



Association of Building Societies and Credit Unions

9 February 2012

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra ACT 2600

Via email: corporations.joint@aph.gov.au

Dear Committee Secretary

Inquiry into the Corporations Amendment (Future of Financial Advice) Bill 2011 and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011

We hope the Committee is able to consider this supplementary submission on the FOFA legislation in addition to our earlier submissions and evidence to the committee at its 24 January 2012 hearing in Sydney.

We wish to respond to claims made during the hearings of 23 and 24 January about the application of the proposed new "best interests duty" to advisers on basic banking products.

Specifically, it was claimed by one witness that the new obligations will be "less than the current law" in relation to basic banking products and by another witness that the new obligations will be "business as usual" for banking institutions.

Abacus wishes to emphasise that the proposed new "best interests duty" is not a lessening of regulatory compliance obligations for advisers on basic banking products and nor will it be "business as usual" if the legislation is implemented.

According to the transcript of the 23 January hearing, Associate Professor Joanna Mary Bird provided the following response to a question about whether the new "best interests duty" will make it more difficult to provide basic banking advice.

Prof. Bird: As the legislation is currently drafted, the standard of advice in relation to basic banking products will be less than the current law, so it would be remarkable if the legislation makes it more difficult for them. They have been given an extremely generous carve-out from the best interest obligation.

Abacus contests this view because the "best interests duty" is a new and additional obligation on financial product advisers, including advisers on basic banking products.

The obligation is "modified" for advisers on basic banking products compared to advisers on other financial products in that they are "deemed" to have complied with the duty if the provider "proves" certain steps have been taken, and fewer steps are required than for other financial products.

This does not amount to a “generous carve-out” from the new obligation or a lessening of existing obligations.

According to the transcript of the 24 January, General Manager of Treasury’s Retail Investor Division, Ms Sue Vroombout, compared the proposed new requirements to existing requirements on advisers about basic banking products.

Ms Vroombout: What we have done is say that those steps that the banks used to be subject to under 945A they will continue to be subject to in the new legislation and they will also be subject to the appropriate advice test in the new legislation.

Senator CORMANN: But to cut through it, are you suggesting that for banks it will be business as usual, or are there going to be some changes?

Ms Vroombout: Yes, the intention is to reflect as far as possible the banks' current position.

Senator CORMANN: So business as usual?

Ms Vroombout: Yes.

We contend that “business as usual” for advisers on basic banking products can only be delivered by a clear and unambiguous carve-out from the new “general obligation” of a “best interests duty” that is designed for financial planners.

Imposing new, unfamiliar and legally uncertain regulatory compliance obligations on front-line ADI staff advising on basic banking products does not replicate the current position and does not mean business as usual.

As argued in our 9 January submission, the FOFA objective of facilitating the provision of advice about basic banking products is much more likely to be delivered by preserving and clarifying the existing requirement for such advice to be “reasonable” and “appropriate”.

Please don’t hesitate to contact me on 02 8299 9053 or Luke Lawler on 02 6232 6666 to discuss this submission.

Yours sincerely

A handwritten signature in black ink that reads "Mark Degotardi". The signature is written in a cursive, slightly slanted style.

MARK DEGOTARDI
Head of Public Affairs