim compensation against a director for loss or

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3 ASX, ASX Listing Rules—Continuous Disclosure: An Abridged Guide, p. 1, http://www.asx.com.au/documents/about/abridged-continuous-disclosure-guide-clean-copy.pdf (accessed 24 April 2013).

4 *Corporations Act 2001*, ss. 708(10).

5 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 6.

6 *Corporations Act*, s. 728.

damage even if the director 'did not commit, and was not involved in, the contravention'.[7]

2.13 Sections 1308 and 1309 of Division 1 of Part 9.4 of the Corporations Act deal with offences that are subject to the *Criminal Code* relating to false or misleading statements[8] and false information, respectively.[9]

2.14 The Corporations Act provides defences in relation to both civil and criminal liability for a misstatement or omission in a disclosure document. Section 731 of the Corporations Act sets out the due diligence defence for prospectuses[10] and provides that:

> a person will not be liable because of a misleading or deceptive statement in a prospectus or an omission from a prospectus if a person can prove that:
>
> - they made all inquiries (if any) that were reasonable in the circumstances; and
> - after doing so believed, on reasonable grounds, that the statement was either not misleading or deceptive or that there was no omission from the prospectus in relation to a particular matter.[11]

2.15 In November 2009, the Australian Financial Centre Forum chaired by Mr Mark Johnson released a report titled *Australia as a Financial Centre: Building on our strengths*. The Johnson report identified the lack of liquidity and diversity in Australia's corporate bond market as a weakness in Australia's financial system. To assist in the development of the retail corporate bond market, the Johnson report recommended a reduction in regulatory requirements on corporate debt issuance to retail investors.[12] Reducing these regulatory requirements is the focus of the bill.

2.16 In December 2010, the Government announced the *Competitive and Sustainable Banking System* package. The Government identified the bond market as a key element of the long-term safety and sustainability of the financial system and pointed to the need to:

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7 *Corporations Act*, s. 729.

8 *Corporations Act*, s. 1308.

9 *Corporations Act*, s. 1309.

10 *Corporations Act*, s. 731.

11 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 6–7.

12 Australian Financial Centre Forum, *Australia as a Financial Centre: Building on our strengths*, November 2009, Recommendation 4.6, p. 96.

> develop a deep and liquid corporate bond market by launching the trading of Commonwealth Government Securities on a securities exchange, to reduce our reliance on offshore wholesale funding markets.[13]

Treasury consultation

2.17 In December 2011, Treasury released a discussion paper on the development of the retail corporate bond market in Australia. It considered the optimum disclosure and liability requirements.[14]

2.18 The Treasury discussion paper observed that when Australian companies wish to obtain funding, they either:

- access overseas debt markets (generally the United States, the United Kingdom and Europe);
- borrow from the Australian wholesale market;
- borrow from Authorised Deposit-taking Institutions; or
- issue equity (for example, shares or rights) or issue some combination of debt and equity (for example, hybrids or convertible bonds).[15]

2.19 Treasury noted that because medium and small companies rarely have access to foreign or domestic wholesale debt markets, they are restricted to bank borrowing or issuing equity. However, when overseas and wholesale markets tighten, raising funds becomes difficult. Treasury further noted that 'the United States, and to a lesser extent New Zealand and the United Kingdom, all have thriving retail corporate bond markets' and that Australian companies of all sizes would benefit from the development of the retail corporate bond market.[16]

2.20 Treasury also found that the current disclosure regime for retail bonds is 'costly and onerous' for companies,[17] and that the length and complexity of the document may deter retail investors from considering retail bonds.[18]

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13 The Hon. Wayne Swan, Treasurer, 'A Competitive and Sustainable Banking System', Media release, http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/091.htm&pageID=003&min=wms&Year=&DocType (accessed 12 April 2013).

14 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011.

15 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 2.

16 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 2.

17 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 2.

18 The Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 3.

Retail trading in Commonwealth Government Securities

2.21 Professional investors are able to trade in Commonwealth Government Securities (CGS) in over-the-counter markets.[19] In 2012, Parliament passed the Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012. The legislation was designed to enable retail trading in CGS depositary interests[20] on the public exchange in order to foster the development of the retail debt market, including corporate debt.[21] ASIC expected that retail trading of CGS would commence in April 2013.[22]

2.22 In his Second Reading Speech to Parliament on the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, the Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, noted that the retail market in CGS was a valuable precursor to the retail bond market:

> Having an active retail CGS is an important step in establishing a wider retail corporate bonds market by providing a visible pricing benchmark for retail investors in corporate bonds.[23]

ASIC Class Order 10/321 and 'vanilla' corporate bonds

2.23 The disclosure requirements for simple corporate bonds were modified prior to the current bill to incorporate a two-part prospectus.

2.24 In May 2010, ASIC introduced Class Order 10/321 specifying the criteria for 'vanilla' corporate bonds. A 'vanilla' bond is a low-risk bond with relatively

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19 The Australian Securities and Investments Commission (ASIC), 'ASIC finalises regulatory framework for retail trading of Commonwealth Government Securities', Media release 13-065, 27 March 2013, http://www.asic.gov.au/asic/asic.nsf/byheadline/13-065MR+ASIC+finalises+regulatory+framework+for+retail+trading+of+Commonwealth+Government+Securities?openDocument (accessed 26 April 2013).

20 ASIC defines depositary interests in CGS as beneficial interests in the underlying security that provide the holder with the same economic rights as if they were the legal holder of the CGS. The Australian Securities and Investments Commission (ASIC), 'ASIC finalises regulatory framework for retail trading of Commonwealth Government Securities', Media release 13-065, 27 March 2013.

21 *Explanatory Memorandum (EM)*, Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012, p. 5; *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 5.

22 The Australian Securities and Investments Commission (ASIC), 'ASIC finalises regulatory framework for retail trading of Commonwealth Government Securities', Media release 13-065, 27 March 2013.

23 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, *Second Reading Speech*, House of Representatives, 20 March 2013, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/8143f75e-7f37-4128-8d3b-e62455d99a32/0063/hansard_frag.pdf;fileType=application%2Fpdf (accessed 10 April 2013).

straightforward terms and conditions, and no unusual features. The committee heard from Dr Richard Sandlant, Manager of the Disclosure and International Unit at the Treasury, that 'vanilla' bonds were synonymous with simple corporate bonds.[24] In its Class Order, ASIC defined a 'vanilla' corporate bond as a debenture of a body that:

- is denominated in Australian dollars;
- has a fixed term of no more than 10 years, with the principal plus any accrued interest payable at the expiry of the term;
- may provide for redemption prior to the expiry of the fixed term in certain circumstances;
- has a floating rate of return that comprises a reference rate plus a fixed margin or a fixed rate of return;
- provides for interest to be paid periodically on specified dates;
- is not subordinated under the terms of the debenture to any debt owing to unsecured creditors of the body;
- is not convertible into another class of securities; and
- is issued at the same price as all other debentures issued under the prospectus for the debenture.[25]

Main provisions of Schedule 1: Part 1—Amendments relating to simple corporate bonds

Two-part prospectus for simple corporate bonds

2.25 The bill's amendments to the Corporations Act would provide a new disclosure regime for the offer of simple corporate bonds. This will require a body corporate to issue a two-part simple corporate bond prospectus consisting of a base prospectus and an offer-specific prospectus.[26] Although the Corporations Act will contain the framework and eligibility criteria for the two-part prospectus, the content and structure will be specified by regulations.[27]

2.26 The two-part prospectus includes a base part that is valid for three years and an offer-specific part that is valid for the period of the offer. The EM describes the structure of the two-part prospectus as follows:

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24 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

25 Australian Securities and Investments Commission (ASIC), *Explanatory Statement*, ASIC Class Order [CO 10/321], pp 5–6, http://www.asx.com.au/documents/professionals/co10-321.pdf (accessed 10 April 2013).

26 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 9.

27 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 7.

- Base: the base part would have a life of three years. The base prospectus will have general information about the issuer and the issue that is unlikely to change significantly over three years. Issuers will have the option of releasing a base prospectus in anticipation of making an actual offer of bonds. Issuers will not generally need to update the base document.
- Offer-specific: for each fund raising tranche, issuers will need to release a second document outlining the key details of the offer, that being the offer-specific prospectus. The offer-specific prospectus will have similarities with the cleansing notice regime for other offerings, whereby it will include a statement outlining that the issuer has complied with their continuous disclosure obligations. Issuers will need to disclose in the second part any matters material to a consideration of an investment in the bonds that have not already been the subject of continuous disclosure.[28]

2.27 Under the proposed section 713A, the bill sets out the criteria that simple corporate bonds must meet in order to qualify for the new streamlined disclosure regime:

- The securities must be debentures as defined in section 9 of the Corporations Act. ***[Schedule 1, item 22, subsection 713A(2)]***
- The securities must be quoted on a prescribed financial market. ***[Schedule 1, item 22, subsections 713A(3) and (4)]***
- The securities must be denominated in Australian currency. ***[Schedule 1, item 22, subsection 713A(5)]***
- The fixed term of the securities cannot exceed 10 years. ***[Schedule 1, item 22, subsection 713A(6)]***
- The principal and any accrued interest must be repaid to the holder at the end of the fixed term of the security. ***[Schedule 1, item 22, subsection 713A(7)]***
- The interest rate must be either a fixed or floating rate. A floating rate is comprised of a reference rate (to which the issuer has no direct control) and a fixed margin set by the issuer. ***[Schedule 1, item 22, subsection 713A(8)]***
- The securities can be subject to an increase in the fixed rate or the fixed margin in respect to the interest payable but cannot be subject to a decrease in the interest payable. ***[Schedule 1, item 22, subsections 713A(9) and (10)]***
- Interest payments under the security must be paid periodically and cannot be deferred or capitalised by the issuing body. ***[Schedule 1, item 22, paragraphs 713A(11)(a), (b) and (c)]***
- The face value for the security cannot exceed $A1000. ***[Schedule 1, item 22, subsection 713A(12)]***

28 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 8.

- Securities can only be redeemed prior to the end of the fixed term in specified circumstances. ***[Schedule 1, item 22, subsection 713A (13)]***
- Debt to security holders is not subordinated to debts to unsecured creditors. ***[Schedule 1, item 22, subsection 713A(14)]***
- The securities must not be able to be converted into another class of securities. ***[Schedule 1, item 22, subsection 713A(15)***
- The price payable for the securities must be the same for all persons who accept the offer. ***[Schedule 1, item 22, subsection 713A(16)]***
- The body offering the securities must have continuously quoted securities, or is a wholly owned subsidiary of a body corporate that has continuously quoted securities. ***[Schedule 1, item 22, subsections 713A(17) and (18)]***
- The most recent auditor's report on the most recent financial statements must not have been modified. ***[Schedule 1, item 22, subsections 713A(19) and 713A (20)]***[29]

2.28 A two-part prospectus must be lodged with ASIC. ASIC has the power to determine whether the proposed offer meets the criteria for a simple corporate bond.[30]

2.29 In order to streamline the process for issuers, reduce the length of the offer-specific prospectus and increase its readability, information in the offer-specific prospectus can be incorporated by cross-reference to the information contained in the base prospectus lodged with ASIC.[31]

2.30 A supplementary or replacement document may be lodged with ASIC if the issuer becomes aware of a misleading or deceptive statement in, or an omission from, the two-part prospectus.[32]

Parallel trading of simple corporate bonds

2.31 Under the bill, simple corporate bonds can be issued directly into the retail market through the ASX. However, there are also provisions to allow simple corporate bonds to be traded on the ASX as depositary interests in a similar fashion to the way foreign shares and CGS are currently traded on the ASX.

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29 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 11–14; *Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013*, pp 7–12.

30 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 14.

31 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 18.

32 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 19.

2.32 In order to facilitate parallel trading of simple corporate bonds in the wholesale and retail markets, the bill proposes the same depositary interests mechanism that already exists for retail trading of CGS. Depositary interests 'provide retail investors with a beneficial ownership in an underlying security' and would allow simple corporate bonds in the wholesale market to be offered to retail investors.[33]

2.33 A depositary nominee—that is, the person who issues beneficial interests to another party—can only issue these interests with the agreement of the issuing body. The disclosure obligation is that required by the issuer of the simple corporate bond (the underlying asset) in the two-part prospectus.[34]

2.34 The EM notes that in addition to amending the Corporations Act to facilitate parallel trading of simple corporate bonds, further regulatory changes will be needed to ensure that all relevant requirements can be met.[35]

The removal of 'deemed liability' for directors

2.35 The EM notes that section 728 of the Corporations Act:

> prohibits a person from offering securities under a disclosure document if, among other things, there is a misleading or deceptive statement, an omission of required material, or a new circumstance has arisen.[36]

2.36 A contravention of subsection 728(1) of the Corporations Act is a criminal offence by an issuer if the contravention is materially adverse to an investor.[37]

2.37 Section 729 of the Corporations Act currently establishes 'deemed liability', applying liability to all directors of the relevant body, regardless of their involvement, for misleading or deceptive statements and omissions in a disclosure document:

> If there is an offer of securities and a person suffers loss or damage because of a misleading or deceptive statement, an omission of required material, or where a new circumstance had arisen in a disclosure a document, the person

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33 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 9.

34 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 10.

35 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 11.

36 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 20.

37 Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 20.

> has the right to recover compensation for that loss or damage from a range of persons including each director of the body making the offer.[38]

2.38 The Treasury discussion paper noted that the amendments provide specific criteria for simple corporate bonds and therefore, 'it may be appropriate to remove directors' deemed liability for retail corporate bonds'.[39] Treasury has noted that:

> Removing directors' deemed liability would be consistent with Council of Australian Governments (COAG) developments, noting that COAG has agreed there is a case for reform to promote a consistent and principled approach to the imposition of personal criminal liability for corporate fault (similar considerations apply to civil liability).[40]

2.39 The bill proposes to limit the liability of directors with regard to the two-part prospectus for simple corporate bonds such that liability for compensation does not automatically include directors unless they are involved in the prohibited actions:

> [F]or an offer of simple corporate bonds under the 2-part simple corporate bonds prospectus, the range of persons to which the person has the right to recover compensation for a loss or damage does not include directors or proposed directors of the body making the offer (and, if the body is a wholly owned subsidiary of a body corporate, does not include directors or proposed directors of that body corporate) unless the director or proposed director is involved in, among other things, the misleading or deceptive statement, the omission of required material, or where new circumstances have not been reflected in the disclosure document as required by the Corporations Act.[41]

Part 2—Amendments relating to false or misleading statements

Reasonable steps obligations

2.40 Part 9.4 of the Corporations Act relates to offences. Section 1308 in Part 9.4 sets out offences relating to 'false or misleading statements' made by a person.[42]

2.41 In a joint media release, the Treasurer, the Hon. Wayne Swan MP, and the Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, stated

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38 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 20–21.

39 Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 20.

40 Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011, p. 20.

41 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 21.

42 *The Corporations Act 2001*, s. 1308.

that the bill would amend the Corporations Act to 'clarify the defences provided in respect to director's liability that apply to all offers of securities'.[43]

2.42 Part 2 of Schedule 1 of the bill proposes adding 'reasonable steps' defences for directors in Part 9.4 of the Corporations Act. The 'reasonable steps' provisions of the bill are as follows:

- A statement or information was not false or misleading in a material particular:
  - If the person proves that all inquiries (if any) that were reasonable in the circumstances to make were made, and after making those inquiries the person believed on reasonable grounds that the statement or information was not misleading in a material particular. ***[schedule 1, items 52 and 53, subsections 1308(10) and 1309(7)]***
  - If the person proves that they relied on information provided to them by somebody other than a director, employee or agent of the body (if the person is a body) or someone other than an employee or agent of the individual (if the person is an individual) and the reliance placed on the information by the person was reasonable in the circumstances. ***[schedule 1, items 52 and 53, subsections 1308(12) and 1309(9)]***
- The information in a document did not omit or have omitted from it any matter or thing that without which the document would be misleading or deceptive in a material respect:
  - If the person proves that all inquiries (if any) that were reasonable in the circumstances were made, and after making those inquiries the person believed on reasonable grounds that there was no such omission. ***[schedule 1, item 52 , subsection 1308(11)]***
  - If the person proves that they relied on information provided to the person by somebody other than a director, employee or agent of the body (if the person is a body), or someone other than an employee or agent of the individual (if the person is an individual), and the reliance placed on the information by the person was reasonable in the circumstances. ***[schedule 1, item 52, subsection 1308(13)]***
- The information in the document did not omit or have omitted from it any matter or thing that would render the information in the document misleading in a material particular:
  - If the person has made all inquiries (if any) that were reasonable in the circumstances to make, and after making those inquiries the person believed on reasonable grounds that there was no such omission. ***[schedule 1, item 53, subsection 1309(8)]***

43 The Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer, and the Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, 'Retail corporate bonds legislation', Joint media release, Canberra, 20 March 2013, http://billshorten.com.au/retail_corporate_bonds_legislation (accessed 7 May 2013).

- If the person proves that they relied on information provided to the person by somebody other than a director, employee or agent of the body (if the person is a body), or someone other than an employee or agent of the individual (if the person is an individual), and the reliance placed on the information by the person was reasonable in the circumstances. ***[schedule 1, item 53, subsection 1309(10)]***[44]

Submitter views on Schedule 1

2.43 The committee received seven submissions addressing Schedule 1 of the bill, with two public submissions and one confidential submission making specific comments. All the submissions supported the general thrust of the amendments to develop the retail corporate bond market.

2.44 The committee heard evidence from Treasury that the retail bond market is currently quite small, with, for example, only 0.7 per cent of self-managed super fund assets being held as debt securities in September 2012.[45]

2.45 Treasury also noted that while Australian investors are active in the equity market, investors could benefit from the development of the retail debt market because it would allow them to diversify their exposure by including lower-risk and less-volatile debt securities, such as bonds, in their portfolios. This was seen as particularly important for retirement-age Australians, particularly with the increase in life expectancy over recent decades.[46]

2.46 Treasury has stated that it expects the initial market for retail simple corporate bonds to comprise older Australians and the trustees of self-managed super funds looking to diversify into relatively low-risk stable assets:

> [T]he type of investors who will be attracted to simple corporate bonds are likely to be older Australians and self-managed super fund trustees who are looking to manage longevity risk and looking for long-term, low risk, relatively stable sources of income that will diversify their holdings against equities and other, perhaps more volatile or higher-risk assets in their portfolios.[47]

2.47 Treasury also saw that developing the retail bond market would alter the structure of the market and facilitate bank lending to smaller domestic customers:

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44 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 21–22.

45 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 9; see also SMSF Owners' Alliance, *Submission 13*, p. 1.

46 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 9; see also SMSF Owners' Alliance, *Submission 13*, p. 1.

47 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 13; see also SMSF Owners' Alliance, *Submission 13*, p. 1.

> Growing the retail bond market will help to reduce reliance on offshore wholesale funding markets for raising corporate debt and free-up bank balances for lending to the domestic market, particularly small businesses.[48]

2.48 Similarly, industry foresaw benefits to corporate entities, investors and businesses:

> A deeper and more liquid retail corporate bond market has benefits for corporates, businesses and investors. For corporates, it will broaden their funding sources and help facilitate their growth aspirations. For investors, a fully functioning retail corporate bond market will offer investors more choice and an opportunity to diversify their investments. Facilitating this funding will free up the banks' balance sheets to continue supporting SMEs, who traditionally do not have the same access level of access to capital markets as their larger counterparts.[49]

2.49 The committee received evidence about the possible reasons why the retail market in corporate debt in Australia was underdeveloped. Mr Steve Lambert, Executive General Manager of Debt Markets at National Australia Bank (NAB), agreed with the committee that there are fewer debt issues and fewer debt instruments available compared to the number of equities in the market, and that as a retail investor, it is more difficult to purchase small amounts of debt (for example, $A1000–2000) than it is to purchase the equivalent amount of shares.[50]

2.50 However, Mr Lambert also pointed to the complexity of prospectus requirements and director liability as other key impediments to developing the retail corporate bond market, and as reasons why so far, only one entity has taken advantage of ASIC Class Order 10/321 to issue 'vanilla' corporate bonds.[51]

Prospectus requirements

2.51 The submissions that commented specifically on Schedule 1 all supported the amendments regarding the proposed two-part prospectus insofar as it aims to make the documentation process for issuing corporate bonds no more onerous than the process for issuing equities. However, some submitters made comments regarding various aspects of the proposed two-part prospectus. Of particular note were suggestions for the use of term sheets for simple corporate bonds, and the use of a two-part prospectus for more complex corporate bonds.

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48 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 9.

49 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p 1.

50 See the exchange between Mr Paul Fletcher MP and Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, pp 4–5.

51 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, pp 2 and 5.

Use of term sheets for simple corporate bond offers

2.52 The bill proposes a two-part prospectus comprising a base disclosure document and offer document for the issue of simple corporate bonds.

2.53 However, some submitters noted that while a base disclosure document and offer document are appropriate for 'corporate bonds with more unusual or complex features', a base document and a two-page term sheet should be sufficient for those bonds which meet the criteria of a simple corporate bond:

> For Simple Corporate Bonds which meet the criteria stated in the legislation, we propose a base disclosure document which allows information to be incorporated by reference from ASIC, as well as a two-page term sheet outlining the key characteristics of the bond, rather than an offer document.[52]

2.54 Mr Lambert explained how the base document and term sheet currently operate in the wholesale market:

> Typically in the wholesale market a large issuer will have an offering circular or an offering document which would have all of the base details upon which that series of bonds could be issued under. It has all of the details; it has everything that they will need. You need both documents; you need to have reference to that. And then every time you do another issue or another transaction, that is done under an offering circle or a term sheet, which is basically a couple of pages and which has all of the details of that specific issue. You need [to] read both together. Rather than every time you do a new deal doing quite a fat document—you have already done the fat one once—you just do a skinny one for every subsequent issue. That is probably the best way to think about it.[53]

2.55 NAB provided the committee with recommendations that it made in its submission to the Treasury discussion paper on retail corporate bonds regarding the information that should be included in a term sheet and a two-part prospectus.[54]

Use of a two-part prospectus for more complex corporate bonds

2.56 Mr Lambert also expressed a preference for more complex offers that do not meet the criteria for an offer of simple corporate bonds (for example, a bond issue with a life of greater than 10 years) to still be eligible for a two-part prospectus that would consist of a base document and an offer document (as opposed to a two-page

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52 National Australia Bank, *Submission 6*, [pp 2–3]; see also Australian Bankers' Association, *Submission 14*, p. 3.

53 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p. 3.

54 National Australia Bank, *Submission 6*, NAB response to Australian Government discussion paper February 2012, Appendices 1 and 3.

term sheet). Being eligible for a two-part prospectus would obviate the need for a corporate entity to prepare a full prospectus with every subsequent bond issue and would therefore make it easier for corporate issuers to meet the legislative requirements.[55]

2.57 In a prior response to a Treasury discussion paper[56] that canvassed various options that would allow more complex bonds to be included under a simplified two-part prospectus regime, NAB proposed that terms longer than 10 years should be permitted under a two-part prospectus 'provided there is clear and adequate disclosure'.[57]

2.58 NAB also suggested that subordinated corporate bonds should be permitted, but only with a two-part prospectus that 'clearly outlines the capital structure and the ranking of the bonds within that structure'.[58] Mr Lambert confirmed that NAB is comfortable with the fact that the bill does not allow subordinated bonds to qualify as simple corporate bonds.[59]

2.59 However, NAB would not recommend allowing deferral of interest because 'it is inconsistent with the view that corporate bonds provide a regular and stable income stream', unless it was restricted to hybrid issues and clearly disclosed.[60]

2.60 NAB pointed out that investor confusion about the nature of the bond issue should be reduced by having the distinction between a two-page term sheet for simple corporate bonds and a more detailed offer document (of between 10 and 20 pages) for more complex corporate bonds.[61]

Contents and length of the offer document

2.61 An offer document would contain 'key details of the transaction as well as any matters material to consideration of the investment which has not been the subject of

55 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p. 3.

56 Treasury, *Discussion paper: Development of the retail corporate bond market: Streamlining disclosure and liability requirements*, December 2011.

57 National Australia Bank, *Submission 6*, NAB response to Australian Government discussion paper February 2012, [p. 6].

58 National Australia Bank, *Submission 6*, NAB response to Australian Government discussion paper February 2012, [p. 6].

59 See the exchange between Mr Paul Fletcher MP and Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p. 5.

60 National Australia Bank, *Submission 6*, NAB response to Australian Government discussion paper February 2012, [p. 7].

61 National Australia Bank, *Submission 6*, [p. 3].

continuous disclosure'.[62] However, Mr Lambert pointed to the importance of restricting the offer document to a reasonable length (between 10 and 20 pages) in order that it would actually be read carefully by potential investors and that practical disclosure of key elements could occur.[63]

2.62 In noting that the content requirements for the disclosure documents associated with simple corporate bonds have not yet been released, and given that as at 22 April 2013 only one entity had taken advantage of ASIC Class Order 10/321 relating to the issue of 'vanilla' corporate bonds, the Australian Bankers' Association (ABA) requested that the government consult with industry over the specific content requirements for the new disclosure regime.[64]

2.63 Treasury confirmed that the disclosure regime for simple corporate bonds will be more streamlined than the regime under ASIC Class Order 10/321 relating to 'vanilla' corporate bonds, and that consultation with industry is occurring:

> Treasury is currently engaging in targeted consultation with key stakeholders to develop content requirements for the disclosure documents that will strike an appropriate balance between streamlining disclosure for issuers, and ensuring that the documents are comprehensible and effective to retail investors. Treasury will publicly consult on the draft regulations to ensure the content requirements achieve these goals.[65]

2.64 Treasury expects to release the draft regulations by July 2013.[66]

Life of the base document

2.65 The ABA and NAB proposed a five-year life for the base document in order to facilitate more repeat issuances, rather than the three-year life proposed in the legislation.[67] NAB stated that this finding was 'based on direct feedback we have received from potential issuers of Simple Corporate Bonds from corporate Australia'.[68]

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62 National Australia Bank, *Submission 6*, [p. 3].

63 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p. 3.

64 Australian Bankers' Association, *Submission 14*, pp 3–4.

65 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

66 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 9.

67 Australian Bankers' Association, *Submission 14*, p. 3; National Australia Bank, *Submission 6*, [p. 3].

68 National Australia Bank, *Submission 6*, [p. 3].

Eligibility criteria for simple corporate bonds—ranking, tenor, maximum price, minimum scale requirements, and mandatory two-part prospectus

2.66 There was support from the ABA and NAB for the provision that simple corporate bonds cannot be subordinated to any other unsecured creditors, effectively meaning that simple corporate bonds 'rank at least equally with all other unsubordinated and unsecured debt obligations of the issuer'.[69] The ABA notes this provision is consistent with the provisions for 'vanilla' corporate bonds in ASIC Class Order 10/321 and is 'in line with the established Australian wholesale bond market'.[70]

2.67 The ABA was critical of the proposal to limit the life of simple corporate bonds to 10 years.[71] NAB felt that while a bond issue with a tenor greater than 10 years would not qualify as a simple corporate bond, it should still be eligible to qualify for disclosure under a two-part prospectus regime.[72]

2.68 Noting that ASIC Class Order 10/321 relating to 'vanilla' corporate bonds does not prescribe a maximum price for simple corporate bonds, the ABA also regarded the inclusion of the $A1000 maximum bond price in the bill as 'unnecessary and problematic'.[73]

2.69 Although NAB did not express a strong view on the maximum bond price for simple corporate bonds, Mr Lambert noted that a maximum bond price of $A1000 could stimulate the market by giving retail investors greater choice and allow investors to more easily diversify their portfolio and thereby reduce risk.[74]

2.70 NAB welcomed the clarification that the $A50 million minimum subscription for an offer-specific prospectus only relates to the initial bond issue, and not to subsequent issues.[75]

2.71 Treasury noted that the value of having a minimum scale requirement of $A50 million was that it would effectively limit bond issuances under the simple corporate bonds regime to the top 200 companies in Australia and would therefore

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69 Australian Bankers' Association, *Submission 14*, p. 2; see also the exchange between Mr Paul Fletcher MP and Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, p. 5.

70 Australian Bankers' Association, *Submission 14*, p. 2.

71 Australian Bankers' Association, *Submission 14*, p. 2.

72 See the earlier section in this chapter titled 'Use of a two-part prospectus for more complex corporate bonds', and National Australia Bank, *Submission 6*, [pp 2–3].

73 Australian Bankers' Association, *Submission 14*, p. 2.

74 Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank, *Committee Hansard*, 22 April 2013, pp 5–6.

75 National Australia Bank, *Submission 6*, [p. 2].

'ensure that the retail corporate bonds that are issued under this regime are high quality'.[76]

2.72 Following questions from the committee, Treasury stated that the two-part prospectus for simple corporate bonds was a mandatory requirement because allowing both single and two-part prospectuses could create confusion, whereas ensuring a consistent standard in the market would build investor confidence. Furthermore, Treasury wanted to set a market standard where investors would get used to looking for and reading both parts of a prospectus:

> One of the challenges with the two-part prospectus is that we want people who receive the issue specific, the second part of the prospectus, to also look at the base. Because it is not a summary of the base; it is the key information about the issuance, about that tranche. So it is important that retail investors receive both documents and see both documents as being the disclosure in combination.[77]

Continuous disclosure

2.73 The ABA requested more clarity on how the continuous disclosure regime for listed entities would interact with the new regime for simple corporate bonds. The ABA also submitted that documents issued under the continuous disclosure regime that are subsequently incorporated by reference in a disclosure document 'should not be captured by the prospectus liability regime'.[78]

Liability regime

2.74 The committee received only one submission—from the ABA—that made specific comments on the proposed changes to directors' civil liability and the reasonable steps obligations.

2.75 The ABA argued that modelling retail disclosure processes and documents on the wholesale market would remove the onus of liability for ensuring accurate disclosure from directors and locate it with management, thereby reducing the costs associated with issuing retail corporate bonds:

> This would enable processes and documentation adopted by the wholesale market to be used and create greater consistency between liability regimes by allowing due diligence to be dealt with at a management rather than

76 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 13.

77 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 13.

78 Australian Bankers' Association, *Submission 14*, p. 4.

> board level, thereby reducing the costs with debt capital raisings in the retail market.[79]

2.76 The ABA supported the proposal to reduce the liability standard on directors in respect to retail corporate bonds offered under a two-part prospectus, but drew attention to the possibility that, in practice, both civil and criminal liability may still apply to directors:

> The ABA supports the Government's proposal to reduce the liability standard on directors in respect to retail corporate bonds by removing strict liability for directors named in (a defective) two-part prospectus as a proposed director under section 729 of the *Corporations Act 2001*. As a result directors will only have civil liability for a defective two-part prospectus if personally 'involved' in the defective statements. 'Involvement' of directors in a prospectus is inferred from the continued requirement for all of the directors of an issuing company to consent to the issue of a two-part prospectus. Directors, therefore, also remain criminally liable under sections 1308 and 1309 of the *Corporations Act 2001* if a prospectus is false or misleading unless a director can prove they have made reasonable enquiries, and after doing so, believed on reasonable grounds that the prospectus was not defective (due diligence defence) or placed reasonable reliance on information provided by other people (reasonable reliance defence).[80]

2.77 Given that the ABA does not believe the bill has addressed the need for a director to be personally involved in the due diligence process, the ABA argues that despite the amendments in the bill, there would still be 'a greater legal risk, administrative complexity and more costly burden involved in issuing retail corporate bonds than wholesale corporate bonds'. Consequently, the ABA maintains that the regulatory bias that causes an entity to favour bond issues into the wholesale market has not been dealt with by the bill.

Treasury response

2.78 The committee received evidence from Treasury that removing directors' deemed civil liability for a two-part prospectus for simple corporate bonds does in fact remove the need for directors to carry out due diligence on that issue:

> Under the existing law of the Corporations Act directors can generally be sued for damages for prospectuses which contravene the prohibition against misleading or deceptive statements or omissions, even if they are not involved in the particular contravention. The bill relieves their liability unless they are actively involved in the contravention, so directors cease to have deemed civil liability. They continue to have involvement of a civil liability but the due diligence defences remain available.

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79 Australian Bankers' Association, *Submission 14*, p. 3, fn. 3.

80 Australian Bankers' Association, *Submission 14*, p. 4.

…

It means that they do not have to conduct due diligence for all of the processes in developing the prospectus. It will reduce and relieve some of the compliance burden in developing prospectuses because they no longer have deemed liability for any contraventions in the prospectus unless they were personally involved or knew of the contraventions.[81]

2.79 Dr Sandlant explained what involvement-based civil liability for directors entailed:

If they know of or were involved in approving information in the prospectus which is a contravention of the requirements in the Corporations Act against misleading and deceptive statements or omissions, then they still have liability for that involvement. But they do not have liability on reasonable grounds for omissions or misstatements which might have been made in the prospectus development process by officers who are working in their business.[82]

2.80 These points were reiterated by Treasury in a written response to the committee, along with an explanation of what would constitute evidence for involvement in material misstatement or omission:

Directors will no longer be subject to the deemed civil liability for offers of simple corporate bonds. As such, directors will not be 'deemed' liable for a contravention in respect to misstatements in, or omissions from, disclosure documents provided for simple corporate bond offers. However, any person 'involved' in a contravention will continue to face liability for that contravention.

The amendments in the Corporations Amendments (Simple Corporate Bonds and Other Measures) Bill 2013 (the Bill) provide that a director will be liable for a misstatement in, or omission from, a disclosure document if they are 'involved' in the misstatement or omission. In addition, directors will continue to be liable if they become aware of a misstatement or omission and fail to bring it to the attention of the person making the offer.

Involved (as defined in section 79 of the Corporations Act) means that the person has:

- aided, abetted, counselled or procured a contravention; or
- induced a contravention; or
- been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to a contravention; or
- conspired with others to effect a contravention.

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81 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

82 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

> Relevant evidence to establish this contravention will be evidence which, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of a fact which establishes whether a director was involved in a misstatement or omission, consistent with what constitutes relevant evidence under general law.[83]

2.81 Dr Sandlant also noted that directors would incur criminal liability if 'they have broken any relevant laws in relation to their duties as directors, other relevant laws as well as the civil liability'.[84]

2.82 In response to committee concerns about the safety of a product that did not incur deemed civil liability on the part of directors, Dr Sandlant observed that director liability had not been completely removed, and that simple corporate bonds were, by definition, a low-risk product:

> There are two points to make. One is that directors still have involvement based civil liability and criminal liability. So liability has not been completely removed, it has just been made, I guess, more rational or a rebalancing of the due diligence process to make it more cost effective for, and to encourage issuance of, corporate bonds. That is one factor—the liability has not been removed completely, it has just been streamlined, if you like. The other factor is that because the bill requires simple corporate bonds to be, as we were discussing just a moment ago, relatively simple and low risk that gives investors a greater degree of confidence in the product.[85]

2.83 Consequently, Dr Sandlant identified the compromise at the heart of the bill; namely, that applying restrictive qualifying criteria to simple corporate bonds allowed the relaxation of some of the 'arguably onerous requirements of prospectus disclosure and directors' liability'.[86]

2.84 In reiterating the rationale for the changes, Treasury confirmed for the committee that the liability provisions in the Corporations Act have only been eased for simple corporate bonds and not for other securities:

> Market participants have indicated that the liability provisions in the Corporations Act are hindering the offer of corporate bonds to retail investors in Australia. The deemed liability placed on directors when an offer of corporate bonds is made to retail investors requires a level of director engagement in the due diligence process that is onerous.

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83 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

84 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

85 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

86 Dr Richard Sandlant, Manager, Disclosure and International Unit, Treasury, *Committee Hansard*, 22 April 2013, p. 10.

> However, while the development of a deep and liquid corporate bond market is a widely supported policy goal, it is also important that consumers continue to receive adequate regulatory protection. For this reason, the liabilities for directors have been eased only for simple corporate bonds.
>
> Simple corporate bonds are relatively safe securities, as they must satisfy the conditions set out in the Bill. These conditions restrict the type of bonds that can be classified as simple corporate bonds to senior debt that is issued by high quality corporate entities (most likely the top 100 to 200 companies).[87]

2.85 Treasury also emphasised that the easing of director liability in section 728 was contingent on the criteria for simple corporate bonds as set out in proposed section 713A remaining the same. Treasury indicated that should the criteria in section 713A be made more flexible, the issue of directors' deemed liability would likely be revisited:

> Section 713A sets out the conditions for offering a simple corporate bond, and the definition of a simple corporate bond. For the amendments in section 728 to apply, the offer must be in relation to simple corporate bonds, so section 713A must be satisfied.
>
> If the criteria in section 713A are made more flexible, this would increase the level of risk associated with the bonds. In the event such changes were contemplated, it is likely that further review and consultation on directors' deemed liability would be undertaken.[88]

2.86 The SMSF Owners' Alliance supported the position adopted by Treasury and stated that it believed the conditions set out in the bill would 'provide sufficient protection for SMSFs' and that they could be complemented by the regulations under development.[89]

2.87 The committee questioned Treasury about whether the changes to director liability created an inconsistency and how the amendments would fit in with the Council of Australian Governments' (COAG) moves to harmonise director liabilities across jurisdictions.[90] Treasury responded that:

> The COAG harmonisation of director liability is aimed at making director liability comply with a specific set of agreed-upon principles (the COAG Principles). These principles include the removal of deemed liability of directors for corporate fault where it is not appropriate, and that where derivative liability is imposed, it should be imposed in accordance with principles of good corporate governance. The reforms in the Bill are not

87 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

88 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

89 SMSF Owners' Alliance, *Submission 13*, p. 1.

90 Ms Deborah O'Neill MP, Chair, *Committee Hansard*, 22 April 2013, p. 11.

> directly in the scope of the type of director liabilities that COAG are considering, however, the proposed changes are consistent with the COAG principles.[91]

Reasonable steps

2.88 In a joint media release, the Treasurer and the Minister for Superannuation and Financial Services stated that the clarification of the reasonable steps defences applied 'to all offers of securities'.[92]

2.89 Yet in his Second Reading Speech, Minister Shorten stated that the bill 'provides clarification around the due diligence defence in respect to directors' criminal liability in offering corporate bonds'.[93]

2.90 The committee asked for clarification on whether the reasonable steps in sections 1308 and 1309 would apply to all corporate bonds and securities.[94] Treasury confirmed that they would, and that the amendments would apply across the entire Corporations Act:

> The proposed amendments that clarify what is meant by 'reasonable steps' in sections 1308 and 1309, apply across the entire Corporations Act.[95]

2.91 Given this, the committee is concerned that the EM does not contain a clear explanation for the amendments to the 'reasonable steps'. Schedule 1 of the bill pertains to simple corporate bonds, and yet the amendments to the reasonable steps provisions were added to the end of Schedule 1 without any context or clear reasoning being given.

2.92 Treasury responded that because the reasonable steps were a clarification, a comprehensive explanation was not required:

> Paragraph 1.17 [of the EM] states 'The amendments in the Bill to the directors' liabilities have been designed to reduce the burden on directors when issuing corporate bonds to retail investors under the 2 part prospectus regime and will provide directors with greater clarity on the steps required

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91 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

92 See the Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer, and the Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, 'Retail corporate bonds legislation', Joint media release, Canberra, 20 March 2013, http://billshorten.com.au/retail_corporate_bonds_legislation (accessed 10 April 2013).

93 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, *Second Reading Speech*, House of Representatives, 20 March 2013.

94 See Mr Paul Fletcher MP, *Committee Hansard*, 22 April 2013, p. 11.

95 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

> as part of the due diligence process in relation to certain criminal liability offences'.
>
> As the proposed changes to the operation of sections 1308 and 1309 of the Corporations Act merely clarify what 'reasonable steps' mean, additional commentary to that provided in paragraph 1.17 was not required.[96]

2.93 In response to questions from the committee, Treasury provided an explanation for these changes:

> While the current law provides a defence of 'reasonable steps' to the offences in sections 1308 and 1309, it does not provide guidance on what constitutes 'reasonable steps'. The purpose of the amendment is to provide greater clarity as to what 'reasonable steps' means.
>
> The amendments provide that a person should be deemed to have taken 'reasonable steps' if they make reasonable inquiries or place reasonable reliance on information provided by others. The proposed amendments reflect the practical application of the criminal liability provisions in the Corporations Act and are consistent with stakeholder views.[97]

2.94 Treasury also confirmed that the clarification of reasonable steps was not predicated on removing the deemed civil liability for directors in the issuance of simple corporate bonds, but instead 'merely provide[d] increased guidance on the application of the defences for criminal liability for deceptive and misleading statements'.[98]

2.95 Questioned by the committee on the consultation process undertaken with regard to the reasonable steps, Treasury gave the following details:

> Treasury has had extensive public and targeted consultation on the Bill and the measures within the Bill (including the clarification of the meaning of 'reasonable steps' in sections 1308 and 1309 of the Corporations Act) since 2011. Below is a summary of that consultation:
>
> - On 13 December 2011 the discussion paper 'Development of the retail corporate bond market: streamlining disclosure and liability requirements' was released for public consultation. Submissions on the discussion paper closed on Friday 10 February 2012.
> - On 24 January 2012, Treasury held a roundtable meeting in Sydney with over 30 market participants including the G100 and the Australian Shareholders Association to discuss aspects of the December 2011 discussion paper.
> - Throughout 2012 and 2013, a number of small targeted consultations (comprising between 2-10 attendees) were held with various market participants.

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96 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

97 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

98 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

- On 11 January 2013, exposure draft legislation was released for public consultation. Submissions on the exposure draft legislation closed on Friday 15 February 2013.

A representative from the Australian Shareholders Association attended the 24 January 2012 roundtable. At the roundtable, a comprehensive discussion took place on the issue of the proposed removal of directors' civil liability and the proposed clarification to what is meant by 'reasonable steps'.[99]

Parallel trading

2.96 NAB welcomed the development of depositary interests that would allow the parallel trading of simple corporate bonds in the wholesale and retail markets.[100]

2.97 The committee questioned Treasury firstly about how the liability provisions apply to bonds that are traded, and secondly, whether the liability provisions associated with the bond transferred to the owner of the depositary interests, and whether every subsequent person who acquires the bonds when they are traded has the benefit of them.[101]

2.98 Treasury responded that:

Under the current law, liability for misstatements etc. attaches to securities in two ways:

- when an offer of corporate bonds is made by the issuer to retail investors, through the application of the liability provisions in section 728; and
- through the general liability provisions in section 1041H, which apply when trading occurs on the secondary market.

The application of the liability provisions for an offer of simple corporate bonds as well as for secondary trading will be consistent with the current law (as outlined above).

As outlined above, and consistent with current law, it is only the person who initially acquires the simple corporate bonds from the issuer who benefits from the liability provisions in section 728. However, every subsequent person who acquires them through secondary trading (including the secondary trading of simple corporate bond depository interests) will have the benefit of the general liability provisions in section 1041H.[102]

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99 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

100 National Australia Bank, *Submission 6*, [p. 2].

101 Mr Paul Fletcher MP, *Committee Hansard*, 22 April 2013, p. 12.

102 Treasury, answer to question on notice, 22 April 2013 (received 8 May 2013).

Investor education

2.99 NAB emphasised that a key element in developing the retail corporate bond market was the education of retail investors. As part of its efforts to educate investors, NAB has 'commissioned the Australian Centre for Financial Studies (ACFS) to develop a series of reports about the corporate bond market in Australia'.[103]

Adviser education and research

2.100 The Stockbrokers Association drew attention to the 'fundamental differences between equity and debt securities' and cautioned that some 'stockbrokers with little experience in bonds may not be equipped to advise on these products'. The Stockbrokers Association stated that adviser knowledge would 'definitely need to be updated if more bonds are to be presented as investment options to retail clients'.[104]

2.101 The Stockbrokers Association also observed that compared with equities, there is little reliable research pertaining to the bond market with which to advise retail clients:

> Another issue in adding bonds (including CGS) to the suite of stockbrokers' offerings is the lack of dependable research. With shares, stockbroking firms rely on in-house expertise from specialist research analysts to analyse the relevant issuer companies and sectors, or have third party arrangements with specialist research houses to obtain such research. This research informs the advice that is then given to clients. Accordingly, retail advisers may lack specialist research in order to properly advise their clients.[105]

Clarification of specific elements in the bill

2.102 In its submission, NAB sought clarity on specific elements in the bill. The committee sent these as questions on notice to Treasury and the responses from Treasury are given here.

2.103 NAB asked Treasury about how 'among other things' in section 1.67 of the EM will be defined, as well as whether subsection 713A(8) is restricted to the Bank Bill Swap rate (BBSW) or whether issuers will be allowed to reference a range of indices. Treasury responded that:

> In section 1.67, the reference to 'among other things' is intended to be inclusive. It is not defined in the legislation. When creating a prospectus, there [are] a number of provisions of the Corporations Act where a director may be 'involved in' a contravention and face accessorial liability.

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103 National Australia Bank, *Submission 6*, [p. 1].

104 Stockbrokers Association of Australia, *Submission 2*, p. 2.

105 Stockbrokers Association of Australia, *Submission 2*, p. 3.

> Section 713A(8) does not refer to the BBSW, or any other specific index. Under the current law, issuers may reference 'a floating rate that is comprised of a reference rate and a fixed margin'.[106]

2.104 NAB asked about the consequences if, subsequent to issuance, the issuer is removed from listed status on an appropriate exchange. Treasury replied that:

> Treasury understands that the consequences of a company delisting will be provided for in the individual bond instruments. Treasury has not mandated that a particular consequence flows from delisting because this may affect commercial outcomes. For example, if a company is taken over and subsequently delists, the bidding company may wish to honour the debt obligations of the target company.[107]

2.105 In regards to section 1.26 which states that a 'regulation making power has been inserted into Chapter 2L so that the requirement for a trust deed and trustee is able to be removed for the making of the specified offer of debentures or a specified class of offers of debentures'.[108] NAB sought clarification as to how this would intersect with ASIC's recent consultation paper 199, which proposes reforms to the regulation of the debenture sector, including increasing the role of trustees for issues of simple corporate bonds. Treasury answered that:

> ASIC's discussion paper was released prior to public industry consultation on this point earlier this year. Consultation revealed that there are a number of existing issues with trustees, so a regulation making power was inserted which would allow regulations to be made in future if required. Treasury has not formed a final view on this issue.[109]

Committee views

2.106 The committee notes that ASIC Class Order 10/321 has not been successful in increasing the issue of 'vanilla' or simple corporate bonds. It supports the process through which Treasury and industry stakeholders have worked to develop regulations that strike an appropriate balance between streamlining the issuing process and maintaining appropriate investor safeguards. The committee is keen to understand whether the issue of an offer document (as opposed to, for example, a two-page term sheet) is viewed as a significant barrier to corporate entities engaging in the retail market, or whether the removal of the due diligence requirements for directors is sufficient to encourage greater supply into the retail simple corporate bond market.

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106 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

107 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

108 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, [schedule 1, item 8, section 283AA], p. 10.

109 Treasury, answer to question on notice, 22 April 2013 (received 2 May 2013).

2.107 The committee notes that the bill proposes measures that seek to streamline the regulatory burden faced by directors in issuing simple corporate bonds. It believes that the two-part prospectus, the ability to trade simple corporate bonds using simple retail corporate bond depositary interests, and the removal of deemed civil liability for misleading and deceptive statements in a disclosure document will all encourage the development of a deeper market for these securities. However, the challenge of developing this market will not be realised by focusing solely on supply-side factors. Crucially, there must be demand for these products among retail investors. Generating this demand will rely on educating retail investors as to the features of simple corporate bonds and offering a product that genuinely meets the needs and risk profile of investors.

2.108 Related to the above point, the committee also notes that the attractiveness of simple corporate bonds relative to other types of retail investment, including direct investment in property, may also depend on the relative tax treatment of the various types of investment.

2.109 The committee found the EM to be obscure and ambiguous on certain points, in particular with respect to the 'reasonable steps' obligations. The answers to questions on notice provided useful clarification, but the committee suggests that the quality of the EM could be improved.

Recommendation 1

2.110 The committee recommends that Treasury amend the EM to more accurately reflect that the clarification of 'reasonable steps' applies across the entire Corporations Act to all offers of securities.

Chapter 3

Schedule 2—'Financial planner' and 'financial adviser'

3.1 This chapter provides an overview and background on the operation of Schedule 2 of the bill, and then presents the views of submitters on the proposed changes.

3.2 As noted in chapter 1, Schedule 2 of the bill proposes to restrict the use of the expressions 'financial planner' and 'financial adviser'.

Background and context of the amendments

3.3 The Future of Financial Advice (FOFA) reforms were enacted last year in response to this committee's November 2009 report, *Inquiry into financial products and services in Australia*.[1] The inquiry was initiated in the wake of corporate collapses, notably Storm Financial and Opes Prime.

3.4 The FOFA reforms are 'designed to tackle conflicts of interest that have threatened the quality of financial advice that has been provided to Australian investors'.[2]

3.5 The reforms were legislated by the *Corporations Amendment (Future of Financial Advice) Act 2012* and the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*. The reforms will come into effect from 1 July 2013.

3.6 Schedule 2 amends Part 7.6 of the Corporations Act. The amendments define in law the terms 'financial planner' and 'financial adviser'. The amendments make it an offence for anyone to use the terms, or words 'of like import', unless they hold an appropriate licence under the Australian Financial Services Licence (AFSL) regime. The bill enables ASIC to take action against unlicensed persons using the defined terms.[3]

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1 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/completed_inquiries/2008-10/fps/report/index.htm (accessed 9 April 2013).

2 Australian Government, the Treasury, Future of Financial Advice, Overhaul of financial advice, http://futureofadvice.treasury.gov.au/Content/Content.aspx?doc=home.htm (accessed 1 May 2013).

3 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 27–31.

3.7 Precedents exist under the Corporations Act for restricting the use of terms used by people in the financial services sector, including, 'stockbroker', 'futures broker', and 'insurance broker'.[4] The Stockbrokers Association noted that '[f]or many years, the stockbroking industry has been subject to strict restrictions in relation to terminology' and that it frequently advised ASIC of apparent breaches of these restrictions.[5]

3.8 The Financial Planning Association of Australia (FPA) noted that Malaysia and Quebec in Canada have enshrined the term 'financial planner' in law and that New Zealand has enacted legislation around financial advisers.[6]

3.9 The EM states that the new measure protects consumers from unlicensed 'product spruikers' and 'complements the FOFA reforms by clearly identifying genuine providers of financial product advice, thereby improving consumer trust in the financial planning and advice industry'.[7]

3.10 During the Second Reading debate on the FOFA reforms on 22 March 2012, the Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, announced the Government's intention to introduce the provisions in Schedule 2 into Parliament by 1 July 2013.[8]

3.11 On 19 November 2012, Minister Shorten released an exposure draft of the legislation and an EM to define the terms 'financial planner' and 'financial adviser'.

Main provisions of Schedule 2: Amendments relating to the use of the expressions 'financial planner' and 'financial adviser'

3.12 The measures in Schedule 2 restrict the use of the terms 'financial planner' and 'financial adviser' to appropriately licensed persons.

3.13 In order to use the restricted terms, the bill introduces certain criteria, namely that a person either:

- holds a Licence, under which the person can provide personal advice on designated products; or

4 *Corporations Act 2001*, Part 7.6, Division 10, ss. 923B(4)(a).

5 Stockbrokers Association of Australia, *Submission 2*, pp 3–4.

6 Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 34.

7 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 27.

8 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 27.

- provides personal advice on designated products on behalf of a Licensee, where under that Licence the Licensee may provide personal advice on designated products. ***[Schedule 2, item 1, subsection 923C(2)]***[9]

3.14 The bill defines a 'designated financial product' as a financial product *other than*:

> a general insurance product (other than a sickness and accident insurance product), a consumer credit insurance product, a basic deposit product, a non cash payment product, or a First Home Saver Account (FHSA) deposit account. ***[Schedule 2, item 1, subsection 923C(5)]***[10]

3.15 This definition is intended to 'capture more complex types of financial products, or less well understood financial products, which may be associated with greater risks for consumers'.[11]

3.16 The EM notes that the licence will not be required to specify certain types of financial products, but rather that the licensee 'would be able to provide advice on one or more of these types of products'.[12]

3.17 The exemptions from the requirement to hold a licence contained in subsection 911A(2) of the Corporations Act remain unchanged.[13]

3.18 The EM notes that persons 'authorised only to provide general advice' and persons 'not authorised to provide any form of financial product advice' will not be able to use the restricted terms.[14]

Definitions of financial product advice and personal advice

3.19 The Corporations Act defines 'financial product advice', 'personal advice' and 'general advice'.

3.20 Section 766B of the Corporations Act defines financial product advice as:

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9 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, pp 29–30.

10 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 30.

11 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 30.

12 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 30.

13 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 30.

14 *Explanatory Memorandum (EM)*, Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, p. 31.

a recommendation or a statement of opinion, or a report of either of those things, that:

(a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or

(b) could reasonably be regarded as being intended to have such an influence.[15]

3.21 The Corporations Act notes that there are two types of financial product advice: personal and general advice.[16]

3.22 Section 766B of the Corporations Act defines personal advice as:

financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

(a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs (otherwise than for the purposes of compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 or with regulations, or AML/CTF Rules, under that Act); or

(b) a reasonable person might expect the provider to have considered one or more of those matters.[17]

3.23 The Corporations Act notes that 'general advice is financial product advice that is not personal advice'.[18]

Submitter views on Schedule 2

3.24 Of the 15 submissions received by the committee, 14 submissions addressed Schedule 2 of the bill. All but one of these submissions supported the proposed changes. Treasury also noted that there was widespread support for the amendments in the submissions that they received on the draft bill.[19]

3.25 However, some submitters expressed reservations about restricting the term 'financial adviser' and other submitters warned that the amendments did not, of themselves, increase the professionalism of advice. These comments are covered in later sections.

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15 *Corporations Act 2001*, Part 7.1, Division 4, ss. 766B(1).

16 *Corporations Act 2001*, Part 7.1, Division 4, ss. 766B(2).

17 *Corporations Act 2001*, Part 7.1, Division 4, ss. 766B(3).

18 *Corporations Act 2001*, Part 7.1, Division 4, ss. 766B(4).

19 Mr Bede Fraser, Manager, Intermediaries and Regulatory Powers Unit, Retail Investor Division, Markets Group, Treasury, *Committee Hansard*, 22 April 2013, p. 38.

Evidence of misuse of the terms 'financial planner' and 'financial adviser'

3.26 There was consensus among some submitters that the terms financial planner and financial adviser had been misused to the detriment of consumers, and that there was very little that regulators were able to do about these types of breaches of the law.[20]

3.27 Under questioning from the committee, Mr Richard Webb, Policy and Regulatory Analyst at the Australian Institute of Superannuation Trustees (AIST), and Mr Bradley Fox, Chief Executive Officer of the Association of Financial Advisers (AFA), acknowledged that under current law, if a person were to provide financial advice without an AFSL (and without an exemption), they would be breaching the law.[21]

3.28 However, Mr Bede Fraser of the Intermediaries and Regulatory Powers Unit in the Retail Investor Division at the Treasury pointed out that while the current law includes 'provisions covering misleading and deceptive conduct, it can be very difficult for regulators to take action'. Mr Fraser added that the new amendments would make pursuing breaches of the law easier:

> The new amendments will make it easier to take action against unauthorised advisers and that is consistent with the approach that has been adopted for a number of other important professions including stockbrokers.[22]

3.29 In a further exchange with the committee, Mr Webb and Mr Fox also conceded that they did not have direct evidence of the misuse of the terms 'financial planner' and 'financial adviser', but both observed that anecdotal evidence surfaced periodically in the media.[23]

3.30 However, Mr Mark Rantall, Chief Executive Officer of the Financial Planning Association of Australia (FPA), told the committee that there was concrete evidence of misrepresentation and noted that in the 12 months to 31 December 2012, 'over 12

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20 See Stockbrokers Association of Australia, *Submission 2*, p. 4; Australian Institute of Superannuation Trustees, *Submission 3*, [p. 1]; Financial Planning Association of Australia, *Submission 5*, [p. 1].

21 See the exchanges between Mr Paul Fletcher MP and Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, pp 17–18; Mr Paul Fletcher MP and Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 24.

22 Mr Bede Fraser, Manager, Intermediaries and Regulatory Powers Unit, Retail Investor Division, Markets Group, Treasury, *Committee Hansard*, 22 April 2013, p. 38.

23 See the exchanges between Mr Paul Fletcher MP and Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, pp 17–18; Mr Paul Fletcher MP and Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 24.

per cent of ASIC's financial services enforcements related to matters against unlicensed participants'.[24]

3.31 Despite different views on the nature of the evidence about the misuse of terms, Mr Webb, Mr Fox and Mr Rantall stated that the key point was consumer confusion, and that the bill would provide consumers with clarity and protection on who to approach to receive authorised financial advice.[25] Mr Fox stated that:

> The issue from our point of view is to try to help consumers differentiate between where to go to seek personal financial advice. At the moment they are unclear on it. They are unclear as to who can provide it and who cannot. There is anecdotal evidence that suggests they assume that similar professions, like accountants, can provide financial advice—when they actually cannot. By narrowing the focus of who can and who cannot provide financial advice, by using only two terms to describe them, we think it can help the consumer and help the marketplace to communicate to the consumer where to go to get personal financial advice. That is a differentiator. It is about leading the market towards a narrower solution rather than leaving them guessing, as they currently do, as to a winder part of the market than is realistically able to help them.[26]

3.32 Questioned as to whether the amendments would 'dissuade a consumer from going to see an accountant on the expectation of being able to get personal financial advice', Mr Fox replied:

> It may not dissuade them. We see ample examples where the accountant is in fact the conduit to help a consumer to go and get personal financial advice from a licensed adviser. The issue here would be twofold. One, it would help the accountant to be reminded of where their authorisation starts and stops; and, two, it would help the accountant have the conversation with a consumer to say, 'You do need this sort of help, by the look of it. Here is someone who can actually help you'. This is the occupation you need to talk to.[27]

3.33 Mr Philip Anderson, Chief Operating Officer at the AFA, also pointed out that the financial advice industry was suffering reputational damage when the media aired

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24 Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 29.

25 Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 18; Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 20; Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 29.

26 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 25

27 See the exchange between Mr Paul Fletcher MP and Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 25.

stories about malpractice by people holding themselves out to be financial advisers when in fact they were not authorised to do so.[28]

Support for the bill

3.34 Mr Peter Kirk, Managing Director of Quill Group Financial Planners, stated that the bill was a 'key outstanding consumer protection measure' of the FOFA reforms and that:

> A lack of restriction on the use of the term financial planner/adviser is, among other things, a significant gap in consumer protection.[29]

3.35 Mr Kirk drew attention to the increasing risks for consumers as the misuse of the terms financial planner and financial adviser become more prevalent:

> It leaves trusting consumers open to influence by unprofessional and inappropriately qualified individuals portraying to provide advice, especially unsolicited advice from people with whom consumers may/may not have a relationship with. The term financial planner/adviser is increasingly being used in marketing and promotional material by persons who provide non-traditional ancillary services, such as realtors, stockbrokers, financial counsellors, life insurance agents or brokers, mortgage brokers, property brokers, sales agents of various investment vehicles, and unlicensed advisers, increasing the risk for consumers to be misled.[30]

3.36 The FPA argued that the bill would inform, protect and empower consumers, and improve consumer outcomes by:

- Providing consumers with a legal definition and hence a better understanding of who and what a 'financial planner' or a 'financial adviser' is, and the role they can be expected to play;
- Supporting and protecting consumers who need and want to get financial advice from a trusted participant in the industry and hence reducing the risk of them being misled by unlicensed or scrupulous individuals;
- Ensuring 'truth in labelling' when it comes to the provision of financial planning advice as it has a profound impact on an individual's and the community's financial well-being; and

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28 Mr Philip Anderson, Chief Operating Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, pp 21–22.

29 Mr Peter Kirk, Managing Director, Quill Group Financial Planners Ltd, *Submission 1*, [p. 1].

30 Mr Peter Kirk, Managing Director, Quill Group Financial Planners Ltd, *Submission 1*, [p. 1]. The submissions from Mr Peter Kirk and Ms Lee Henderson (*Submission 9*) were very similar to the submission from the Financial Planning Association of Australia.

- Supporting the FOFA reforms by empowering consumers of financial services to identify genuine providers of financial advice.[31]

Tying the use of the terms to authorisations under an AFSL

3.37 The Stockbrokers Association particularly welcomed the fact that the use of the restricted terms was tied to authorisation under an AFSL rather than being linked to membership of an industry body.[32] This position was supported by the AFA,[33] and the AIST, both of which noted that the AFSL regime provided a good regulatory framework.[34]

3.38 By contrast, the FPA does support linking use of the terms to 'an approved code of professional conduct or an approved professional body'. Mr Rantall said that such a link 'would accelerate the profession by light years…[and] would have provided maximum consumer protection'.[35]

Equivalence of the terms 'financial planner' and 'financial adviser'

3.39 Mr Fox of the AFA stated that the terms 'financial planner' and 'financial adviser' were equivalent and interchangeable.[36] The AIST also pointed out that in terms of the provision of personal financial advice, the terms were treated the same under current law.[37]

3.40 Mr Rantall accepted that the terms were used interchangeably throughout the industry, but pointed out that the FPA had a different perspective:

> We believe financial planners are more involved in a holistic approach to financial advice. We think financial advisers are more product advisers.[38]

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31 Financial Planning Association of Australia, *Submission 5*, [p. 2].

32 Stockbrokers Association of Australia, *Submission 2*, p. 4.

33 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 20.

34 Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 17.

35 Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 32.

36 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 21; The Association of Financial Advisers Limited, *Submission 8*, p. 1.

37 Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 16.

38 Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 30.

3.41 Mr Dante De Gori, General Manager of Policy and Government relations at the FPA noted that some jurisdictions saw the terms 'financial planner' and 'financial adviser' as interchangeable, while others did not.[39]

Concerns over the inclusion of the term 'financial adviser' in the legislation

3.42 Submitters supported the Government's objectives to improve consumer trust and ensure greater consumer protection. Some, however, had concerns about confusion the legislation may cause, and specifically about the inclusion of the term 'financial adviser' in the legislation.

3.43 CPA Australia and the Institute of Chartered Accountants Australia (ICAA) conceded that restrictions on the use of the term 'financial planner' may be beneficial:

> …restricting the term 'financial planner' to only those individuals who are appropriately licensed to provide financial product advice may be in the public interest.[40]

3.44 However, CPA Australia and the ICAA did not support the restrictions proposed for the term 'financial adviser':

> …we do not support restricting the use of the term 'financial adviser' and any other word or expression that is of like import. We believe this is unnecessary and overly restrictive. In addition, it would add complexity to consumers' understanding.
>
> The term 'financial adviser' is recognised and used in broader terms by professionals other than those licensed to provide financial product advice to retail clients. This includes professional accountants and financial institutions such as investment banks that provide financial advice both in Australia and internationally. It is also widely used by other professional advisers who provide financial product advice to wholesale clients.[41]

3.45 Furthermore, CPA Australia and the ICAA warned that the legislation could cause confusion if persons authorised to give personal advice on a limited range of financial products were still allowed to use the restricted terms such as:

- drafted licensees with authorisations to give personal advice on agricultural MIS;
- product issuers, for example issuers of timeshare schemes, horse racing schemes, property schemes;

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39 Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 30.

40 CPA Australia and the Institute of Chartered Accountants Australia, *Submission 7*, p. 1.

41 CPA Australia and the Institute of Chartered Accountants Australia, *Submission 7*, p. 2.

- limited licensees advising on only investment life and/or life risk products; and
- some superannuation trustees with authorisations to advise on their superannuation scheme and possibly insurance.[42]

CPA Australia and the ICAA argued that:

> Allowing individuals with a limited scope of advice to call themselves a 'financial planner' or 'financial adviser' would not be in the public interest. These terms should apply to individuals who provide comprehensive financial advice. This must be addressed if the regulation is going to achieve its intended policy objectives of improving consumer trust and confidence.[43]

3.46 The committee notes that the suggestion by CPA Australia and the ICAA appears at odds with the definition in the Corporations Act which defines financial product advice (and therefore someone licensed to provide such advice) in relation to a particular financial product or class of financial products rather than necessarily comprehensive financial advice.

3.47 Mr Fox of the AFA disagreed with the concerns that restricting the term 'financial adviser' would be detrimental:

> If there are specialists in a particular area, they still cannot provide personal financial advice unless they are authorised. If they are authorised, then they would be welcome to use one of the approved terms and they would be welcome to use other descriptors of their role. A financial adviser and an international investment expert can coexist, but the point that we would be looking for is for a consumer to understand, if they are seeing someone that has the term 'financial adviser' or 'financial planner', that that is someone licensed to provide them with personal financial advice.[44]

3.48 Questioned by the committee about the concerns voiced by CPA Australia and the ICAA, Mr Bede said that Treasury recognised that the terms 'financial planner' and 'financial adviser' were used interchangeably in the industry and that it would be 'very hard for the government to restrict just financial planners and not financial advisers given that there is that sort of common usage'.[45]

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42 CPA Australia and the Institute of Chartered Accountants Australia, *Submission 7*, p. 2.

43 CPA Australia and the Institute of Chartered Accountants Australia, *Submission 7*, p. 2.

44 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 23.

45 Mr Bede Fraser, Manager, Intermediaries and Regulatory Powers Unit, Retail Investor Division, Markets Group, Treasury, *Committee Hansard*, 22 April 2013, p. 38.

Concerns over the phrase 'of like import'

3.49 The phrase 'of like import' is already used in the Corporations Act in relation to restricted terms. Section 923B(4) of the Corporations Act uses the phrase 'of like import' in relation to restrictions on the use of terms that include stockbroker, sharebroker, futures broker, and insurance broker.[46]

3.50 Suncorp Group Limited raised concerns about the phrase 'of like import' in connection with 'financial adviser'. Suncorp pointed out that they have staff that provide personal advice on general insurance products only and are typically titled 'customer service advisers'. Suncorp also has authorised representatives 'who provide personal advice. These representatives are generally identified as 'advisers' or 'insurance advisers'.[47]

3.51 Although Suncorp agreed that the term 'financial adviser' should be restricted, it noted that the bill as currently worded raises compliance issues for their advisers:

> The ban as currently worded would result in these staff attempting to explain they are trained and licenced to provide financial advice on general insurance, but are not 'financial advisers'. This presents a compliance challenge as use of the word ‘adviser’ and similar terms represent natural language when describing the services our staff provide.[48]

3.52 Accordingly, Suncorp sought reassurance that under the proposed legislation that there would be sufficient flexibility in the bill to allow their advisers to operate without breaching the legislation:

> Suncorp believes it is vital that providers of non-designated financial product advice are provided ample flexibility to explain their offering in natural language using the term 'adviser' without breaching the 'of like import' ban. We seek clarity that the 'of like import' ban does not extend to use of the term 'adviser' more generally.
>
> Suncorp would also welcome clarification regarding how providers of advice on non-designated products may refer to themselves in a way that both distinguishes them from 'financial advisers' and conveys that they are licenced to provide financial advice.[49]

3.53 The Australian Bankers' Association (ABA) also sought clarification that the phrase 'of like import' would not capture well understood terms within the banking profession.[50]

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46 *The Corporations Act 2001*, Part 7.6, Division 10, ss. 923B(4).

47 Suncorp Group Limited, *Submission 12*, pp 1–2.

48 Suncorp Group Limited, *Submission 12*, p. 2.

49 Suncorp Group Limited, *Submission 12*, p. 2.

50 Australian Bankers' Association, *Submission 14*, p. 5.

3.54 From a consumer perspective, Mr Webb of the AIST argued that the phrase 'of like import' was necessary to ensure that consumers were not misled by preventing unauthorised persons from using terms that could convey the impression they were qualified to provide advice on financial services products:

> This bill is to make sure that customers do not get the wrong idea when they go in to see financial services professionals. If a mortgage broker, for example, is not authorised to provide advice on a financial services product, if they are merely there to be a salesperson of lending products, I am uncertain as to why they would need a term like that in the first place.[51]

Treasury response to the intent of the phrase 'of like import'

3.55 Treasury explained the scope of the phrase 'of like import' and the rationale for its inclusion in the legislation:

> As the Committee is aware, the Bill inserts definitions of the terms 'financial planner' and 'financial adviser' into the Corporations Act 2001 (Corporations Act), and restricts the use of those terms and terms of similar importance.
>
> A person is taken to assume or use a word or expression if it is being used as part of another word or expression, or in combination. As noted at the Committee hearing, the terms 'financial planning adviser' and 'financial advising agent' would be considered to be of like import and are specifically identified in the Explanatory Memorandum to the Bill.
>
> If there was evidence that terms like 'private wealth adviser' were being used by unlicensed individuals in an attempt to convince consumers that they were licensed to provide financial advice then the Government has regulation making powers to restrict usage of such terms. This will provide consumers with certainty that a person using a restricted term is authorised to do so under an Australian Financial Services Licence (AFSL).[52]

Concerns over the impact on the wholesale sector

3.56 The committee notes that in paragraph 2.53 of 'ASIC Regulatory Guide 2: AFS Licensing Kit: Part 2-Preparing your AFS licence or variation application', (RG 2:53), a person must select the type of financial product advice that he or she would like to be authorised to provide under an AFSL:

> Provide Financial Product Advice—this authorisation will cover both personal and general advice to both wholesale and retail clients; or
>
> Provide General Financial Product Advice Only—this authorisation will cover general advice to both wholesale and retail clients (i.e. it does not cover personal advice); or

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51 Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 16.

52 Treasury, answer to question on notice, 22 April 2013 (received 9 May 2013).

> Provide General Financial Product Advice Only To Wholesale Clients—this authorisation will only cover general advice to wholesale clients (i.e. it does not cover personal advice or general advice to retail clients).

3.57 The committee notes that the type of authorisation selected would depend on the nature of the services that a person would be providing, either personal and/or general financial advice, and financial advice to retail and/or wholesale clients.

3.58 The committee sought clarification on how the legislation would impact on people operating in the wholesale sector. Reading RG 2:53 in conjunction with the bill 923C(2) (that specifies the need to hold or operate under an AFSL and be licenced to provide personal advice on a designated financial product in order to be able to use the restricted terms), the committee understands that those persons currently licenced under an AFSL to provide general financial product advice solely to wholesale clients would not be able to use the restricted terms. Only those persons currently operating in the wholesale sector under an AFSL that are authorised to provide personal financial advice would be able to use the restricted terms. This understanding was confirmed by Treasury in correspondence to the committee.

Exemptions from holding an AFSL

3.59 Noting that some submitters had expressed concern about people providing wholesale financial advice that may get caught by the amendments, the committee was keen to clarify whether a person who was exempt from holding an AFSL would still be able to call themselves a 'financial planner' or a 'financial adviser'.

Response from Treasury

3.60 Treasury clarified the circumstances in which a person would be able to use the restricted terms including in the wholesale arena. Treasury also signalled legislative changes that will apply to recognised accountants from 1 July 2013:

> The exemption from holding an AFSL granted under section 911A(2) of the Corporations Act is only available to individuals in specific situations and many of these situations which section 911A(2) identifies do not warrant the need for an AFSL.
>
> Whether the person could call themselves a financial planner would also depend on the specific situation, for example:
>
> - the person is not providing financial product services, such as performing the duties of a receiver or liquidator - unable to call themselves a financial planner under this exemption;
> - the person is providing a service where they are a representative of someone who has an AFSL - able to call themselves a financial planner if they were meeting the relevant licensing conditions;
> - the person providing advice is doing so in a general nature to a broad audience, for example providing general advice in the media - unable to call themselves a financial planner under this exemption;

- 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.

Several other exemptions from holding an AFSL exist in the corporations law. For example, under Corporations Regulation 7.1.29A, a recognised accountant i.e. a member of the CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants is able to provide advice on the acquisition or disposal of a self managed superannuation fund without an AFSL. The Government has announced that it will replace this exemption with a new limited AFSL requirement from 1 July 2013 which allows accountants (and others) to provide advice on matters related to self managed superannuation fund and general product advice - a person holding a new limited licence will also be able to call themselves a financial planner.[53]

3.61 The committee sought information from ASIC and from the FPA on the numbers of people that operate with an AFSL, operate as a representative of a company that holds an AFSL, operate without an AFSL under exemptions in section 911A(2) of the Corporations Act, and operate without an AFSL without a section 911A(2) exemption.

3.62 The FPA provided the committee with the following figures relating to their members:

FPA members operating with an AFSL:

From data collected in 2009 prior to the removal of principal (licensee) membership from the association, the number of practitioners that operated with their own AFSL was around 50. Though we are unable to provide you with more updated figures, it would still only represent a minority of our practitioner membership.

FPA members operating as a representative of a person / firm with an AFSL:

The FPA has around 7,500 practitioner members. As mentioned previously all practitioner members must provide proof of their authority to provide personal financial advice via their 'representative status' as a requirement for membership on the application. This would include practitioners that operate as 'self-employed' representatives as well as 'employed' representatives.

It should be noted that there is a very small number (estimated to be around 1%) within the 7,500 practitioner membership that are no longer 'practicing' and are either retired or operating in a mentoring/supervisory role. This includes Academics lecturing at Universities. All of these members are still required to maintain their Continuing Professional Development (CPD) training if they wish to remain as member.

53 Treasury, answer to question on notice, 22 April 2013 (received 9 May 2013).

FPA members operating without an AFSL under section 911A of the CA:

Based on our understanding of section 911A of the Corporations Act, the majority of our 7,500 practitioner members would be operating under sub-section 911A(2)(a)(i). That is they would be exempt from holding a license because they provide the service as a representative of a second person who carries on a financial services business and who holds an AFSL.

It should also be noted that the note in sub-section 911A(2) states that: However, representatives must still comply with section 911B even if they are exempt from this section by this paragraph. Section 911B refers to 'Providing financial services on behalf of another person who carries on a financial services business'.

The FPA is unaware of any practitioner member operating under any other sub-section within 911A. We believe that this question would be more appropriately directed at ASIC.

FPA members operating without an AFSL without this exemption:

It is our understanding that it would be unlikely that any practitioner member operates without an AFSL without this exemption.[54]

3.63 ASIC provided the committee with the following data on the numbers of entities holding an AFSL and the numbers of authorised representatives of AFSL holders:

As at 10 May 2013, there were 5, 027 entities that hold AFSLs.

As at 10 May 2013 there were 51,147 authorised representatives of AFSL holders with a total of 59,564 links to AFSL holders (the higher number for links is due to the fact that some are authorised representatives of more than one licensee).

ASIC holds no data on entities that fall within the provisions of s911A(2) of the Corporations Act, as entities falling within the exemptions are not required to register with ASIC.[55]

3.64 While ASIC was able to provide the numbers of persons authorised to provide personal financial advice to retail clients, there is less clarity about the numbers of entities that may be able to use the terms 'financial planner' and 'financial adviser':

As at 2 April 2013 (the most recent data ASIC has interrogated) there were 39,782 authorised reps with a total of 44,024 links to AFSL holders authorised to provide personal financial advice to retail clients.

54 Financial Planning Association of Australia, answer to question on notice, 22 April 2013 (received 3 May 2013).

55 Australian Securities and Investments Commission, answer to question on notice, 22 April 2013 (received 13 May 2013).

> The only information that ASIC holds that indicates whether entities offering personal financial advice to retail clients may call themselves 'financial advisers' or 'financial planners' is the 'main business activity' descriptor selections which can be selected by an AFSL applicant during the completion of their application form.
>
> The selections of the main business activity of 'adviser' and 'financial planner' are voluntary selections elected by the applicant from a list of descriptors in the AFSL Application Form. The selections are not contingent upon, linked or connected to any suite or combination of financial product or services authorisations. The selections are not reflected or displayed in any external fashion and do not appear on any public register or in any term or condition of the AFSL certificate. The selections are made at the time of the lodgement of the initial application for an AFSL.
>
> This information is set out below:

AFSLs authorised to provide personal advice to retail clients	2736
AFSLs authorised to provide general advice to retail client	770
AFSLs selecting the main business activity of 'adviser'	1839
AFSLs selecting the main business activity of 'financial planner'	1228
AFSLs selecting both 'financial planner' and 'adviser'	581[56]

Concerns over the professionalism of the industry and the effectiveness of the bill

3.65 Concerns were raised that, in practice, the bill will not improve consumer protection because it does not address key areas of consumer risk. Some submitters expressed the view that the amendments, while a worthwhile step, did not in themselves constitute an improvement in the professionalism of financial advice. The SMSF Owners' Alliance supported the measures, but noted that the measures would 'not guarantee the quality of advice offered'.[57]

3.66 The Industry Super Network strongly supported the measures in Schedule 2, but, over time, would also support 'increasing the minimum requirements associated with use of these restricted terms, for instance in relation to minimum qualification requirements of those using the term'.[58]

3.67 The SMSF Professionals' Association of Australia (SPAA) felt strongly that improving adviser competency was the key element in consumer protection and better consumer outcomes:

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56 Australian Securities and Investments Commission, answer to question on notice, 22 April 2013 (received 13 May 2013). The dates at which these figures are current are provided in Appendix 3, Answers to questions on notice.

57 SMSF Owners' Alliance, *Submission 13*, p. 2.

58 Industry Super Network, *Submission 15*, [p. 1].

> We strongly believe that improving the skills and competencies of financial advisers is the most important facet of increasing the professionalism of financial advice and giving consumers more protection. Increased competencies of advisers will ensure the best outcomes for consumers of financial advice.[59]

3.68 Mr Robert Brown, Fellow of the Institute of Chartered Accountants, had strong reservations about the effectiveness of the bill. He based his argument on the premise that the recent FOFA reforms were compromised because they failed to sufficiently restrict all forms of conflicted remuneration:

> While I accept that FOFA may lead to some improvements in the way in which the industry operates (time will tell), that legislation contains significant political compromises for which the industry fought hard. These include allowing the continuity of widely-used forms of conflicted remuneration such as commissions paid on individual life insurance policies, trailing commissions on existing arrangements and percentage-based asset fees on investment products. The latter are often misleadingly referred to by the industry as 'professional fees for service', but in reality they are commissions paid by clients (akin to real estate agents' commissions).[60]

3.69 Mr Brown therefore pointed out that the bill might have the unintended effect of misleading consumers as to the nature of the advice that they may be receiving:

> My concern is that should the restrictions in this Bill become law, consumers of financial services are likely to incorrectly conclude that by consulting what amounts to a 'government-endorsed' licensed 'financial planner' or 'financial adviser' that they will be dealing with a professional person who can be relied upon to act in their interests without the improper influence of conflicted remuneration.
>
> […]
>
> My point here is that proper consumer protection is not achieved from what a licensed person is called (or not called) in legislation. It is achieved by professional practitioners adopting the highest ethical (conflict-free) standards, developed and enforced through self-regulation (my strong preference) or imposed by law. It is misleading to suggest that consumers should trust the advice of financial planners and financial advisers who use a legislatively restricted descriptor (implying trust and professionalism) while allowing those same planners/advisers to continue to receive commissions, percentage-based asset fees and other forms of conflicted remuneration.[61]

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59 SMSF Professionals' Association of Australia, *Submission 4*, p. 3.

60 Mr Robert Brown, Fellow of the Institute of Chartered Accountants in Australia, *Submission 11*, [p. 1].

61 Mr Robert Brown, Fellow of the Institute of Chartered Accountants in Australia, *Submission 11*, [p. 1].

3.70 Mr Brown concluded by arguing that the key element was conflicted remuneration, and that only by addressing conflicted remuneration along with the issue of restricted terms could the bill achieve adequate levels of consumer protection:

> If the government is determined to place legislative restrictions on the terms 'financial planner' and 'financial adviser', an effective measure from a consumer protection viewpoint would be to legislate so that those terms may ONLY be used by licensed persons who do not receive any form of conflicted remuneration. Then, at least, consumers could have the confidence and trust that licensed financial planners and financial advisers with whom they consult are what they claim to be, that is, un-conflicted professional advisers whose interests are clearly and unambiguously aligned with their clients' best interests.[62]

3.71 The AFA agreed with measures to improve the professionalism of the industry including education, membership of professional associations, and extending the coverage of codes of conduct.[63] However, it did not see the measures in the bill as appropriate for the pursuit of increased professionalism.[64] Mr Fox argued that the 'best interest duty' enshrined in the FOFA reforms was a key element in driving professionalism, and that this change needed time to work before considering other measures.[65]

3.72 By contrast, the FPA distinguished between industry associations and professional associations. Mr Rantall said that the FPA held itself to be a professional association and that professional associations were characterised by firstly, a globally recognised 'professional framework which incorporates standards, ethics, compliance and practice' and secondly, by a world-class certification program. As noted earlier, Mr Rantall argued that linking use of the term 'financial planner' to membership of a professional body would significantly increase the professionalism of the industry.

3.73 In its submission to the exposure draft legislation, the FPA outlined the initial and ongoing requirements for achieving certification as a Certified Financial Planner:

> To gain CFP certification, a financial planner must complete an under-graduate degree, Masters degree or PhD and have successfully completed all of the units of study in the CFP Certification Program. To achieve the CFP certification, at least three years of financial planning experience is also required. The CFP program is a postgraduate education program that

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62 Mr Robert Brown, Fellow of the Institute of Chartered Accountants in Australia, *Submission 11*, [p. 2].

63 Mr Philip Anderson, Chief Operating Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 23.

64 The Association of Financial Advisers Limited, *Submission 8*, p. 2; Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 21.

65 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 28.

> covers the knowledge a financial planning professional must be able to draw on to deliver financial planning to clients, or when interacting with colleagues or others in a professional capacity. A detailed capstone assessment is part of the program.
>
> CFP professionals must also adhere to the FPA Code of Professional Practice which includes the Code of Ethics, Rules of Professional Conduct and Practice Standards; and undertake at least 120 hours of quality on ongoing Continuing Professional Development (CPD) every three years. This requirement is for all CFP professionals whether they are actively providing personal financial advice to clients or not.[66]

3.74 The FPA also explained what is occurring globally to increase the professionalism of the financial planning industry. Mr De Gori and Mr Rantall noted that the Financial Planning Standards Board, of which the FPA is a member, has 23 members internationally, and is discussing with the International Organization of Securities Commissions (IOSCO) and with regulators that are members of IOSCO moves to have the term 'financial planner' enshrined in law. Mr De Gori advised that Malaysia and Quebec in Canada have enshrined the term 'financial planner' in law and that New Zealand has enacted legislation around financial advisers.[67]

3.75 The distinction between selling financial products and providing unaligned financial planning advice is central to the FPA's position, and also addresses concerns expressed by some submitters about the extent to which the bill would actually address the professionalism of the industry. Mr De Gori expressed the FPA's belief that the bill would help address consumer confusion, but would not differentiate between those focused more on selling financial products and those providing financial planning:

> The confusion around those who just sell financial products and those who provide financial planning services, as we were discussing earlier, is probably the original step that the FPA was looking for. In the absence of that, regarding the confusion between those operating outside of the regime versus those inside the regime, this legislation will help with that. This will rule out the property spruikers and real estate agents—those who are trying to mislead consumers that they are able to provide some form of financial advice.[68]

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66 Financial Planning Association of Australia, *Submission*, Exposure Draft—Legislative amendments relating to the use of the expressions 'financial planner' and 'financial adviser', p. 4; see also Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 31.

67 Mr Mark Rantall, Chief Executive Officer, and Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, pp 33–34.

68 Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 35.

3.76 The AFSL system is premised on service providers demonstrating professionalism and acting in the best interest of the client. An AFSL pertains to a business and not necessarily to an individual because a person may be authorised to provide financial advice on behalf of a license holder. Treasury stated that a licence holder is responsible for monitoring their authorised representatives. Mr Fraser also pointed out that the broader FOFA reforms placed obligations on licensees and authorised representatives to act in the best interest of their client and placed restrictions on conflicted remuneration.[69]

3.77 Treasury further noted that:

> Any person advising on financial products must be licensed to do so by ASIC or operate under the licence of a licensee i.e. an authorised representative.
>
> Under the licensing regime, the licensee is responsible for ensuring their authorised representatives are adequately trained and competent to provide the services covered by the AFSL's licence. Under the Corporations Act, licensees must adequately train and supervise their representatives, and must themselves be competent.
>
> The knowledge, skill and educational level requirements vary depending on the representative's advice activities. That is, they vary depending on whether the adviser gives general or personal advice and what products the adviser gives advice on. Where the adviser provides advice on products that are more complex and not generally understood, a higher standard of knowledge, skill and educational level is required.[70]

Time-frame for commencement of penalties

3.78 The AFA had reservations around the timeframe for the commencement of penalties, particularly those related to passive breaches such as signage rather than active breaches such as emails and face-to-face communication.[71] Mr Webb from the AIST supported the idea of a transition period.[72]

Recommendation 2

3.79 The committee recommends that ASIC consult with key stakeholders in the financial advice sector to implement a grace period to ensure that in the

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69 Mr Bede Fraser, Manager, Intermediaries and Regulatory Powers Unit, Retail Investor Division, Markets Group, Treasury, *Committee Hansard*, 22 April 2013, p. 40.

70 Treasury, answer to question on notice, 22 April 2013 (received 9 May 2013).

71 The Association of Financial Advisers Limited, *Submission 8*, p. 2; Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 21.

72 Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 17.

short-term, passive breaches of the new provisions will not be prosecuted. ASIC should engage with the financial advice sector to discuss the time that practitioners will need to ensure that signage is changed.

Public education campaign

3.80 The AIST recommended that advisers 'be required to display the title 'financial planner' or 'financial adviser' publicly'.[73] The FPA agreed that this proposal 'would be very useful' and recommended teaming it with a display of a licence number. Mr De Gori noted that this recommendation would help distinguish financial planners from 'authorised representatives'.[74]

3.81 The AIST encouraged ASIC to initiate a public education campaign on the matter to 'ensure that the public is aware of who can provide personal financial advice by looking for financial planners/financial advisers for their advice needs'.[75] The AFA also saw ASIC's *MoneySmart* website as an appropriate avenue for a public education campaign.[76]

3.82 CPA Australia and the ICAA argued that an education campaign by government and industry was essential to convey the benefits of receiving licensed financial advice:

> For this measure to be successful, it would also require both the government and industry to work together to deliver an education campaign that provides consumers with a clear understanding on who can provide licensed financial planning advice and importantly, the very real benefits of seeking such advice.[77]

3.83 The FPA remarked that it has a $200 advertising levy in addition to its $800 membership fee, and that it has run an advertising campaign over the last two years 'promoting the benefits of seeking out a professionally qualified financial planner'. Mr Rantall added that, should the bill pass, they would run further advertising campaigns promoting the idea of seeking advice from a 'professionally qualified, certified

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73 Australian Institute of Superannuation Trustees, *Submission 3*, [p. 2]; see also Mr Richard Webb, Policy and Regulatory Analyst, Australian Institute of Superannuation Trustees, *Committee Hansard*, 22 April 2013, p. 16.

74 Mr Mark Rantall, Chief Executive Officer, and Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 37.

75 Australian Institute of Superannuation Trustees, *Submission 3*, [p. 2].

76 Mr Bradley Fox, Chief Executive Officer, and Mr Philip Anderson, Chief Operating Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 28.

77 CPA Australia and the Institute of Chartered Accountants Australia, *Submission 7*, p. 3.

financial planner'.[78] Mr De Gori expressed the hope that 'ASIC would also assist in the consumer campaign around promoting this new piece of legislation, should it pass'.[79]

3.84 Mr Rantall also saw 'a massive role for education in the school system'. He noted that financial literacy was a compulsory subject in Thailand. Mr Rantall explained that financial literacy encompassed very basic money management skills:

> It is just about how you manage your credit card properly or your phone account properly. It is as simple as that—staying away from debt that is going to cause you any grief and living within your means. It is as simple as that.[80]

Industry size and membership

3.85 The committee questioned industry representatives about the size of their industry, their membership coverage, and the proportion of Australians currently receiving personal financial advice. The committee heard that only two in 10 Australians currently have an active advice relationship with a financial adviser, and that the AFA currently has about 2 000 individual members and about 8 000 advisers through the licensee network. Noting that the legislation may result in an increase in the number of people seeking advice from authorised financial advisers, the committee asked industry representatives whether there would be enough financial advisers to meet the potential increase in demand.[81]

3.86 Mr Fox outlined some of the steps that the AFA was taking to address workforce issues:

> It is a challenge that the market could face. There is the combined issue here about being able to successfully establish that trust along with being able to deliver advice that a consumer readily attaches to receiving that type of advice, which has been a challenge well highlighted through the FOFA debate over the last three years. The AFA started work on bringing younger advisers into the marketplace through initiative called GenXt several years ago. That has seen the demographic of advisers changing. There are younger, newer advisors coming through, but we have an old workforce. The average age of an adviser is still in the mid-50s. So as they retire we do have a challenge to top up from the bottom and in fact grow the capability

78 Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 31.

79 Mr Dante De Gori, General Manager, Policy and Government, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 35.

80 Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, *Committee Hansard*, 22 April 2013, p. 36.

81 See the exchange between the Chair, Ms Deborah O'Neill MP and Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 22.

> of the market to continue to deliver personal advice as opposed to just general advice.[82]

Recourse to the law

3.87 The bill would enable ASIC to take action against a person that had breached the law on use of the restricted terms. However, SPAA believed that the bill could be strengthened by giving consumers recourse to the law in the event that they had suffered loss as a result of the fraudulent use of the terms:

> To strengthen the proposed amendments, and deliver better consumer protection, we believe that the amendments should provide for a person that has illegally held themselves out to be a financial planner/adviser to compensate consumers that suffer a loss due to their advice/actions. This could be administered and enforced by ASIC as part of their administration and enforcement of the restricted use of financial planner/advisor. We believe providing consumers with recourse for fraudulent or incompetent advice would be an important addition to the amendments and provide real consumer protection.[83]

Committee view

3.88 While the amendments regarding use of the terms 'financial planner' and 'financial adviser' by those offering personal financial advice are welcome and should ensure that those persons are operating under a relevant licence, the amendments will only work as part of the broader package of FOFA reforms that address issues of conflicted remuneration and acting in the best interest of the client.

Recommendation 3

3.89 The committee recommends that ASIC clearly sets out on its *MoneySmart* website the changes that the bill makes to inform consumers about what they can expect when they receive a service from a 'financial planner' or a 'financial adviser'.

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82 Mr Bradley Fox, Chief Executive Officer, Association of Financial Advisers, *Committee Hansard*, 22 April 2013, p. 22.

83 SMSF Professionals' Association of Australia, *Submission 4*, p. 3.

Recommendation 4

3.90 The committee recommends that the bill be passed.

Ms Deborah O'Neill MP

Chair

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 debit 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 Deloittes – 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

Appendix 1

Submissions

1 Mr Peter Kirk

2 Stockbrokers Association of Australia

3 Australian Institute of Superannuation Trustees

4 SMSF Professionals' Association of Australia Limited

5 Financial Planning Association of Australia Ltd

6 National Australia Bank

7 Institute of Chartered Accountants Australia

8 Association of Financial Advisers Ltd

9 Ms Lee Henderson

10 Confidential

11 Mr Robert Brown

12 Suncorp

13 SMSF Owners' Alliance Limited

14 Australian Bankers' Association Inc.

15 Industry Super Network

Additional information

1 Document 1 provided by Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank: ICMA report on 'Economic Importance of the Corporate Bond Market'

2 Document 2 provided by Mr Steve Lambert, Executive General Manager, Debt Markets, National Australia Bank: break-down of the international corporate bonds market

Tabled documents

1 Document 1 tabled by Mr Mark Rantall, Chief Executive Officer, Financial Planning Association of Australia, public hearing Sydney, 22 April 2013

Questions on notice

1 Treasury, answers to questions on notice, 22 April 2013(received 2 May 2013)

2 Financial Planning Association of Australia, answers to questions on notice, 22 April 2013 (received 3 May 2013)

3 Treasury, answers to questions on notice, 22 April 2013 (received 8 May 2013)

4 Treasury, answers to questions on notice, 22 April 2013 (received 9 May 2013)

5 Australian Securities and Investments Commission, answers to questions on notice, 22 April 2013 (received 13 May 2013)

Appendix 2

Public hearings and witnesses

Sydney, 22 April 2013

National Australia Bank
Mr Steve Lambert, Executive General Manager of Debt Markets

Treasury
Dr Richard Sandlant, Manager, Disclosure and International Unit, Retail Investor Division, Markets Group
Mr Bede Fraser, Manager, Intermediaries and Regulatory Powers Unit, Retail Investor Division, Markets Group

Australian Institute of Superannuation Trustees (via teleconference)
Mr Richard Webb, Policy and Regulatory Analyst
Ms Karen Volpato, Senior Policy Advisor

Association of Financial Advisers
Mr Brad Fox, Chief Executive Officer
Mr Phil Anderson, Chief Operating Officer

Financial Planning Association
Mr Mark Rantall, Chief Executive Officer
Mr Dante De Gori, General Manager, Policy and Government Relations