



**Abacus**  
Australian Mutuals

Association of Building Societies and Credit Unions

2 March 2012

Mr Tim Bryant  
Secretary  
Senate Economics Committees  
Parliament House  
Canberra ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Bryant

**Corporations Amendment (Future of Financial Advice) Bill 2011 and  
Corporations Amendment (Further Future of Financial Advice Measures) Bill  
2011**

*Abacus – Australian Mutuals* provides this supplementary submission in response to the Committee Chair's request to me at the 23 February 2012 hearing to provide exact details of the shortcomings we see in the application of the "best interests duty" to advisers on basic banking products.

Employees of Authorised Deposit-taking Institutions (ADIs, i.e. banks, building societies and credit unions) such as tellers engaged in selling basic banking products are subject to different regulatory obligations depending on whether they provide factual information, general advice or personal advice.

The proposed "best interests duty" is relevant only where personal advice is provided. ADI staff providing factual information or general advice will not be affected by the "best interests duty".

However, other than in a highly scripted interaction with a customer, it can be difficult to avoid giving personal advice. Under the Corporations Act (s766B), personal advice is a recommendation about a financial product after considering even a single aspect of a person's needs. For example, if a teller recommends a 3-month term deposit because a customer has revealed that they have some funds they do not need for 3 months, the teller could be giving personal advice.

Under the current requirements (s945A), the advice must be reasonable and appropriate.

The legislation before the Committee will repeal s945A and impose a new "best interests duty" on ADI employees giving personal advice. This is a new obligation and the scope of this new obligation is uncertain. The fact that a new and uncertain obligation is being imposed creates more regulatory risk for an ADI that would otherwise wish to promote positive interaction between their employees and customers about that ADI's basic banking products.

The uncertainty factor is illustrated by the following evidence provided by Associate Professor Joanna Bird (formerly head of Strategic Policy at ASIC) at the 23 February 2012 hearing:

CHAIR: Does your definition of 'best interest' include the salesperson, the teller or the administrative clerk at a retail bank?

Prof. Bird: The obligation will only apply to that person if that person is providing what is called personal advice.

CHAIR: Let me finish my question. If I am depositing \$30,000 in a term deposit for 12 months or two years at a local retail bank, which is hardly a rocket science transaction, and that bank is offering me five per cent, but the competitor down the road offers 5½ per cent; are you telling me that the transaction clerk who negotiates the deal is under some sort of obligation to send me down the road because 5½ is better than five?

Prof. Bird: No, not unless that transaction clerk takes on an obligation to provide you with personal advice and act in your interests. If you go and say, 'Here's my \$30,000. I want it deposited in this account', the obligations are not triggered because you are not being provided with personal advice.

Abacus does not dispute that the "best interests duty" applies only to personal advice, but the implication of Professor Bird's evidence is that if personal advice is provided the ADI employee may be obligated under the new "best interests duty" to recommend a competitor ADI's product.

This is an absurd outcome and illustrates why we see shortcomings in imposing a duty aimed at financial planners on ADI staff advising about their ADI's basic banking products.

Yours sincerely,

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