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Future of Financial Advice (FOFA)

FOFA Reforms

The Future of Financial Advice (“**FOFA**”) reforms were introduced as a Government response to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into 'Financial Products and Services in Australia'.

On 25 February 2009, the Parliamentary Joint Committee on Corporations and Financial Services resolved to inquire into and report on the issues associated with recent financial product and services provider collapses, such as Storm Financial, Opes Prime and other similar collapses, with particular reference to:

- the role of financial advisers
- the general regulatory environment for these products and services
- the role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest, the need for appropriate disclosure, and remuneration models for financial advisers
- the role played by marketing and advertising campaigns
- the adequacy of licensing arrangements for those who sold the products and services
- the appropriateness of information and advice provided to consumers considering investing in those products and services, and how the interests of consumers can best be served
- consumer education and understanding of these financial products and services
- the adequacy of professional indemnity insurance arrangements for those who sold the products and services, and the impact on consumers
- the need for any legislative or regulatory change.

The objectives of FOFA were to improve the trust and confidence of Australian retail investors in the financial services sector and ensure the availability, accessibility and affordability of high quality financial advice.

The report on Financial Products and Services in Australia was completed on the 23 November 2009.

FOFA Legislative Overview

The original FOFA package of legislation is contained in two separate but related Acts covering the best interests duty, ban on conflicted forms of remuneration, opt-in and changes to ASIC's licensing and banning powers. The two Acts are the:

- *Corporations Amendment (Future of Financial Advice) Act 2012,*
- *Corporations Amendment (Further Future of Financial Measures) Act 2012.*



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The FOFA legislation amended the Corporation Act and was passed by Parliament on 25 June 2012 and commenced on 1 July 2012. It introduced:

- A prospective ban on conflicted remuneration structures including commissions and volume based payments, in relation to the distribution of and advice about a range of retail investment products
- A duty for financial advisers to act in the best interests of their clients, subject to a 'reasonable steps' qualification, and place the best interests of their clients ahead of their own when providing personal advice to retail clients. There is a safe harbour which advice providers can rely on to show they have met the best interests duty
- An opt-in obligation that requires advice providers to renew their clients' agreement to ongoing fees every two years
- An annual fee disclosure statement requirement
- Enhanced powers for ASIC.

Compliance with the FOFA reforms was mandatory from 1 July 2013.

FOFA Legislative Amendments

On 19 March 2014 the Australian Government introduced the *Corporations Amendment (Streamlining of Future Financial Advice) Bill 2014* into Parliament that outlined the following changes to the FOFA reforms:

- remove the 'catch-all' element of the 'safe harbour' for the best interests duty and further amendments to the best interests duty to facilitate scaled advice
- remove the requirement for fee disclosure statements to be sent to pre-1 July 2013 clients
- remove the opt-in obligation for ongoing fee arrangements entered into after the commencement of the Amendment Regulations
- exempting general advice from conflicted remuneration in some circumstances.

Most of these changes were implemented through the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014* which commenced on 1 July 2014.

Changes to the Statement of Advice (“**SOA**”) requirements were also implemented through the *Corporations Amendment (Statements of Advice) Regulation 2014* (SOA Regulation), which was to commence on 1 January 2015.

The Streamlining FOFA Regulation was disallowed by the Senate on 19 November 2014, meaning that the FOFA provisions reverted back to their position prior to the commencement of the Streamlining FOFA Regulation. A number of these regulations were reinstated by the *Corporations Amendment (Revising Future of Financial Advice) Regulation 2014*, which commenced on 16 December 2014.



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The SOA Regulation was repealed on 16 December 2014 by the *Corporations (Statements of Advice) Repeal Regulation 2014*.

On 2 March 2016, the Bill renamed the *Corporations Amendment (Financial Advice Measures) Bill* was passed by Parliament. The Bill made a number of amendments, including extending the time period for giving opt-in notices and fee disclosure statements from 30 to 60 days.

FOFA and the Accountants Exemption

Part of the FOFA reforms were that the government repealed Regulation 7.1.29A from the *Corporations Regulations 2001*. This was the accountants' exemption which allowed accountants to provide advice to clients on establishing or winding up an interest in a Self-Managed Superannuation Fund (“**SMSF**”) without the need to hold an Australian Financial Services licence (“**AFS licence**”).

Since 1 July 2016, accountants must be appropriately licensed to provide SMSF related financial advice meaning they must be covered by an AFS licence to provide advice about acquiring or disposing of an interest in an SMSF to their clients.

With the accountants exemption repealed, there are still a number of other exemptions available to accountants that do not require an AFS licence when providing services relating to SMSF's. These exemptions apply to a variety of activities and are summarised in the Financial Services resource titled **ASIC Information Sheet 216 (INFO 216)** as part of the suite of IPA member Practice Management Tools.

It is important to understand what type of activities fall within these exemptions and what activities require an AFS licence. Members are warned not to stray into providing SMSF advice to a client if they do not hold an AFS licence. ASIC are auditing IPA members to identify these types of activities and are prosecuting members who breach the law.

ASIC Information Sheet 216 (INFO 216)

This is an ASIC document which provides guidance for IPA members around the exemptions to holding an AFS licence in relation to providing SMSF client services. The IPA have created a summary of this document for members to use.