CHAPTER 4

ASIC Policy Statement 146: Licensing: Training of financial product advisers

Introduction

4.1 Before granting a licence ASIC must be satisfied, among other things, that an applicant will be able to comply with its statutory obligations, including those relating to training and competency.[1]

4.2 ASIC's Policy Statement 146: *Licensing: Training of financial product advisers* (PS 146) sets out minimum training standards for people who provide financial product advice to retail clients.[2] The training standards apply to the provision of both personal and general financial product advice.

4.3 Several submissions from authorised deposit-taking institutions (ADIs) or from industry groups representing ADIs were highly critical of the training requirements prescribed by PS 146 for advisers on basic deposit products (BDPs) and related non-cash payment (NCP) facilities. They argued that the requirements were excessive and costly, and questioned whether, in fact, they would deliver any benefits to consumers. In addition, they claimed that the delivery of services in remote and regional areas would be threatened.

4.4 Apart from the criticisms targeted at training requirements for BDPs, relatively few submissions raised concerns about other requirements in PS 146.

4.5 Of these, the Insurance Australia Group (IAG)[3] claimed the training requirements for advisers on personal accident and sickness insurance products were excessive, while the National Institute of Accountants (NIA) considered that PS 146 failed to recognise accountants' professional qualifications where financial planning advice was dispensed.[4]

4.6 In addition, the requirement in PS 146 that advisers must have 5 years' relevant experience in the previous 8 years to qualify for individual assessment, attracted comment from Freehills[5] and the Australian Associated Motor Insurers

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1 Paragraph 913B(1)(b) of the *Financial Services Reform Act 2001*.

2 Under subsection 766B(1) of the *Corporations Act 2001*, 'financial product advice' is a recommendation or statement of opinion or a report of either that is intended to influence or could reasonably be regarded as intended to influence a person in making a decision in relation to a particular financial product or class of financial products. For clarification of the definition, ASIC has released *Licensing: The scope of the licensing regime: Financial product advice and dealing—an ASIC guide*, November 2001.

3 Submission 28.

4 Submission 16 and supplementary submission 16A.

5 Submission 7 and supplementary submissions 7A and 7B.

Limited (AAMI).[6] The general view was that there should not be a threshold for this type of assessment.

4.7 These issues will be discussed in more detail in this chapter.

PS 146 requirements in brief

4.8 ASIC states in PS 146 that the training focus is 'on protecting retail clients because they generally do not have the resources or expertise to assess whether their adviser has an appropriate level of competency to provide financial advice'.[7]

4.9 The policy statement recognises formal qualifications or experience according to the type of financial product advised on. Two levels have been developed:

- Tier 1, the higher level, which is broadly equivalent to the 'Diploma' level under the Australian Quality Training Framework (AQTF) and applies to all financial products not listed in Tier 2; and
- Tier 2, the lower level, which is broadly equivalent to the 'Certificate III' level under the AQTF and applies to general insurance products except personal sickness and accident; BDPs and NCP facilities.

4.10 Advisers must complete training courses that are either listed on ASIC's Training Register or assessed by an authorised assessor as meeting the relevant skills and knowledge requirements. Licensees may develop their own courses in partnership with authorised assessors or have their own courses assessed by authorised assessors. Provision is also made for recognition in some instances of relevant industry experience as an alternative to the completion of formal training.

4.11 PS 146 provides a limited exemption from the training requirements for call centre or front-counter representatives who typically deal with initial customer queries where the only financial product advice they provide is:

- derived from a script approved by a person who meets the training standards; or
- made under the direct supervision of a person who meets the training standards.

Basic deposit products and non-cash payment facilities

Overview of objections

4.12 Submissions made and evidence given to the Committee, indicated quite significant opposition from ADIs to ASIC's prescription of Tier 2 training requirements for front-counter representatives advising customers on BDPs and related NCP facilities.[8]

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6 Submission 18.

7 PS 146.20.

8 Submission 2, pp. 1–2; submission 8, pp. 1–3; submission 9, pp. 1–4; submission 22, pp. 3–6; submission 25, pp. 3–4.

4.13 The main criticisms levelled at ASIC's training requirements were that they were excessive given what was described as the low-risk nature of BDPs and related NCP facilities. A number of witnesses argued that the requirements would impose a significant cost burden on ADIs with negligible, if any, benefits for consumers. The claim was made that, if anything, consumers would be disadvantaged by a withdrawal of banking services in remote and regional areas, not only because of costs, but also because of the impracticalities of training service providers in these areas. These issues are discussed below.

Objections in detail

Uncertainty of scope of 'financial product advice'—contribution to training costs

4.14 For some witnesses, a major source of concern regarding training costs was the uncertainty surrounding the scope of the definition of financial product advice.

4.15 It was commonly claimed in submissions and evidence given at the inquiry's hearings that front-counter representatives responding to customers' queries about BDPs and related NCP payment facilities generally provided factual information that was not financial product advice. However, the concern was expressed that it was difficult to determine with certainty where the line between factual information and financial product advice would be drawn. Most witnesses appearing before the Committee claimed that, because of this, they had no alternative but to train their front-counter representatives rather than risk being in breach of requirements.

4.16 In this regard, the Australian Finance Conference (AFC) said that:

> …there is a lot of confusion about what is advice, with many financial institutions being told that a financial services provider cannot issue a product without giving advice or coming so close to it they should play safe and assume the FSR Act advice provisions will apply.[9]

4.17 In a similar vein, the Australian Bankers' Association (ABA) stated that:

> …the Act actually creates a problem…in the way it defines 'advice'…Advice can constitute direct advice, albeit inferred from circumstances in the course of the discussion with the customer. If, in the course of discussions with a customer, it can be inferred that there is a recommendation being made by the bank officer that this customer should open this account rather than that account, then that bank officer has advised the customer…It will be virtually impossible to train staff to stay on the right side of the line, because they want to help customers.[10]

4.18 At the hearing, the Australian Association of Permanent Building Societies (AAPBS) commented that because providing factual information could constitute the

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9 *Committee Hansard,* 12 July 2002, pp. 216–17.

10 *Committee Hansard*, 11 July 2002, p. 99.

giving of financial product advice in some circumstances, there were concerns that a representative might inadvertently give financial product advice in an attempt to provide a customer-oriented service.[11] It highlighted the possibility that this might be more prevalent in country areas where there might be a more personal element involved in representative/customer interactions. Examples given by the AAPBS as possibly triggering a training requirement included:

- asking a customer opening a passbook account if a cheque facility was also required given that such facilities did not come with passbook accounts;
- asking a customer with a loan account if he or she would like an offset facility attached to the account to reduce interest payments; and
- suggesting that a customer might wish to use a direct debit facility rather than a cheque account to pay certain ongoing accounts because it was cheaper.[12]

4.19 At the hearing on 7 August 2002, ASIC's clarification was sought as to when information given to a customer might cross the line and become financial product advice. Ms Pauline Vamos, Director, FSR Licensing and Business Operations at ASIC, commented that:

> …you have to look at the whole situation; and, on the whole, the provision of factual information is not caught. But, with the relationship between the parties, [if] all the circumstances are such that the amount of reliance may move it towards, in that instance, general advice; again certain training and skills are required to provide that advice.[13]

4.20 Mr Malcolm Rodgers, Executive Director, Policy and Markets Regulation at ASIC, added:

> If [a front-counter representative] said, 'There are four accounts here; this one has these features, this one has those features and this one has those features,' [the representative] would probably be doing nothing more than describing something that exists as a matter of fact, and that is factual. But you do not need to go far in those circumstances to be saying, 'This one is the one for you.' That is where there is the question of whether you have crossed the line.[14]

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11 ASIC's guide to financial product advice says in paragraphs 1.2.4 and 1.2.5 that: 'Communications that consist only of factual information—ie objectively ascertainable information whose truth or accuracy cannot be reasonably questioned—will generally not involve the expression of opinion or recommendation and will not, therefore, constitute financial product advice. However, in some circumstances, a communication which consists only of factual information may amount to financial product advice, eg factual information which is presented in a manner which may reasonably be regarded as suggesting or implying a recommendation to buy, sell or hold a particular financial product or class of financial products.'

12 *Committee Hansard*, 11 July 2002, pp. 144–46.

13 *Committee Hansard,* 7 August 2002, p. 271.

14 *Committee Hansard*, 7 August 2002, pp. 271–72.

And later:

> [The definition of financial product advice] does have in it that notion of influence and it is conceivable that you can give a set of information, each element of which arguably is factual information but in the circumstances you are in fact giving advice.[15]

4.21 The Committee accepts that the distinction between financial product advice and factual information is not clear cut and appreciates the problems this might create in the practical situations referred to by the witnesses appearing for ADIs.

Course content is excessive in view of the products involved

4.22 Many submissions were critical of the skills and knowledge requirements of Tier 2 training which they claimed were excessive given the nature of BDPs and related NCP facilities. These products were characterised as simple, of negligible risk, well understood and not linked to markets.

4.23 More particularly with regard to the actual training requirements in Tier 2, the AAPBS stated that, for 'simple, well-understood, long established no-risk products':

- the generic knowledge requirement went beyond what was needed; [and]
- the skills requirement mirrored benchmarks for the financial planning industry and was irrelevant.[16]

4.24 At the hearing on 11 July 2002, the ABA, stated that:

> [PS 146] really fails to differentiate sufficiently the nature of a basic deposit product and the related non-cash payment facility as a class—which is your plastic ATM card—from a range of other products that are infinitely more sophisticated and have greater complications attaching to them. For example, for someone who wanted to assist a customer in deciding which account to open—be it a term deposit, a simple savings account or a transaction account—the training required to simply provide that service to the customer would involve economic training, understanding debt cycles and interest rate cycles, and would include product knowledge.[17]

4.25 The AFC submitted that the training requirements represented a significant upgrade for financial institutions without any added benefit for customers. It referred to its findings that only between two per cent to less than three per cent of front-counter transactions were financial services coming within the *Financial Services Reform Act 2001* (FSR Act). It questioned whether there was a consumer benefit to

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15 *Committee Hansard,* 7 August 2002, p. 274.

16 Submission 2, p. 2 and letter to the Committee dated 17 July 2002.

17 *Committee Hansard,* 12 July 2002, p. 98.

justify the significant costs involved in training given what it claimed was the well-understood and low-risk nature of these products.[18]

4.26 A similar sentiment was expressed by the AAPBS which claimed that the training requirements were far in excess of what was required for 99 percent of its business.[19]

4.27 ASIC responded generally to ADIs' concerns about training requirements at the hearing on 7 August 2002. Ms Vamos indicated that the available training courses may not have been appropriate for the skill levels involved. However, she said that ASIC had been working with banks and deposit institutions to remedy this. She also reminded industry of the options for individual assessment or approved in-house training.[20]

Impact of training on the delivery of services in remote and regional areas

4.28 In relation to the impact of PS 146 on the availability of services in regional and rural areas, Bendigo Bank Limited said that:

> …implementation of certain aspects of PS 146, in its current form, will almost certainly reduce the level of service and assistance that Bendigo Bank customers experience, unnecessarily raise the cost of providing banking services—which will in turn result in increased costs to the consumer, and, most significantly, reduce competition in the finance sector by making it much more difficult to expand the Bendigo Bank branch and Community Banking network, in remote and regional areas (both in terms of finding trained staff and the expense associated with training those staff).[21]

4.29 Bendigo Bank also said that small branches would either have to instruct staff not given Tier 2 training to refrain from advising customers on appropriate product choices or train all customer service representatives to Tier 2 level. It claimed that the first option would greatly limit flexibility and customer education while the second option would result in reduced staffing levels and a reduction in banking services particularly in Community Bank and rural branches.[22]

4.30 Similar concerns were expressed in several other submissions which suggested that financial institutions would have considerable difficulties in retaining and attracting agents to conduct their deposit-taking business. The AFC said it was impractical to expect pharmacy or newsagency staff offering such services,

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18 Submission 25, p. 3.

19 *Committee Hansard,* 11 July 2002, p. 134.

20 *Committee Hansard,* 7 August 2002, p. 269.

21 Letter enclosing submission 8 dated 3 May 2002.

22 Submission 8, p. 3. See also submission 8A.

particularly in regional Australia, to undertake the required training.[23] The ABA stated that:

> The cost, inconvenience and business disruption associated with tertiary training for what might be an incidental activity for a small business operator is unlikely to be wanted by them with the possible resulting loss to the area of the banking service.[24]

4.31 The AAPBS commented that:

> If we have to train people, especially in the agencies and the newsagents, and have them assessed by an external RTO (Registered Training Organisation), it gets very costly and frankly [the AAPBS] cannot see how societies would continue having these agencies.[25]

4.32 And the Bendigo Bank said that:

> The effect of the cost and requirements of training staff has already become apparent with 90 Bendigo Bank agents having to examine their viability as Bank agents because of the cost and time required for PS 146 training for agency staff.[26]

4.33 At the hearing on 7 August 2002, Mr Rodgers from ASIC said that PS 146 had tried to cater for remote areas where training might not be feasible by allowing for the use of a script (in lieu of training) by a properly supervised front-counter representative. He commented, however, that this option would not meet everyone's needs and that there might be an 'irresistible temptation to go beyond a script' in rural agencies.[27]

4.34 At one of the Committee's earlier hearings, Mr Ian Johnston, Executive Director, Financial Services Regulation at ASIC, advised that he thought the script would be more relevant for call centres, and the supervision model more suitable for front-counter representatives.[28] Ms Vamos also from ASIC, indicated that the exemption would only be useful where front-desk representatives conducted a very limited dialogue with customers and that, otherwise, banking and other types of deposit-taking institutions would generally be training to Tier 2 standard.[29]

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23 Submission 25, p. 4.

24 Submission 22, p. 5.

25 *Committee Hansard*, 11 July 2002, pp. 143–44.

26 Supplementary submission 8A.

27 *Committee Hansard,* 7 August 2002, p. 272.

28 *Committee Hansard*, 23 May 2002, p. 83.

29 *Committee Hansard*, 23 May 2002, p. 84.

4.35 When questioned by the Committee about the applicability of the script exemption, the ABA said that, because a script lacked the flexibility needed to deal with the variables involved in customer inquiries, it was not a workable alternative.[30]

4.36 The Credit Union Services Corporation (Australia) Limited (CUSCAL) stated that the script and supervision exemptions had no application in small branches or agencies in rural areas.[31]

4.37 Although there was some debate at the hearings about using front-counter representatives as a sales force for more complex financial products, the Committee accepted that the issues involved concerned disclosure rather than training. In this regard, CUSCAL stated:

> We are not concerned about the impact of PS 146 on 'cross-selling' or 'up-selling' or advice about financial products other than basic deposit products and non-cash payment facilities.[32]

Costs

4.38 The high costs involved in meeting the requirements of PS 146 were viewed in the submissions as being disproportionate to any potential gains in customer protection.

4.39 Mr David Thorpe for the AFC, said at the Committee's hearing on 12 July 2002, that he had received estimates from members ranging from $300 to $1,000 per person.[33] The Bendigo Bank estimated initial training costs of approximately $945,179.00 with a minimum additional amount of $630,000 for the following year.[34] At the Committee's hearing on 23 May 2002, CUSCAL said that about 6,000 credit union staff would have to be trained or assessed to be competent against the benchmarks set in PS 146 at a minimum cost of approximately $3 million.[35] For the AAPBS, estimated costs ranged from $440 to $900 per employee whether it involved an ASIC-approved course or internal training developed with an authorised assessor such as a Registered Training Organisation (RTO) approved by ASIC.[36]

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30 *Committee Hansard,* 11 July 2002, p. 100.

31 Supplementary submission 9, p. 2.

32 Supplementary submission 9A.

33 *Committee Hansard*, p. 217.

34 Submission 8A.

35 *Committee Hansard,* p. 30.

36 Letter to the Committee dated 17 July 2002.

4.40 The AFC commented at the hearing on 12 July 2002, that requirements for RTOs to maintain records and issue certificates for all trainees would further blow out training costs.[37]

Proposed alternatives to PS 146 requirements

4.41 CUSCAL criticised as excessive not only the training standards for BDPs, but also those for deposit products other than BDPs. It stated in its submission that PS 146:

- [was] not clear and straightforward;
- [did] not recognise the unique status of 'basic deposit products' and related payment products in the Act; and
- [categorised] deposit products that [were] not basic deposit products in Tier 1 instead of Tier 2.[38]

4.42 CUSCAL argued that the training requirements imposed by PS 146 for advice on BDPs and related NCP facilities as well as for deposit products other than BDPs, were disproportionate to the nature of the advice involved. It claimed that ASIC's adaptation of PS 146 to fit in with the new regime failed to take into account the unique treatment accorded in the FSR legislation to ADI deposit products which recognised their status as capital guaranteed and well understood by consumers.

4.43 A number of witnesses took the view that a separate 'Tier 3' training category was needed for BDPs and related NCP facilities. The proposed content of the training in Tier 3 varied from 'product knowledge'[39] to what was already contained in in-house training manuals.[40]

4.44 CUSCAL suggested that a Tier 3 training category could either be met by RTOs or licensees' own in-house programs. For deposit products other than BDPs, it also suggested that Tier 2 rather than Tier 1 training should apply.

4.45 At the Committee's hearing on 11 July 2002, the ABA argued that a new product knowledge training category for BDPs would be an appropriate alternative to Tier 2 training given the special features of BDPs.[41] The AAPBS considered that training manuals which its members currently had in place for their deposit-taking transactional business would be a satisfactory training tool.[42] The AFC proposed a Tier 3 training category using existing training manuals and suggested that section

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37 *Committee Hansard*, p. 216.

38 Submission 9, p. 2.

39 Ian Gilbert, *Committee Hansard*, 11 July 2002, ABA, p. 101.

40 James Larkey, *Committee Hansard*, 11 July 2002, AAPBS, p. 134.

41 *Committee Hansard*, p. 101.

42 *Committee Hansard*, 11 July 2002, p. 134.

912A of the *Corporations Act 2001* placed an obligation on licensees in any event to ensure all representatives were adequately trained.[43]

4.46 In response to proposals for a new training category, ASIC commented that:

> Again, it is more about making sure the training is appropriate. Whether there are three tiers, two tiers or five tiers, it is about making sure that there are courses out there that fit the services being provided. Certainly, a lot of entities that only provide services in relation to tier 2 products have raised the issue of the skills required to provide those products. Even for tier 2 training, many of the courses train people at the skill level of providing a financial planning type service—'know your client' and that sort of thing. It is a matter of pulling that back. Again, that is covered in PS146; it just has not translated in many of the courses being provided.[44]

and also that:

> The overall message we would give there is that we will maintain the integrity of the two-tier system. But we understand that there may be some difficulties in various areas, and we will work to try to be flexible and tailor things as much as we can.[45]

The background to ASIC's formulation of training requirements

4.47 ASIC formulated PS 146 following a period of public consultation commencing with the release of a policy proposal paper on 26 April 2001.[46] The final policy was published on 28 November 2001.

4.48 Although PS 146 was formulated in consultation with interested stakeholders, CUSCAL, the ABA and AAPBS claimed that the training requirements failed to reflect the special characteristics of BDPs and related NCP facilities.

4.49 In particular, CUSCAL commented that:

> The interim policy statement—IPS 146—was drafted well before the final provisions of the FSR regime were settled. One of the most contentious issues in developing the FSR policy development process was the status and treatment of deposits with ADIs. The status of ADI deposit products as capital guaranteed and well understood by consumers was given distinct recognition in the FSR legislation but this was not reflected in the ASIC Policy Proposal Paper 3 Adapting IPS 146 to the FSR Regime. Indeed, there was virtually no acknowledgment in PPP 3 of this significant policy development process and its outcome.[47]

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43 *Committee Hansard*, 12 July 2002, p. 218.

44 Pauline Vamos, *Committee Hansard,* 7 August 2002, p. 280.

45 Ian Johnston, *Committee Hansard,* 7 August 2002, p. 280.

46 *Policy Proposal Paper No.3–Licensing: Adapting IPS 146 to the Financial Services Reform*.

47 Submission 9, p. 3.

4.50 Likewise the ABA stated that:

> [PS] 146 was actually there before FSR came along. It was there for securities advisers and dealers. It simply was recast as an interim policy statement in the lead-up to the passage of the Act. It has been altered since then, but, fundamentally, its structure is very much the same.[48]

4.51 And, in a similar vein, the AAPBS said at the hearing that:

> [PS 146] originated from interim policy statement 146, which preceded quite a lot of the FSR. I suspect it was not written for the banking culture or our branch culture and that is why it has things in it that are unnecessary. Frankly, we do not have any evidence that it was sensibly modified to meet the requirements of deposit taking institutions.[49]

The Committee's earlier findings regarding regulation of BDPs

4.52 During the Committee's inquiry into the exposure draft of the Financial Services Reform Bill conducted in 2000, submissions were received from banks, building societies and credit unions concerning the inclusion of basic deposit products in the definition of 'financial product'. In its *Report on the Draft Financial Services Reform Bill* dated August 2000, the Committee concluded that:

> …the inclusion of basic banking products within the ambit of the draft Bill imposes requirements on approved deposit taking institutions which would have a devastating effect on the level of services offered by agencies of these institutions in regional areas…Moreover, the Committee also recognises that the disclosure and training requirements associated with more complex financial products—which are by nature investment products—are inappropriate for basic banking products where there have been few concerns expressed about inadequate consumer protection. Furthermore, the Committee recognises that such requirements on basic banking products are not aligned with the express intent of the Wallis Inquiry on this matter.[50]

4.53 The Committee proposed an amendment to the definition of 'financial product' to exclude basic deposit products provided by ADIs.[51] This proposal was not adopted but amendments provided that deposit products offered by ADIs for a term of two years or less and having no management or break fees would not generally be subject to the Financial Services Guide or Statement of Advice requirements. This concession took into account that BDPs are capital guaranteed and well understood by consumers.

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48 *Committee Hansard*, 11 July 2002, p. 100.

49 *Committee Hansard*, 11 July 2002, p. 134.

50 Page 28.

51 Pages 28–29.

4.54 Following the Committee's second inquiry into the Financial Services Reform Bill 2001, the Committee again recommended that BDPs be exempted from the definition of 'financial product'. As with its findings in the earlier inquiry, the Committee was concerned that the increased compliance costs associated with BDPs would not lead to greater consumer protection and, in fact, would increase costs to consumers while threatening the availability of these products in remote areas.[52]

4.55 The Committee's recommendations were not adopted.

The Committee's views

4.56 It appears to the Committee that the uncertainty surrounding the ambit of the definition of 'financial product advice', and the compliance issues arising from this, may prompt more widespread training of front-counter representatives advising on BDPs and related NCP facilities than was initially anticipated.

4.57 In this regard, the Committee accepts the comments made by ADIs and their member associations that the 'script' and 'supervision' alternatives to training provided by PS 146 are not workable in practice, particularly in agencies and branches in regional and remote areas, and that formal training will consequently be required.

4.58 The Committee notes that BDPs and related NCP facilities are well understood by retail consumers and are offered by prudentially regulated entities. It accepts the evidence given by the AFC that only a very small proportion of the transactions handled by front-counter representatives come within the purview of the FSR Act, and again concludes that there is insufficient consumer benefit to justify the costs.

4.59 The Committee recognises that PS 146 allows for the assessment of in-house courses by ASIC-approved RTOs. However, it notes the AAPBS's comments that its costs would be much the same regardless of whether the courses were conducted externally or approved by an RTO for in-house training.

4.60 The Committee understands that ASIC is required to formulate policy to reflect the objectives of the legislation involved. It further understands that the training requirements with which licensees must comply, have a strong consumer-protection focus.

4.61 Notwithstanding this, the Committee believes that the training requirements in PS 146 for representatives advising on BDPs and related NCP facilities go beyond what is necessary given the nature of the products involved, the high costs associated with training and the questionable benefits to consumers.

4.62 The Committee notes ASIC's evidence that it is presently examining the available courses to ensure they are more appropriate to the nature of the financial products involved.

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52 *Report on the Financial Services Reform Bill 2001,* August 2001, p. 89.

4.63 However, the Committee considers that in setting the training requirements for persons advising on BDPs and related NCP facilities, PS 146 is not consistent with the objective of the FSR Act to promote consumers' interests while facilitating efficiency and flexibility in the provision of these products and services.

4.64 In addition, the Committee notes the evidence presented to this inquiry and, indeed, its two previous inquiries regarding FSR legislation that regulation of BDPs and related NCP facilities will seriously threaten agency and branch banking services in remote and regional areas.

4.65 Furthermore, the Committee agrees that formal training requirements imposed on agencies and small branches would be disproportionately costly as well as difficult to implement. The Committee is particularly concerned that the closure of services in these areas could have far-reaching adverse impacts on local communities.

4.66 The Committee believes it was not the Government's intention that the FSR legislation would have a deleterious effect on remote and regional areas.

4.67 In this regard, the Committee refers to the comments of the then Minister for Financial Services and Regulation, the Hon Joe Hockey MP, when introducing the FSR Bill into Parliament, that:

> The [FSR] framework will also be capable of flexible implementation so that it can apply differently to different products where this difference can be justified within the overall objectives of the regulatory framework.
>
> Basic deposit products will be subject to less intensive regulation than more complex investment products.
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> This will ensure that the bill will not jeopardise the cost-effective provision of basic banking services, especially in rural and regional areas.[53]

4.68 The Committee believes that the fundamental problem underlying the difficulties associated with PS 146, is the inclusion of BDPs and related NCP facilities within the scope of FSR regulation.

4.69 The Committee further believes that the provision of BDPs and related NCP facilities does not need to be regulated by the Act and concludes that the Government should exempt these products from the definition of 'financial product' and hence, makes the following recommendation:

Recommendation

The Committee, for the third time, recommends that the Government, either by amending the Corporations Act or regulations, should remove basic deposit products and related non-cash payment facilities from the definition of 'financial product'.

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53 Second Reading Speech, 5 April 2001, *House Hansard*, p. 26522.

4.70 Should the Government inexplicably continue to ignore the evidence and arguments put forward by the Committee and fail to act with commonsense by implementing this recommendation, then the absolute minimum acceptable response is to implement the following recommendation, which the Committee nevertheless regards as a very inadequate substitute for the above recommendation.

Recommendation

The Committee recommends that ASIC urgently review the training requirements in PS 146 so they take into account the special features of basic deposit products and related non-cash payment facilities.

Recommendation

In addition, the Committee recommends that ASIC consider amending PS 146, as far as possible—and without compromising consumer protection—to:

- **provide a framework for more cost-effective reviews of ADIs' current in-house training requirements;**
- **ensure training costs—whether in-house or external—are more proportionate to envisaged consumer protection gains; and**
- **cater for the training challenges presented by agencies and small branches, particularly in regional and remote areas.**

Objections to other training requirements

4.71 The IAG commented on the requirement that staff advising on personal accident and sickness insurance products meet the Tier 1 educational level.

4.72 It argued that Tier 1 training would not render any significant industry protection for consumers and said these particular insurance products would be more appropriately grouped with other general insurance products so that training to Tier 2 rather than to Tier 1 level was required. It claimed that, under current industry practice and experience, staff advising on personal accident and sickness insurance products were required to have the relevant theoretical knowledge and that this accorded with the Certificate III or Tier 2 standards.

4.73 The IAG also asked whether the Tier 1 training level would apply to staff advising 5 per cent of the time on personal accident and sickness insurance products but the rest of the time on Tier 2 products.[54]

4.74 The NIA expressed concerns that PS 146 failed to recognise accountants' professional qualifications in relation to the provision of general advice in certain areas. The view was that accountants already held the qualifications necessary to conduct their professional activities so, if licensing were required, they should not have to complete additional courses prescribed by PS 146.

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54 Submission 28, p.3.

4.75 This is discussed further in Chapter 5 which deals with the conditional licensing exemption for accountants in regulation 7.1.29.

The Committee's views

4.76 The Committee notes the evidence given by IAG that the Tier 1 standard applied to staff advising on personal accident and sickness insurance is too high. However, the Committee is not convinced that the level of training for personal accident and sickness insurance advisers is inappropriate. The Committee therefore considers that no further action is necessary.

Recognition of experience

4.77 PS 146 provides an alternative to the completion of approved training courses. This is the recognition of relevant experience. Where an adviser has at least 5 years' relevant experience in the immediate 8 years, individual assessment by an authorised assessor is an option.[55]

4.78 Freehills commented that its clients were concerned about the arbitrary application of the 5 years in 8 rule. It suggested that advisers with significant and worthwhile experience of less than 5 years should not be treated in the same way as a person having no industry experience.[56]

4.79 The Australian Associated Motor Insurers Limited (AAMI) submitted that the 5 years in 8 rule was arbitrary and that recognition of all time spent as an adviser in relevant areas should be recognised. It endorsed the approach taken by the Australian National Training Authority which it said did not apply the rule as a mandatory qualifier for assessment of earlier-acquired competencies.[57]

The Committee's views

4.80 On the basis of evidence presented by ADIs (for BDPs and related NCP facilities), CPA Australia and Mr Peter Davis (for training of financial planners),[58] the Committee accepts that formal training requirements prescribed by PS 146 can entail substantial costs.

4.81 The Committee notes that the Australian Quality Training Framework (AQTF) does not impose thresholds such as the 5 years in eight rule as mandatory qualifiers for the assessment of prior experience.

4.82 However, the Committee considers that the financial services to which training requirements relate, are often complex and not well understood by retail consumers. The Committee is consequently not persuaded that the costs involved

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55 PS 146.52–146.53.

56 Submission 7, p. 6.

57 Submission 18, p. 3.

58 Details of the evidence given by CPA Australia and Mr Peter Davis are in Chapter 5.

outweigh the potential reduction in the quality of advice given to consumers and recommends that the 5 years in 8 rule remain in place.