AUSTRALIAN BANKERS' ASSOCIATION INC.

Diane Tate
Policy Director

Level 3, 56 Pitt Street
Sydney NSW 2000
Telephone: (02) 8298 0410
Facsimile: (02) 8298 0402

10 February 2012

Dr Richard Grant
Acting Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600
corporations.joint@aph.gov.au

Dear Dr Grant,

Future of Financial Advice (FOFA) reforms

On 23 January 2012, the Australian Bankers' Association (ABA) appeared before the Parliamentary Joint Committee on Corporations and Financial Services and gave testimony to the inquiry into the *Corporations Amendment (Future of Financial Advice) Bill 2011* and *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011*, and accompanying Explanatory Memorandums ("FOFA legislative package").

The ABA would like to take this opportunity to offer some points of clarification in relation to the discussion between Committee members and the ABA about the current law and the proposed legislative provisions as well as in relation to part of the discussion between Committee members and other witnesses where the testimony provided by the ABA was mentioned. These matters are contained in our initial submission to the Committee. However, the following seeks to clarify the fundamental points regarding the current law and the proposed legislative provisions, and in particular the proposed provisions relating to basic banking products and general advice.

It is the ABA's view the proposed provisions do not reflect the stated policy intent to carve out basic banking products from the FOFA reforms and enable bank staff offering or providing advice on these products to continue to operate 'business-as-usual'.

1. Background—current law

The ABA notes that there is no designation of a "financial planner" in the law. The current law defines "financial product advice" as: "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 financial product or class of financial products; or (b) could reasonably be regarded as being intended to have such an influence"[1]. For the purposes of the law, there are two types of financial product advice – "general advice" and "personal advice".

[1] Section 766B of the Corporations Act.

The current law 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; or (b) a reasonable person might expect the provider to have considered one or more of those matters"[2]. The current law defines "general advice" as: "financial product advice that is not personal advice"[3].

Some banks operate via a 'no advice' model. Following implementation of the FSR Act (as well as other factors), these banks determined that the additional legal obligations and associated compliance costs were too great to provide advice via their bank branches and other banking channels and meet the new obligations commensurate with the new advice regime. Consequently, these banks meet their legal requirements by providing customers with factual information only. If a customer seeks advice from these banks, tellers or specialists will follow strict compliance systems to ensure they do not trigger the legal definition and provide financial advice. For example, these banks often adopt scripts for bank staff to follow when engaging with customers. In this instance, bank customers do not receive financial product advice.

Some banks operate an advisory model which could include general advice, personal advice or a combination of both. These banks meet their legal requirements when providing customers with additional information and advice, including conduct and disclosure obligations (i.e. product documentation, staff training, consumer warnings, etc). Compliance systems ensure the various advisory models are operated within the constraints of the law. Banks have compliance arrangements in place to monitor staff to ensure that they do not give advice they are not qualified to provide and/or the provider (licensee) is not authorised to provide.

The ABA notes that whether financial product advice is general advice or personal advice will often depend on how a customer asks their bank a question and how bank staff respond. If a customer and a teller or specialist have a conversation and exchange information of a certain nature – that is, where personal information is provided and a product is recommended based on the customer's personal information or where options regarding a class of financial products offered by the bank is outlined based on the customer's financial situation or needs or where the customer is provided with guidance on what decision they should make about a product versus another product (i.e. a term deposit account versus a savings account) – this will likely constitute personal advice[4]. However, if a customer is provided with information and advice not directed specifically to that customer, such as general product information contained in newsletters, market information contained in reports, tools which provide comparative information on websites, etc – this will likely constitute general advice[5].

For example, a customer walks into a bank branch or calls their bank's call centre. The customer says: "I've got $5,000, what should I do?" A teller or specialist could satisfy the legal requirements and answer this question providing factual information only. Or the teller or specialist could provide financial product advice, such as:

---

[2] Section 766B(3) of the Corporations Act.
[3] Section 766B(4) of the Corporations Act.
[4] The ABA notes that this is not an exhaustive list of all relevant circumstances.
[5] The ABA notes that industry has expressed concern with regards to the existing definitions in the law and associated regulatory guidance, for example, *Regulatory Guide 175: Licensing: Financial product advisers – conduct and disclosure* [RG 175]. The ABA, independently and as part of the Finance Industry Council of Australia (FICA), has made numerous representations to the Government to amend the definitions of personal advice and general advice and to clarify the interpretation of the application of the definition to limited advice (or scalable advice). We consider that the law should be amended to better accommodate the spectrum of advisory situations.

- *General advice*: Whereby the teller or specialist follows a script and provides basic information about certain products offered by their bank and a consumer warning that the advice is of a general nature.

- *Personal advice*: Whereby the customer provides or the teller or specialist asks for additional information about the customer's objectives, financial situation and needs (e.g. "Do you need immediate access to this money or could you lock it away for a few months and get a higher interest rate?") and gives a specific product recommendation based on the products offered by their bank and the customers' circumstances. In this instance, the teller or specialist would typically provide the customer with information and advice which is product-specific (i.e. term deposit account and the current market rates offered by their bank).

Invariably, bank customers will seek to do more than one transaction at a time or seek information or advice about more than one product at a time. Depending on the transaction, the bank product, or the nature of the advice, the customer may receive additional assistance from the teller or specialist or be asked to speak to a bank financial planner. Banks understand that customers want to limit the time they spend doing their retail banking and limit the cost of doing their retail banking, and as such have implemented business models, banking channels, and service structures to ensure their customers receive streamlined banking services and helpful information and advice about their retail banking options.

2. Carve out for basic banking products

The ABA notes that:

- Basic banking products are simple and well understood[6];

- The advice situations associated with the offer of these products is simple and straight forward;

- The banks and other financial institutions providing these products already have sophisticated compliance systems and appropriate consumer protection frameworks;

- The expectations of consumers when interacting with their bank and seeking to purchase or obtain advice on these products is they can do so with ease and in ways convenient to them; and

- There has not been evidence of a market failure in relation to the offer of bank products and services by bank staff and the provision of general advice.

This was recognised by Minister Shorten when the policy about the FOFA legislative package was announced. Specifically, it was announced there would be a carve out for basic banking products.

> *There will be a limited carve out from the ban on volume payments and best interests duty for basic banking products where employees of an Australian [authorised] Deposit-taking Institution (ADI) are advising on and selling their employer ADI basic banking products.*

[6] The ABA notes that the legal obligations and regulatory requirements are commensurate with the fact that these products are simple and well understood. For example, bank staff do not have to prepare a Statement of Advice (SOA) and bank staff have to meet training requirements associated with 'Tier 2 products'.

The ABA welcomed the announcement that there would be a carve out for basic banking products from the FOFA reforms. However, the proposed legislative provisions are not aligned with this stated policy intent. Instead elements of the best interests duty and restrictions on remuneration structures have been applied to bank staff and basic banking products. Despite some amendments being made to the exposure draft and some clarifications being added to the draft explanatory memorandum, the legislative provisions are uncertain, and therefore present significant practical difficulties.

As currently drafted, the carve out from the best interests duty is unclear and not absolute, and therefore will create additional regulation, which will likely make it too difficult and too costly for some banks to continue to provide advice on basic banking products. Additionally, the carve out from the conflicted remuneration provisions is ambiguous and will likely prevent banks from paying their staff performance pay from a bonus pool arrangement and provide general advice on financial products.

The ABA is concerned that the legal uncertainty and compliance costs associated with the proposed legislative provisions in terms of both the best interest duty and the conflicted remuneration provisions would impose additional and unnecessary obligations and restrictions on banks, and therefore present challenges for banks to retain their existing advisory models and continue to offer easy access to low-cost banking products.

Requiring tellers and specialists to meet a best interests duty and the conflicted remuneration provisions is likely to have adverse and unintended consequences for banks and banking groups and result in:

- Complicated regulatory requirements and compliance processes and systems;
- Greater legal and operational risks for banks;
- Altered remuneration arrangements and business operations for banks and bank employees;
- Convoluted bank-customer relationships and poor customer experience; and/or
- Less information and 'simple' advice being made available through banks to Australian consumers.

The ABA also welcomed the introduction of a 'scaled' advice model. However, the treatment of basic banking products, coupled with the breadth of the conflicted remuneration provisions, will restrict the ability for banks to offer innovative advice services. Specifically, we consider that the proposed legislative provisions should not restrict the ability for banks to provide innovative advice services to their customers and clients due to legal uncertainty. The proposed law must be amended to explicitly provide the ability for banks and other providers to offer 'scaled' advice, and in particular to accommodate the provision of advice as agreed between a customer and the bank or other provider as well as scoped by a person providing advice via a calculator or computer program.

The ABA believes:

- The FOFA reforms are far reaching across the banking and financial services industry – that is, currently the scope of the proposed law inadvertently captures retail banking and business banking. Because there is no designation of a "financial planner" in the law and the definition of financial product advice is extremely broad it is important to ensure the reforms are targeted. The proposed law should avoid imposing unnecessary legal requirements, regulatory burdens and compliance costs across the banking and financial services industry.
- There are a number of amendments that can be made to the proposed law to address concerns with regards to legal ambiguity, and therefore minimise disruption to the offer of bank products and promote the availability of retail banking products and services in ways convenient to bank customers. These amendments would be targeted and can be made simply and would not undermine the stated policy intent or require wholesale changes to the proposed law.

3. Basic banking products

3.1 Best interests duty and associated provisions

The ABA supports, in principle, a duty for financial advisers to act in the best interests when providing personal advice to retails clients and to give priority to the interests of those clients in the event of a conflict of interest. However, there are many situations where a bank customer or retail client may receive financial product advice from their bank. We consider that tellers and specialists should provide personal advice to their customers which is reasonable and appropriate. However, the law should better accommodate the different advisory situations or the different circumstances in which bank customers seek information or advice on banking and other financial products.

The ABA believes that the existing law is adequate by requiring bank staff that provide personal advice relating to basic banking products and general insurance products (designated as 'Tier 2 products') to meet the 'reasonable basis for advice' test and make sure the advice is appropriate. The application of a 'best interests duty' is a much higher obligation than is needed or expected in the retail banking context. Despite certain claims that applying elements of the best interest duty is a lower test than the existing reasonable basis for advice test in the law, we contest that the legal uncertainty associated with the best interests duty and the practical outcome of the imposition of elements of the duty on tellers and specialists would be more onerous and is unnecessary in the retail banking context.

The following provides a comparison relating to financial product advice about basic banking products:

Existing law

Section 945A applies to bank staff providing personal advice. Bank staff must meet the 'reasonable basis for advice' test when providing personal advice to retail clients. In practice, this obligation requires bank staff to 'know your client', 'know your product', and meet the 'appropriateness' requirements. Bank staff must provide product disclosures

(e.g. terms and conditions). Bank staff must be RG 146 complaint[7]. Bank staff are not required to provide a Statement of Advice (SOA) for basic banking products, general insurance products and non-financial products.

Under FOFA

Subsections 961B(2)(a)-(c) would apply to bank staff providing personal advice. Bank staff may not be able to offer advice based on a limited range of products only (i.e. those products offered by their bank) because the customer is not able to agree the scope of the advice. In practice, as currently drafted, this ambiguous obligation may result in bank staff being required to make a recommendation about a competitor's products. Not only would this be nonsensical, it is impractical given the vast array of bank products and market rates available across the retail banking market[8]. Additionally, bank staff may have to determine or verify information provided by the customer. In practice, this ambiguous obligation implies that bank staff must validate the information provided to them by the customer and make a record of the advice (i.e. similar to a SOA).

For example, a customer wants advice on a savings product attached to their credit facility (i.e. home loan). The customer provides information about the value of their home along with other information about their personal circumstances. It is unclear the extent to which a teller or specialist is expected to validate the information provided by the customer. It may be interpreted that the teller or specialist would be required to verify all the information (i.e. ascertain the value of the home, etc) and validate against external sources to establish whether the information is inaccurate (i.e. similar to a valuation). It may be interpreted that a teller or specialist is required to conduct additional investigations into the customer's objectives, financial situation and needs and into all products in order to establish whether the information is incomplete (i.e. conduct a financial needs analysis, etc).

Imposing these elements of the best interests duty could require a bank to inquire into the customer's circumstances beyond the provision of information or advice on a deposit account – it is unclear what objectives, financial situation and needs would 'reasonably' be considered relevant. It could require a teller or specialist to ask about the customer's outstanding debts (home loan repayments), existing superannuation arrangements (salary sacrificing), existing level of salary and whether regular payments would be better made into an alternative investment (managed fund), etc – it is unclear whether the teller or specialist needs to conduct a full fact find. Therefore, it would require the bank to ensure adequate compliance arrangements are in place to demonstrate compliance, including monitoring of staff making inquiries, maintain a record of the analysis, etc.

Ultimately, this could be effectively requiring bank staff to provide 'holistic advice' in all circumstances and spend time and resources verifying and validating customer's information even though the advice being sought by the customer is merely limited or alternatively conduct a full fact find to demonstrate that 'holistic advice' was not 'reasonably' expected in the circumstances.

---

[7] The ABA notes that *Regulatory Guide 146: Licensing: Training for financial product advisers* [RG 146] sets out the training and competency standards for advisers providing advice on basic banking products and other 'Tier 2 products'.

[8] The ABA notes that products and market rates can change daily, and each bank or financial institution will have many different products and different rates. There are around 140 banks and other ADIs which provide the main retail banking services in Australia. According to Cannex data, there are over 1,000 transaction and savings accounts available in the market (this does not include term deposit products). A teller or specialist could be required to know all products and rates across the market to provide advice commensurate with the elements of the best interests duty. This obligation would be well beyond the current requirements of tellers and specialists.

This legal uncertainty would mean transactions would be delayed and bank products and services would become more expensive or less available. Additionally, this would be effectively reinstating the obligation to prepare a SOA, which was removed in relation to basic banking products because it was deemed unnecessary (and over regulation). It would also effectively be requiring additional training standards to be met by all bank staff or disjointed bank-customer relationships where customers may be asked to speak to different staff about different products. This would result in additional compliance costs and extend significantly the advisory models adopted by a number of banks. This would also result in advice services not expected by customers, and therefore frustrate customers and lead to poor customer experience.

3.2 Conflicted remuneration provisions

The ABA supports the banning of adviser remuneration that is conflicted. However, we are concerned that the conflicted remuneration provisions are much broader than necessary to ensure that retail clients have access to unbiased advice.

The ABA believes that the existing law is adequate by requiring banks that provide personal advice relating to basic banking products and risk insurance products to meet their general obligations (including management of conflicts of interest)[9] and as relevant, assistance relating to credit products to meet their responsible lending standards and to meet their general conduct obligations (including avoiding disadvantaging customers by any conflict of interest)[10].

The ABA believes:

- The FOFA reforms should not impose additional regulatory requirements on basic banking products or, in effect, reverse previously stated policy regarding the offer of these products.
- The carve out for basic banking products must be clear and absolute. The proposed law should reflect the stated policy intent and should not apply elements of the best interests duty or the conflicted remuneration provisions to the offer or distribution of basic banking products.
- In the absence of amendment, the proposed law could result in additional banks withdrawing from the advice market in relation to basic banking products and adopting 'no advice' models in order to avoid having to introduce new and complex compliance arrangements and having to pass on additional costs to their customers. This outcome would be adverse for bank customers and competition in the retail banking market.

4. Best interests duty—other financial products

The ABA believes that the best interests duty as currently drafted is likely to create legal uncertainties and compliance risks for banks and banking groups, including:

- The duty is undefined and the terminology is unclear. This legal uncertainty will create significant compliance risks for banks and other financial service providers.

[9] Section 912A of the *Corporations Act 2011*.
[10] Section 47 of the *National Consumer Credit Protection Act 2009*.

- The duty does not contain a reasonable steps defence. In practice, in the absence of a reasonable steps qualification an adviser is required to exercise all judgments and take all steps in all circumstances in order to comply with the duty.

- The duty does not allow a provider to scope the advice. In practice, in the absence of a clearly defined duty and conduct steps a provider is unable to offer 'scaled' advice.

The ABA believes that the duty should include a clear definition of the best interests obligation so that a provider has reasonable certainty in relation to what they must do to comply with the duty. It is essential that the law offers certainty in relation to the interpretation and practical application of the duty by licensees and advisers.

The ABA believes that the duty must afford a provider a defence where reasonable steps have been taken to comply with the law. It is illogical that directors of a company are provided with a safe harbour in the law, whereas advisers are not provided with similar protections in the proposed law.

The ABA believes that the duty must be amended to clarify the scope and nature of the duty in terms of the ability to limit the scope and subject matter of the advice. Bank staff (including bank financial planners) should be able to meet the best interests duty by providing advice only on those financial products offered by their bank/banking group (including subsidiaries) and not be expected to compare products offered by other financial institutions, subject to appropriate warnings and clear branding. It is essential that the law encourages the adaptation of the 'scaled' advice model, especially in circumstances where a customer or client contacts their bank via frontline bank staff or via the bank website to discuss or seek information about one or more of that bank's products.

For example, a client wants advice about a savings product offered by the bank/banking group. However, a savings product may not be in the broader best interests of the client, instead it may be in the best interests of the client to reduce their outstanding debts (e.g. home loan repayments). The provider would be prevented from providing advice limited to the savings product. The absence of a defined duty and the way the duty is currently drafted prevents the client from seeking advice only on a product. The provider would have to provide personal advice where the scope of the advice is in the best interests of the consumer and the recommendation is in the best interests of the consumer.

The ABA believes that banks and banking groups with large distribution models and various channel arrangements are well-positioned to provide a range of advisory services and fill the gap in the advice market. It is vital with Australia's ageing population that Australians have access to some form of financial advice.

5. Conflicted remuneration

The ABA believes that the conflicted remuneration provisions as currently drafted are likely to create legal uncertainties and compliance risks for banks and banking groups, including:

- The conflicted remuneration provisions apply to benefits relating to general advice and the distribution of products. This application is far reaching and extends significantly beyond the initial intent of the FOFA reforms.

- The definition of conflicted remuneration is too broad and unclear. This legal uncertainty will create significant compliance risks for banks and other financial service providers.

- The conflicted remuneration provisions are too broad and the terminology is unclear. In practice, in the absence of clearly targeting the provisions a bank may not be able to give their staff performance pay. Additionally, a bank may not be able to make legitimate business-to-business payments.

The ABA believes that the conflicted remuneration provisions should not apply to general advice. General advice does not take into account a person's objectives, financial situation or needs and must be accompanied by a warning indicating that the advice does not consider the client's personal circumstances, and hence the client should consider their individual circumstances and the accompanying disclosure documents before making a decision. Furthermore, general advice has an informative purpose, without including product-specific advice, and is often available to the consumers through various channels, including websites, brochures, newsletters, market reports, media advertising, etc. It is essential that the law target identified market failures.

The ABA believes that business models and remuneration structures should only be prohibited where there is a negative outcome for the provision of personal advice to a retail client – that is, the ban should only apply to circumstances where a monetary or non-monetary benefit has a reasonable likelihood of inappropriately influencing the financial product recommended or financial advice given, and therefore resulting in biased or conflicted advice. The definition of "conflicted remuneration" must be unambiguous. However, the proposed definition relates to whether the benefit might influence the choice of financial products recommended to retail clients. In practice, any benefit or payment "could" influence behaviour, and therefore be prohibited.

The ABA believes that the application of the ban must be clarified, and in particular performance pay to bank staff must not be unreasonably restricted. The treatment of volume related payments from employers to employees relates to access to a benefit which is 'wholly or partly' dependent on the 'value' or 'number' of financial products. The Explanatory Memorandum confirms that "performance pay can be an important part of any remuneration arrangement" and that the intention of section 963L is to provide the industry "with the flexibility to maintain broadly based performance-based remuneration arrangements without compromising the advice provided to retail clients." However, the proposed legislative provisions are misaligned with this stated policy intent. In practice, any payment or benefit for every staff member is related to the offer or distribution of financial products, and therefore any monetary or non-monetary reward could be considered able to influence a recommendation. Therefore, we consider that it may be interpreted that: (1) the payment of a performance bonus to potentially all bank staff (not just frontline bank staff involved in the offer or distribution of financial products) is prohibited; and (2) due to this interpretation, the carve out for basic banking products becomes unworkable.

The ABA believes that the conflicted remuneration provisions should exempt execution-only services, 'sophisticated businesses', and white labelling arrangements. Firstly, the proposed ban will prevent legitimate payments, including business-to-business payments, that allow banks and banking groups to provide financial services to retail clients and financial products to business clients. For example, a bank may brand a device (e.g. ATM) or facility (e.g. trading facility) where the infrastructure is built by another bank or provider. A bank customer or retail client could use another service, however, the bank provides this technology to increase the availability and choice of banking services.

Secondly, the proposed ban will prevent legitimate payments between related entities within a corporate group. For example, a bank may offer hedging products to a business customer to assist them manage their business, financial and operational risks and cash flows. An importer/exporter may need to execute foreign exchange or options contracts, however, the statutory test means currently the client is deemed a 'retail client', and therefore a volume based payment would be banned. These transactions are not made for the purposes of investment.

The ABA believes that the regulation making power should be appropriately applied. Subsection 963B(1)(e) can prescribe a benefit, or circumstances in which a benefit is given, as excluded from the definition of conflicted remuneration. We are assured that there will be a carve out for stockbroking and capital raising activities[11]. Furthermore, the regulation making power should be utilised to ensure the reforms are targeted, and especially if amendment is not made to exempt general advice from the conflicted remuneration provisions.

6. Opt-in obligation

The ABA believes that the proposed opt-in obligation is not intended to apply to ongoing fees and charges for retail banking products and services (i.e. monthly account keeping fee) where advice might be provided in relation to the offer of these products.

However, a strict legal interpretation of the proposed obligation could capture such fees and charges because there is no requirement that the fee be for, or related to, advice and captures any ongoing fee 'however described or structured'.

The ABA recommends that the definition of 'ongoing fee arrangement' be narrowed to include only those ongoing fees which are for, or relate to, the provision of personal advice by the fee recipient to the client. Additionally, the Explanatory Memorandum should be explicit that the opt-in obligation does not apply to fees and charges for banking products and services.

7. Implementation issues and transitional arrangements

The ABA believes that the FOFA legislative package contains numerous drafting issues and anomalies which do not achieve the stated policy intent or result in impractical or costly compliance obligations. We consider that there are a number of drafting issues that if unresolved would create additional implementation issues for banks and banking groups and undermine the operation of the proposed legislative provisions.

For example, the carve out for basic banking products is ineffective in a number of ways due to drafting anomalies and errors. Even if the carve out for basic banking products operated in a manner which replicated the existing provisions, there is also a carve out for general insurance products, which means that 'Tier 2 products' are [in theory] exempt. This approach is sensible and consistent with the comments we have previously made to the Government.

[11] The ABA notes that the Explanatory Memorandum indicates that the proposal is to "exclude certain stockbroking activities from being considered conflicted remuneration." A carve out for stockbroking and capital raising activities must be clear and absolute.

However, these carve outs function separately – that is, the manner in which the carve out is applied for basic banking products with respect to the conflicted remuneration provisions is that bank staff [in theory] might be able to receive a payment if it relates to the offer or distribution of a basic banking product, but not if the payment relates to a banking product and another product, even an 'exempt' product or non-financial product. This approach does not make sense and should be corrected otherwise it means that the carve out for basic banking products is unworkable because frontline bank staff provide information and advice relating generally to the range of 'Tier 2 products' and non-financial products.

The ABA is concerned that in the absence of resolving and amending the application of the proposed legislative provisions, addressing drafting anomalies and irregularities, and correcting technical problems, there could be significant compliance and implementation issues for banks and banking groups.

The ABA believes that it is necessary to:

- Address the drafting issues and anomalies so that the proposed legislative provisions reflect the stated policy intent.
- Correct the technical problems and ensure that the proposed legislative provisions do not impose additional and unnecessary compliance obligations on retail banking and business banking.
- Clarify the exemptions relating in particular to banking, general insurance, and the offer and distribution of 'Tier 2 products'; other financial products and services (e.g. stockbroking and capital raising activities); and, general advice on simple financial products (e.g. basic super, simple wealth products, etc).
- Articulate grandfathering provisions for existing contractual arrangements. In the absence of arrangements to grandfather existing contractual arrangements (including workplace, employee and remuneration arrangements for bank staff), banks could face substantial legal risks.
- Provide adequate transitional arrangements to allow banks and banking groups sufficient time to comply with the new laws. Importantly, new obligations should be aligned with the implementation of other reforms so that banks and banking groups avoid having to administer multiple product, system and documentation changes.

The ABA recommends:

- Timing for compliance should be adjusted to ensure the commencement date and transitional arrangements allow sufficient time for banks and banking groups to make the necessary and substantial changes required for compliance.
- Transitional arrangements should be adopted:
    - Enhanced ASIC powers commence from the commencement date (i.e. 1 July 2012);
    - Existing law continues to apply until 30 June 2013, yet providers are permitted to opt-in to the new regime prior to 1 July 2013 at their own discretion; and
    - New law commences from 1 July 2013.

The ABA is concerned that in the absence of resolving and amending the application of the proposed legislative provisions and reducing the logistical impediments and implementation costs, there could be significant compliance and implementation issues for banks and banking groups.

8. Concluding remarks

The ABA believes that regulation should target identified market failures. We are not aware of any identified market failures, consumer detriment or systemic concerns regarding practices by banks in the offer of basic banking products or the provision of general advice by banks.

The ABA believes it is important that the law:

- Does not impose unreasonable and unnecessary obligations on banks with regards to the offer or distribution of basic banking products, general insurance products and other simple financial products.
- Allows banks and other ADIs to offer, or provide advice on, basic banking products, rather than create legal uncertainties, unnecessary regulatory burdens, and additional compliance costs.
- Encourages banks and other financial institutions to provide advice on basic banking products and other financial products, rather than restrict the possibility of 'scaled' advice or indeed result in the further expansion of 'no advice' models.
- Promotes banks offering simple, low-cost products and innovative advisory services.
- Does not result in a disjointed, haphazard or poor customer experience whereby unnecessary administrative complexity frustrates the provision of transactional services, information or advice to bank customers.

Upon request, the ABA would be happy to provide the Committee with suggested drafting corrections and amendments so that the carve out for basic banking products and the application of the best interests duty and the conflicted remuneration provisions are effective. We believe that the FOFA reforms should reflect the stated policy intent as well as ensure the reforms are targeted towards the area of concern – being the business of "financial planning".

Yours sincerely

Diane Tate