House debates

Wednesday, 27 August 2014

Bills

Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014; Second Reading

6:35 pm

Kelvin Thomson *(Wills, Australian Labor Party)* *Share this* | *Hansard source*

The purpose of the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 is to repeal some of the future financial advice measures introduced by the Labor government. The bill amends the Corporations Act to remove the need for clients to renew their ongoing fee arrangement with their adviser every two years, which is known as the opt-in requirement; to make the requirement for advisers to provide a fee disclosure statement applicable only to those clients who entered into their arrangement after 1 July 2013; to remove from the list of steps an adviser may take in order to satisfy the best interests obligation the requirement that advisers must generally act and provide advice in the best interests of their clients, which is referred to as the catch-all provision; to facilitate the provision of advice limited to, say, a particular product or product range that is personal advice that is limited in scope; and to provide an exemption from the ban on conflicted remuneration for general advice, but not personal advice, in certain circumstances. Broadly, personal advice is advice directed at a person by an adviser with knowledge of the person's objectives, financial situation and/or needs. General advice is advice that is not personal advice.

The Liberal government has a penchant for euphemism, whether it is 'green tape', 'open for business' or, in this case, 'streamlining'. What is happening here, however, is yet another example of the government bowing to the vested interests of the big end of town. Labor's reforms—referred to as the FoFA reforms—were introduced for a reason. They were introduced in the wake of the collapses of Storm Financial and others and the subsequent parliamentary inquiry into financial advice products and services.

These were the most significant reforms in financial services for a generation, and a number of measures were designed to protect investors and to help the industry become more professional. They included the best-interest duty, requiring advisers to act in their clients' best interests; the opt-in, requiring advisers to get their clients to opt-in to receiving ongoing service every two years; annual disclosure statements to be sent to clients annually disclosing fees and details of services performed; and a ban on conflicted remuneration—that is, commissions paid by financial product providers to financial advisers.

The whole basis for introducing these FoFA reforms was to restore faith in a sector which had been rocked by high profile collapses and a poor culture of product sales over advice. And now that we have $1.8 trillion in savings the reforms were to ensure that Australians were getting advice and service that was in their best interests. During the reform process, over many years there was extensive and intensive industry and public consultation that clearly identified a path to achieve growth, to protect consumers and to restore trust by changing the culture of the past 20 years—lifting standards and professionalism and acting in clients' best interests.

The government's comments on these changes to FoFA are about certainty for the sector, but not for the consumer. The changes are much more than technical reforms; they are a complete unwinding of FoFA. The lowering of standards and the delay towards professionalisation is a massive step backwards for the entire sector and for consumers. Removing blanket best-interest provisions is what the banks want. This has nothing to do with red tape and everything to do with the government doing the banks' bidding. It is not about protecting ordinary people.

The effects of recent major financial advice scandals have been catastrophic, resulting in consumers losing $5.7 billion in funds, losing their homes, losing their financial security and retirement. The consumer group CHOICE—the member for Moreton pointed this out too—pointed out:

… the proposed changes will lead to costs to consumers as they reintroduce measures that encourage sales-driven practices in financial advice. With financial advisers working in boiler-room style sales cultures, consumers are highly likely to lose significant funds through further major market failures like Storm Financial. While no legislation can fully prevent a market failure, the original FoFA reforms aimed to curb the worst practices in the financial advice industry.

I know firsthand that constituents in my electorate of Wills have been very badly affected as a result of poor advice by a financial adviser—specifically, the Melbourne-based accountants and financial planners, Holt Norman Ashman Baker. People have lost their homes, hundreds of thousands of dollars, their self-managed super funds, their share portfolios and their health because of poor advice and management by Holt Norman Ashman Baker accountants.

Mr Holt sold schemes using dubious advice concerning loans and margin lending. An example of the consequences of his poor advice is contained in the following impact statement provided to me by constituents. It reads:

Our situation has been desperate since October 2008 and very much a work in progress looking for the bottom of the financial quagmire, the legacy left by Mr Peter Raymond Holt, our ex-accountant. In brief, Mr Holt had overcommitted us with debt by taking out loans in tree schemes, Timbercorp. We were unaware of most of these loans and they were for large sums of money. He had been paying them with money from a bank account that was to collect dividends from my husband's margin loan account. I found the deductions in the margin account in October 2008. The amounts were very large and would eventually bankrupt us. The first invoices that we received from Timbercorp were forwarded to us by Holt's office in October 2008. They were to the value of $128,000 and were due for payment on 31 October 2008. It was about then that we really came to grips with the true meaning of debilitating and hysteria—hell had begun. By the end of January 2009 our situation was dire. Holt had lost $70,000 in cash trying to save margin loans with stupid recommendations. He had turned about $450,000 cash into $15,000 with margin lending. We had deductions of about $177,000 per annum for tree schemes. These payments would exceed our income for the year. Peter Holt has gone through hundreds and hundreds of thousands of dollars, including our superannuation fund. We really don't know the exact tally, but it would be somewhere around $400,000. The deeper we dug, the worse things got, so we stopped digging.

As a result of the efforts of the HNAB Action Group, set up by past clients who were financially ruined by Mr Holt—a group dedicated to providing information to members of our community who have been victims of poor financial advice—ASIC banned Peter Holt for three years.

In my view, this was pretty light. I think his actions warranted a life ban. Peter Holt filed for personal bankruptcy and his personal assets seem to have been largely protected through his bankruptcy proceedings. Two of the partners of the former firm now operate as an accountancy practice called Holt Baker Pty Ltd, and the financial planning arm of the practice is called HBM Advisers Pty Ltd under the WealthSure banner.

Peter Holt and his associates were the largest distributors of the Timbercorp product. Peter Holt and his associates geared his clients in share portfolios and managed investment schemes, including Timbercorp and other agribusinesses. His clients, in many cases, were not aware of the agribusiness loans and, in particular, the loan conditions were either misrepresented or not disclosed at all. These loans effectively resulted in some clients being geared twice over. Where gearing was disclosed, he assured his clients the margin loans would never exceed 50 per cent. Investors were explicitly assured their homes were safe. In fact, he allowed the margin loans to exceed over 200 per cent, resulting in his clients losing their entire share portfolio and other assets. Former clients have made attempts to recover their capital losses, which were significant, but there was inadequate professional indemnity insurance of only $2 million. According to the HNAB Action Group, significant flaws existed in the practices used by Peter Holt and his associates. He frequently assured clients that he was ex-ATO, representing the investments as government endorsed and a superior investment to superannuation. In most instances, clients were asked to sign the rear page, which was not witnessed in their presence. Asset, liability and income details were often left blank or were completed after the client had signed the application. Some of the loan documents recently obtained from Timbercorp Finance show that these details were never completed, had liability details erased, or included incorrect client information. Timbercorp management, maintenance, insurance and other agribusiness fees were disguised by being rolled into the refinancing of debt. Timbercorp increased the level of commission paid to financial advisers to promote their geared investments as the GFC began to impact. A number of clients were pressured by Peter Holt and associates to increase their level of investment in Timbercorp even when the product was failing. Undisclosed incentives were provided in relation to his recommending of Timbercorp products—for instance, the provision of overseas trips. Given that the product disclosure statement for Timbercorp required them to disclose all incentives they might pay to advisers distributing their products, this would have been in breach of the requirements of the Corporations Act. Even when gearing levels were significantly above the 50 per cent threshold on margin lending and share portfolios, which he had set as the maximum, as the GFC set in he continued to recommend and pressure clients to continue to increase their gearing by buying more Timbercorp or other agribusiness products.

As recommended by the HNAB Action Group, ASIC should be requested to reopen the case against Peter Holt and his associates with a view to a life ban. A three-year ban is inadequate and, in any case, it is alleged that he is circumventing the ban through the engagement of an authorised representative working from his accountancy practice.

The significant omissions and potential fraud in respect to loan documentation should be investigated, all debts frozen and recovery action ceased by the respective creditors. The ANZ, CBA, Macquarie Bank and other credit providers should explain their involvement and why such significant breaches of lending practices were permitted. They should waive debts as a consequence of the improper and inappropriate lending facilitated by Peter Holt and his associates.

Furthermore, the proposed changes to the FoFA reforms we are debating now should be opposed due to the risk of loopholes being reopened which enable advice scandals like this one to occur again. There needs to be opposition to the bill's removal of the opt-in requirement—that is, the requirement for financial advisers to obtain their client's approval at least every two years to continue an ongoing fee arrangement. This has been criticised by National Seniors Australia:

Removing the opt-in requirement pushes the obligation onto consumers to externally monitor the performance of their portfolio and the appropriateness of their current services and fee structure. It is clear that advisers are far better equipped than consumers are to perform this task.

And:

Without the opt-in requirement most consumers will remain inactive. Unaware of the services they are receiving and associated fees and charges, they will not have the opportunity to determine if they are receiving value for money.

CPA Australia and the Institute of Chartered Accountants also support the existing mandatory two-year opt-in process as an important pillar of the FoFA reforms on the grounds that it will assist clients who are actively involved in planning their financial future to assess whether the services they are receiving reflect value for money before they decide to renew an ongoing fee arrangement.

The minister says that people who are opposed to their changes have vested interests with political motivations. Is the minister seriously saying that National Seniors Australia, the Council of the Ageing or Choice are part of some Labor/union conspiracy?

Despite a Senate inquiry into these changes, and revelations about disturbingly poor practice at the financial planning arms of the Commonwealth Bank, the Liberal government is pushing ahead with these changes—changes that clearly put the big banks' interests ahead of those of consumers. These changes have nothing to do with removing red tape or streamlining and everything to do with the Liberal government acting on behalf of vested interests in the sector. The CBA crisis highlights the problems that can arise if people try to push products when they are supposed to be offering consumers independent advice in their best interests.

The proposed government changes are not minor or technical in nature—they are, rather, a complete undermining of the core principles of consumer protection and lifting standards to a professional level. The reality is that these changes will broaden the scope of what banks can do in terms of upselling and advice on products to make more money. That is the reality of what is being done and, if these changes pass, people will again need to pay a lot of attention—close attention—to the type of advice they are getting. It is entirely regrettable that the Liberal government has decided to weaken the strong elements of consumer protection put in place by the previous Labor government.

Comments

No comments