

REFINEMENTS TO FINANCIAL SERVICES REGULATION

OVERVIEW OF PROPOSALS PAPER

The financial services regulatory framework was substantially amended by the introduction of the *Financial Services Reform Act 2001* (now contained in Chapter 7 of the *Corporations Act 2001*), which came into full effect on 11 March 2004.

The introduction of harmonised financial services licensing, conduct and disclosure requirements has produced significant benefits for consumers through the promotion of consistent basic standards across the financial services industry.

The Government has consulted with a broad cross section of the community to gauge the overall effectiveness of the new regulatory regime since its implementation, with particular consideration paid to whether the financial services reforms have achieved the Australian Government's objectives. Overall, there is support for, and satisfaction with, the reforms.

However, in light of stakeholders' day-to-day experience with the legislation, it has become clear that some aspects of the regulation of financial services would benefit from refinement to improve their practical operation.

The intention underlying the refinement process is to:

- ensure that consumers receive information that is relevant to their needs
- reduce the compliance burden on industry
- clarify the intent of the legislative and regulatory framework that applies to the financial services industry.

A main area of concern relates to the amount and detail of information provided to consumers through financial services disclosure. In particular, it is felt that the content requirements for the various disclosure documents are resulting in the production of excessively lengthy and complex documents (or, in the case of oral disclosure, excessively lengthy verbal 'scripts'), which are difficult to reconcile with the legislation's requirement that information be presented to consumers in a 'clear, concise and effective' manner.

As a result, the purpose behind the disclosure requirements — that is, to assist consumers to make informed investment decisions — is potentially being undermined. In addition, the expense of producing lengthy disclosure documents is seen as an unreasonable burden on service providers and, in many instances, the increased cost is passed through to consumers.

The proposals are therefore designed to achieve more effective written and oral disclosure. However, disclosure is not the only issue that is addressed by the proposals. Others include:

- Retail / wholesale client distinction
- Provision of secondary services
- General advice definition
- Jurisdictional issues
- Authorised representatives
- Staff training
- Non-cash payment facilities.

The proposals are intended to achieve the following broad outcomes:

- Facilitate the provision of more specific and concise information to consumers by encouraging the production of disclosure documents that have less duplicated information and are more directly relevant to their needs.
- Provide oral disclosure that is simpler and more easily understood by consumers.
- Simplify General Advice Warnings and make them more meaningful for consumers.
- Streamline product disclosure requirements in relation to Basic Deposit Products and general insurance products.
- Improve aspects of the tests which determine whether a client is 'retail' or 'wholesale'.
- Reduce excessive disclosure where services are provided through intermediaries.
- More clearly delineate the distinction between 'general' and 'personal' advice.
- Clarify the jurisdictional extent of the law.
- Modify authorisation procedures for representatives, certain staff training requirements and the coverage of non-cash payment facilities.

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