

Chapter 1

Introduction and background to the inquiry

Conduct of the inquiry

1.1 On 13 October 2011, the House of Representatives referred the Corporations Amendment (Future of Financial Advice) Bill 2011 to the committee for inquiry and report.¹ On 24 November 2011, the House of Representatives referred the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 to the committee for inquiry and report.² The two Bills propose to amend the *Corporations Act 2001* (Corporations Act) to change the way the financial advice industry in Australia is regulated.

1.2 The committee advertised the inquiry on its website and in *The Australian*, and invited submissions from interested individuals and organisations. The committee received 69 submissions, as listed in Appendix 1. Two days of public hearings were held in Sydney on 23 and 24 January 2012. A full list of witnesses who gave evidence at the hearings is at Appendix 2. The committee thanks those individuals and organisations who made submissions, and those which gave evidence at public hearings.

Background to the inquiry

1.3 The two Bills currently before the committee represent the government's response to this committee's 2009 inquiry into financial products and services in Australia. The recommendations of that inquiry, and the subsequent consultation processes undertaken by government that led to the current legislation, are outlined below to give context to this inquiry.

The financial advice industry in Australia

1.4 The financial advice industry in Australia comprises over 750 adviser groups operating over 8,000 practices and employing around 18,200 people.³ Advisers work for authorised businesses holding an Australian Financial Services Licence (AFSL) under the Corporations Act. The majority of financial advisers work for one of the approximately 160 dealer groups currently operating in Australia, and the largest 20 dealer groups hold approximately 50 per cent of the market share.⁴

1 Selection Committee Report, *House of Representatives Hansard*, 13 October 2011, p. 11873.

2 Selection Committee Report, *House of Representatives Hansard*, 24 November 2011, p. 13849.

3 Australian Securities and Investments Commission, *Report 224*, 'Access to financial advice in Australia', December 2010, p. 30.

4 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 16.

1.5 Many Australians are the recipients of financial advice; according to recent survey data the 20 largest licensees offering financial product advice to retail clients had around 4 million clients in 2010, of which 1.5 million were considered 'active clients'.⁵

1.6 Various business models are used within the financial advice industry. The industry includes: medium to large sized advisory dealer groups which operate similar to a franchise; institutional-owned financial adviser firms with employed advisers; and smaller, independent advisory firms with their own licence.⁶ These firms operate using a range of remuneration models:

Financial advisers are paid through a variety of remuneration models, including fee-for-service, commissions and bonuses. Fee-for-service charges are paid by clients to the adviser and may be an hourly rate or a proportion of funds under management. Commissions are paid by product manufacturers to advisers, usually as up-front payments as a proportion of the investment or as an ongoing trailing commission. Bonuses are generally paid by manufacturers to providers for meeting certain volume targets.⁷

Regulation of the financial advice industry in Australia

1.7 The regulation of the financial services industry is overseen by the Australian Securities and Investments Commission (ASIC). The existing regulatory regime has been designed to maximise market efficiency, with minimal regulatory intervention to protect investors.⁸

1.8 ASIC is responsible for the granting and cancelling of AFSLs. A licence granted to a business will specify the scope of financial services they are authorised to offer, and applicants must demonstrate to ASIC that they will be able to meet the licence conditions. ASIC is responsible for ensuring compliance with licence conditions, which it carries out through monitoring, surveillance and intervention measures.⁹

1.9 Protection for investors is currently limited to conduct and disclosure obligations placed upon AFSL holders. Part 7.7 of the Corporations Act requires providers of financial product advice to retail clients to comply with certain conduct

5 Australian Securities and Investments Commission, *Report 251: Review of financial advice industry practice*, September 2011, p. 6.

6 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 16.

7 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 17.

8 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 7.

9 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, pp 8–9, 15.

and disclosure obligations, which vary depending on whether the advice is personal advice or general advice. Personal advice is defined as advice given in circumstances where the provider has considered the client's objectives, financial situation and needs. 'General advice' refers to financial product advice that is not personal advice.¹⁰

1.10 In cases where personal advice is being given, disclosure obligations include preparing a Financial Services Guide (FSG) for a client receiving advice as well as a Statement of Advice (SOA) for each piece of advice given.

1.11 An FSG is a general document provided at the commencement of an advice relationship, which must outline the kinds of financial services and products the licensee is authorised to provide, as well as any remuneration, commission and other benefits that may be received by the providing entity as a result of advice being offered and any potential conflicts of interest.¹¹

1.12 An SOA outlines personal advice provided to a client regarding a financial product or service, and must include information such as details of remuneration arising from the advice and possible conflicts of interest, in addition to the advice itself and information explaining the basis for the advice.¹²

1.13 As well as disclosure obligations, licensees must adhere to certain conduct obligations, including a requirement that advisers providing personal advice must ensure that there is a reasonable basis for that advice. This is often referred to as the 'suitability rule', and is stipulated in section 945A of the Corporations Act, as follows:

- (1) The providing entity must only provide the advice to the client if:
 - (a) the providing entity:
 - (i) determines the relevant personal circumstances in relation to giving the advice; and
 - (ii) makes reasonable inquiries in relation to those personal circumstances; and
 - (b) having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
 - (c) the advice is appropriate to the client, having regard to that consideration and investigation.

10 ASIC, *Regulatory Guide 175, 'Licensing: Financial product advisers – Conduct and disclosure'*, April 2011, p. 4.

11 ASIC, *Regulatory Guide 175, 'Licensing: Financial product advisers – Conduct and disclosure'*, April 2011, pp 21-23.

12 ASIC, *Regulatory Guide 175, 'Licensing: Financial product advisers – Conduct and disclosure'*, April 2011, pp 45–48.

Previous committee inquiry into financial products and services in Australia

1.14 In February 2009, the Parliamentary Joint Committee on Corporations and Financial Services resolved to inquire into issues associated with the provision of financial products and services in Australia. The inquiry was initiated in response to a string of high profile collapses of financial product and service providers, such as Storm Financial and Opes Prime.

1.15 The committee investigated a wide range of issues including the role of financial advisers, commission arrangements relating to product sales and advice; the adequacy of licensing arrangements for financial product and service providers; consumer information and protection relating to financial services and products; and the need for any legislative or regulatory change.¹³

Recommendations of the PJC report

1.16 The committee's final report in November 2009 (the PJC report) found that significant changes to the regulatory regime for the financial advice industry were warranted. It made a series of recommendations designed to 'enhance professionalism within the financial advice sector and enhance consumer confidence and protection',¹⁴ as outlined below.

Introducing a statutory fiduciary duty for financial advisers

1.17 The committee found that some financial advisers were not acting in the best interests of their clients, but rather promoting investment products based predominantly on their own interests (e.g. by promoting products from which they received commission payments).

1.18 The committee recommended that the Corporations Act be amended to explicitly include a fiduciary duty for financial advisers operating under an AFSL, requiring them to place their clients' interests ahead of their own.¹⁵

Remuneration practices and conflicts of interest

1.19 The committee found that remuneration structures which involve payments from product manufacturers to advisers, such as product commissions, constitute a significant conflict of interest for financial advisers, and are inconsistent with the proposed fiduciary duty for advisers to act in their clients' best interests. Accordingly,

13 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. vii.

14 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 149.

15 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 110.

the committee recommended that the government consult with and support the industry in developing the most appropriate mechanism by which to cease payments from financial product manufacturers to financial advisers.¹⁶

1.20 The committee also found that potential conflicts of interest and restrictions on the advice certain financial advisers can give (e.g. where an adviser is limited to discussing only certain financial products) were not easily apparent in disclosure documents and marketing materials provided to clients by financial advisers. The committee recommended that the Corporations Act be amended to require advisers to disclose prominently in marketing material restrictions on the advice they are able to provide consumers and any potential conflicts of interest.¹⁷

Expanding ASIC's regulatory powers and enforcement activities

1.21 The committee made four recommendations concerning ASIC's statutory powers as the financial services regulator and its enforcement activities in this area.¹⁸

1.22 The committee found firstly that ASIC could do more to enforce the current legislative standards relating to the provision of financial advice. The committee recommended that the government ensure ASIC is appropriately resourced to perform effective risk-based surveillance of the advice provided by AFSL holders, and that ASIC should conduct financial advice shadow shopping exercises annually.¹⁹

1.23 In addition to enforcement activities, the committee found that ASIC did not have sufficient powers to ban licensees where there was a suspicion they would not comply with their obligations under the licence. Additionally, ASIC was unable to ban individual financial advisers from the industry, instead only being permitted to ban businesses at a licensee level,²⁰ which prevented individuals operating at the fringes of the industry from being suspended.²¹

16 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 127.

17 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 115.

18 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, pp 111, 139–141.

19 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 111. In this context shadow shopping exercises involve ASIC officials posing as consumers and obtaining financial advice from providers to determine its quality and compliance with regulations.

20 AFSLs are granted to financial service businesses, which then authorise individual employees to operate under the terms of that licence.

21 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, pp 135, 139.

1.24 Accordingly, the committee recommended that the Corporations Act be amended to allow ASIC to ban individuals from the financial services industry, and to allow ASIC to deny an application, or suspend or cancel an AFSL, where there is a reasonable belief that the licensee 'may not comply' with their obligations under the licence.²²

Establishment of a professional standards board

1.25 The committee recommended that ASIC begin consultation with the financial services industry on the establishment of an independent, industry-based Professional Standards Board (PSB) to oversee nomenclature, and competency and conduct standards for financial advisers.

1.26 The committee considered that such a board would increase professionalism in the industry by ensuring that those wishing to call themselves 'financial advisers' or 'financial planners' would be required to obtain membership and adhere to the board's standards. It would work in conjunction with ASIC to establish, monitor and enforce competency and conduct standards amongst members and have the power to sanction or remove those who do not comply.²³

Investor compensation

1.27 The committee considered the issue of what compensation arrangements should be in place for consumers who lose money through the collapse of AFSLs. It noted that public indemnity insurance held by licensees is generally insufficient to cover losses sustained during significant corporate collapses, and that a 'last resort' statutory compensation fund covering licensee wrongdoing, while an appealing option, had significant challenges associated with it.

1.28 The committee recommended that the government investigate the costs and benefits of different models of a statutory 'last resort' compensation fund for investors.²⁴

Other issues

1.29 The committee also made recommendations on three other issues of relevance to the industry.

1.30 The committee considered a proposal to make the cost of obtaining financial advice tax deductible for consumers, and recommended that the government consider

22 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, pp 139–141.

23 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 141.

24 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 146.

the implications of this proposal as part of its response to the Treasury review of the tax system.²⁵

1.31 Another issue discussed by the committee was the adequacy of capital arrangements for AFS licensees, and particularly the capital adequacy of agribusiness Managed Investment Schemes (MIS) in Australia. While the committee made no recommendation about capital arrangements for AFSLs generally, it did recommend that ASIC require agribusiness MIS licensees to demonstrate they have sufficient working capital to meet current obligations as part of their licence conditions.²⁶

1.32 Finally, the committee noted its view that ASIC could be doing more to educate key, higher risk, older demographic groups by promoting sensible investment messages, and recommended that ASIC develop and deliver more effective education activities targeted to groups in the community who are likely to be seeking financial advice for the first time.²⁷

Government response – the Future of Financial Advice reforms

1.33 In response to the PJC report, in April 2010, the then Minister for Financial Services, Superannuation and Corporate Law, the Hon. Chris Bowen MP, announced reforms to 'improve the trust and confidence of Australian retail investors in the financial planning sector'.²⁸

1.34 The initial reform announcement supported nine of the PJC's eleven recommendations, as well as proposing several additional measures to overhaul the financial advice industry.

Response to the PJC recommendations

1.35 Five of the PJC's recommendations were taken up directly in the government's reform package, while four recommendations were supported in principle and two were not supported by government.

1.36 The recommendations adopted directly include the introduction of a statutory fiduciary duty for advisers to act in their clients' best interests, strengthening ASIC's enforcement powers and ceasing payments from product manufacturers to financial advisers. The government strengthened the recommendation to cease payments from product manufacturers to financial advisers to include a ban on conflicted

25 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, pp 127–128.

26 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 140.

27 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 147.

28 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Overhaul of Financial Advice', *Media Release No. 036*, 26 April 2010.

remuneration practices such as commission payments and payments relating to volume or sales targets, as well as banning percentage-based fees on geared investments.²⁹

1.37 In line with the PJC's recommendation, the government commissioned an independent study, undertaken by the financial services and corporate governance expert Richard St. John, into the merits of a last resort statutory compensation scheme for consumers of financial services. Mr St. John released a consultation paper in April 2011 into these issues, and received public submissions until June 2011.³⁰ The final outcome of the study has not yet been made public.

1.38 The government also expressed in principle support for the PJC's recommendations relating to ASIC's role in providing risk-based surveillance of the financial advice industry, offering increased financial education initiatives to target groups in the community, and more closely monitoring capital requirements of agribusiness MIS licensees.

1.39 It also supported the PJC's recommendation that the government consider the implications of making the cost of financial advice tax deductible for consumers as part of its response to the Treasury review into the tax system. However, this issue was not mentioned in the government's initial response to the *Australia's Future Tax System* (AFTS) review that was released in May 2010.

1.40 The government did not support two of the PJC's recommendations. These related to the disclosure of potential conflicts of interest and limits on advice in marketing material, and ASIC consulting on the establishment of a PSB for the financial advice industry.

1.41 With regards to increased disclosure of potential conflicts of interest and limits on advice in marketing material, the government response noted that it is difficult for a range of restrictions and conflicts to be disclosed in various forms of marketing material, and that the government would act to improve disclosure regarding financial advisory services provided to consumers, through simplifying disclosure in FSGs.³¹

1.42 With regards to the establishment of a PSB, the government noted concern about the costs of a separate PSB, which could be passed on to consumers, and for the potential for significant overlap with the role of ASIC in enforcing competency and

29 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Overhaul of Financial Advice', *Media Release No. 036*, 26 April 2010, pp 8–9.

30 Treasury, 'Review of compensation arrangements for consumers of financial services', http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=consultation/compensation_arrangements_CP/default.htm (accessed 3 January 2012).

31 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Overhaul of Financial Advice', *Media Release No. 036*, 26 April 2010, pp 8–10.

conduct standards.³² While not supporting the establishment of a separate PSB, the government announced a review of professional standards in the industry by an expert advisory panel (see below).

Additional government proposals

1.43 In addition to the PJC's recommendations, the government announced several additional proposals as part of the Future of Financial Advice (FOFA) reform package. These included:

- the introduction of a new 'adviser charging' regime, with an annual renewal notice required for advisers entering ongoing fee arrangements with clients;
- improving access to simple or limited advice to assist in the affordability of advice, by removing regulatory barriers;
- removing the current exemption permitting accountants to provide advice on the establishment and closing of self-managed superannuation funds without holding an AFSL; and
- consulting on the appropriateness of the current criterion under which a client is classified as retail or wholesale.³³

Consultation process

1.44 Treasury undertook a consultation process throughout the development of the FOFA reforms. A peak consultation group, comprising key industry and consumer stakeholders as well as ASIC, was established to facilitate this process. Treasury also held public information sessions relating to the FOFA reforms in June and July 2010 and February and March 2011 in Adelaide, Brisbane, Melbourne, Perth and Sydney.³⁴

Establishment of expert advisory panel

1.45 On 24 November 2010, the government announced the establishment of an advisory panel on financial advice and professional standards as part of its FOFA reforms. The panel was established to provide views on:

- professional and ethical standards in the financial advice industry, including the possible development of a best practice guide for financial advisers;
- the competency requirements that must be satisfied by financial services professionals regulated by the Corporations Act;

32 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Overhaul of Financial Advice', *Media Release No. 036*, 26 April 2010, p. 10.

33 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, 'Overhaul of Financial Advice', *Media Release No. 036*, 26 April 2010, p. 9.

34 Treasury, 'Future of Financial Advice: Consultation', <http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=consultation.htm> (accessed 9 January 2012).

- the training requirements for people providing financial product advice;
- the extent to which material soft-dollar benefits³⁵ are consistent with any ethical standards imposed on financial advisers; and
- proposals regarding how training should be tested or assessed.³⁶

Second round of FOFA announcements – April 2011

1.46 The government released an additional round of information in April 2011 relating to the FOFA reforms. This package included modifications to several of the proposals previously announced, including:

- extending the ban on conflicted remuneration to include 'soft dollar' benefits over a certain threshold (proposed to be \$300), and a ban on commissions for both individual and group risk insurance within superannuation from 1 July 2013;
- an exemption from elements of the ban on conflicted remuneration and best interests duty for employees of Authorised Deposit-taking Institutions (ADIs) selling basic banking products; and
- a change to the proposed 'adviser charging regime', under which clients would need to 'opt-in' via a renewal notice every two years, supplemented by an annual disclosure statement.³⁷

1.47 The government also announced that it would explore whether the term 'financial planner/adviser' should be restricted under the Corporations Act. Further details of the April 2011 update are outlined in Diagram 1.1 and Diagram 1.2 below.

Exposure draft legislation

1.48 On 29 August 2011, the government released exposure draft legislation for the *Corporations Amendment (Future of Financial Advice) Bill 2011*, including details on measures such as the statutory best interests test, compulsory renewal requirement (opt-in), and the enhancement of ASIC's powers. Consultation on this exposure draft closed on 16 September 2011, with 47 submissions received.³⁸

35 'Soft dollar' benefits are any non-monetary benefits received by a party as part of a remuneration arrangement for services provided.

36 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, 'Government announces financial advice advisory panel membership', *Media Release No. 015*, 24 November 2011, p. 1.

37 Australian Government, 'Future of Financial Advice 2011: Information Pack', 28 April 2011, pp 5-6.

38 The Hon. Bill Shorten MP, Minister for Financial Services and Superannuation, 'Future of Financial Advice reforms – Draft legislation', *Media Release No. 127*, 29 August 2011; Treasury, 'Exposure Draft – Corporations Amendment (Future of Financial Advice) Bill 2011', http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=consultation/corporations_amendment/default.htm (accessed 9 January 2012).

1.49 On 28 September 2011 the government released exposure draft legislation for the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011*. This Bill implements further aspects of the FOFA reforms including the proposed ban on conflicted remuneration. Consultation on this exposure draft closed on 19 October 2011, with 48 submissions received.³⁹

1.50 Diagram 1.1 outlines the initial PJC recommendations, how they have been taken up or modified in the government's response, and where applicable the provisions in the current Bills relating to each. Diagram 1.2 outlines the additional proposals that the government has announced as part of the FOFA reforms.

Structure of the report

1.51 This report consists of 10 chapters. Chapter 1 has outlined the conduct of the inquiry and the background to the FOFA reforms. Chapter 2 then provides an overview of the provisions of the two FOFA Bills. Chapters 3-8 discuss stakeholder views on the provisions of the Bills.

1.52 Chapter 3 discusses the provisions relating to the 'opt-in' and fee disclosure regime. Chapter 4 discusses the proposed statutory obligation for advisers to act in the best interests of their clients.

1.53 Chapters 5-7 deal with the provisions of the Bill relating to the ban on conflicted remuneration. Chapter 5 provides a look at the proposed conflicted remuneration bans, then chapter 6 considers the anti-avoidance provisions on volume based fees and the proposed ban on soft dollar benefits. Chapter 7 finishes this section by discussing the proposed carve-outs from the conflicted remuneration ban for basic banking products and stockbrokers.

1.54 Chapter 8 discusses ASIC's proposed additional statutory powers under the Bill.

1.55 Chapters 9-10 examines the process of the FOFA reforms and their possible impact. Chapter 9 canvasses the expected impact of the FOFA reform package on the financial services industry, while Chapter 10 examines the implementation process of the FOFA reforms and the consultation process undertaken in the development of the legislation.

39 Joint Consumer Submission, *Submission 25*, p. 6; Treasury, 'Exposure Draft - Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011', http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=consultation/corporations_further/default.htm (accessed 9 January 2012).

Diagram 1.1 – PJC recommendations and subsequent FOFA reform measures

PJC Recommendation	Government Response (April 2010)	Government update (April 2011)	Current legislation
1. The committee recommends that the Corporations Act be amended to explicitly include a fiduciary duty for financial advisers operating under an AFSL, requiring them to place their clients' interests ahead of their own.	Support the introduction of a statutory fiduciary for financial advisers to act in the best interests of their clients, including a 'reasonable steps' qualification outlining steps advisers must take to fulfil this duty.	Duty to be based on how a person acted rather than the outcomes of an action. Consultation with industry on the form of the statutory duty is taking place.	FOFA bill No. 2 ¹ Covered in Division 2, ss. 961-961Q. 'Best interests' requirement and procedural steps for satisfying it (s961B). Requirement for advice to be appropriate to client, replacing s945A (s961G). Provider must preference the client's interest in the case of a conflict of interest (s961J).
2. The committee recommends that the government ensure ASIC is appropriately resourced to perform effective risk-based surveillance of the advice provided by licensees and their authorised representatives. ASIC should also conduct financial advice shadow shopping exercises annually.	Support in principle. The government believes that ASIC is appropriately resourced to perform its functions.	N/A	N/A

1 In this table 'FOFA Bill No. 1' refers to the *Corporations Amendment (Future of Financial Advice Measures) Bill 2011* while 'FOFA Bill No. 2' refers to the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011*.

PJC Recommendation	Government Response (April 2010)	Government update (April 2011)	Current legislation
3. The committee recommends that the Corporations Act be amended to require advisers to disclose more prominently in marketing material restrictions on the advice they are able to provide consumers and any potential conflicts of interest.	Do not support. Difficult for a range of restrictions and conflicts to be disclosed in various forms of marketing material. Government is already acting to improve disclosure of advisory services to consumers, through simplifying disclosure in FSGs.		
4. The committee recommends that the government consult with and support industry in developing the most appropriate mechanism by which to cease payments from product manufacturers to financial advisers.	Support with additional strengthening - a ban on 'conflicted remuneration' including commission payments, volume-based payments and asset-based fees on borrowed amounts.	Ban expanded to include 'soft-dollar' benefits over a threshold value (proposed \$300) and risk insurance within superannuation. Exemption from this ban for basic banking products. <i>Note: an exemption for general insurance products was also introduced in the Exposure Draft legislation in September 2011.</i>	FOFA Bill No. 2 Definition of conflicted remuneration (s963A) and exemptions(ss. 963B-963D). Ban on conflicted remuneration (ss. 963E-963L). Ban on volume-based shelf-space fees (ss. 964-964A). Ban on asset-based fees on borrowed amounts (ss. 964B-964G).
5. The committee recommends that the Government consider the implications of making the cost of financial advice tax deductible for consumers as part of its response	Supported, noting that the government's response to the Treasury review of the	N/A - The government's May 2010 response to the	N/A

PJC Recommendation	Government Response (April 2010)	Government update (April 2011)	Current legislation
to the Treasury review into the tax system.	tax system would be released in May 2010.	AFTS review did not mention this issue.	
6. The committee recommends that section 920A of the Corporations Act be amended to provide extended powers for ASIC to ban individuals from the financial services industry.	Support. Government intend to adopt the changes recommended by the committee.	No change.	FOFA Bill No. 1 Items 5-7. ss. 920A(1)(ba), 920A(1)(d), 920(1)(da) and 920A(1)(f).
7. The committee recommends that, as part of their licence conditions, ASIC require agribusiness MIS (managed investment scheme) licensees to demonstrate they have sufficient working capital to meet current obligations.	Support in principle, noting that implementation is a matter for ASIC.	On 30 January 2012, ASIC released an investor guide and regulatory guide 232, <i>Agribusiness managed investment schemes: Improving disclosure for retail investors</i> , dealing with issues relating to investing in an agribusiness MIS.	
8. The committee recommends that sections 913B and 915C of the Corporations Act be amended to allow ASIC to deny an application, or suspend or cancel a licence, where there is a reasonable belief that the licensee 'may not comply' with their obligations under the licence.	Support. Government intend to adopt changes recommended by the committee.	No change.	FOFA Bill No. 1 Items 2-4. ss. 913B(1)(b), 913B(4)(a), and 915C(1)(aa).
9. The committee recommends that ASIC immediately begin consultation with the financial services industry on the establishment of an independent, industry-based professional standards board (PSB) to oversee nomenclature, and competency and conduct standards for financial advisers.	Do not support. Government acknowledges current arrangements for professional standards could be enhanced, however is concerned about the cost of establishing a separate PSB, which may be passed on to consumers, and the potential overlap with ASIC's role. <i>Instead, the government established an expert advisory panel in November 2010 to review professional standards including competency and conduct standards.</i>		

PJC Recommendation	Government Response (April 2010)	Government update (April 2011)	Current legislation
10. The committee recommends that the government investigate the costs and benefits of different models of a statutory last resort compensation fund for investors.	Support. Government appointed Richard St. John to undertake a study on this issue.	Consultation paper from Richard St. John released. Submissions closed June 2011. Final report not yet published.	N/A
11. The committee recommends that ASIC develop and deliver more effective education activities targeted to groups in the community who are likely to be seeking financial advice for the first time.	Support in principle.	N/A	N/A

Diagram 1.2 FOFA reforms - additional Government proposals

Government proposal (April 2010)	Government Update (April 2011)	Current legislation
1. The exemption permitting accountants to provide advice on the establishment and closing of self-managed superannuation funds without holding an AFSL will be removed.	Government, ASIC and industry working to develop initiatives to replace the current exemption.	N/A
2. Improve access to simple or limited advice to assist in the affordability of advice, by removing regulatory barriers.	Government intends for amendments to be made to the Corporations Act to ensure that the provision of scaled advice is consistent with licensees' obligations under the Act.	No provisions explicitly relating to scaled advice, however the EM to FOFA Bill No. 2 states that the provisions relating to the 'best interests' obligation have been drafted so as to facilitate the

	ASIC Consultation Paper 164, <i>Additional guidance on how to scale advice</i> , released on 28 July 2011.	provision of scaled advice. ²
3. Introduce a new 'adviser charging' regime with an annual renewal notice required for ongoing fee arrangements.	<p>Clients will need to 'opt-in' to ongoing advice fees via a renewal notice every two years.</p> <p>Renewal notice to be supplemented by an annual fee disclosure statement detailing fee and service information for the previous and forthcoming year.</p> <p>These measures are to apply prospectively.</p>	FOFA Bill No. 1 Covered in Division 3, ss. 962-962S. Definitions of ongoing fee arrangements (ss.962A-C) Fee disclosure statements (s962H) Renewal notice (s962K).
4. Improve and simplify disclosure on the nature of financial services offered to investors.	ASIC released an updated version of Regulatory Guide 175, <i>Licensing: Financial product advisers—Conduct and disclosure</i> , in April 2011, to assist licensees in preparing disclosure documents.	N/A
5. Consult on the appropriateness of the current criterion under which a client is classified as retail or wholesale.	Options paper released in January 2011, receiving around 45 submissions. The government is currently considering its response.	N/A
N/A	Government to explore whether the term 'financial planner/adviser' should be restricted under the Corporations Act (introduced April 2011).	N/A

2 *Corporations Amendment (Further Future of Advice Measures) Bill 2011*, Explanatory Memorandum, p. 12.