



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 17

Licensing: Adapting IPS 146 to the Financial Services Reform regime

April 2001

What this paper is about

1 ASIC Interim Policy Statement 146 *Training of authorised representatives* [IPS 146] gives guidance to licensees and principals on how they can meet their obligation to ensure that their representatives are adequately trained.

2 We are examining how the policy in [IPS 146] will apply in the new regime established by the *Financial Services Reform Bill 2001*. The Bill proposes major changes to the way financial services are regulated, especially by:

- (a) creating a single regime for the licensing of all financial service providers; and
- (b) creating separate kinds of licences for different classes of activities, such as an financial product advice and dealing.

3 In the light of these changes and our experience in administering [IPS 146], we have decided to refine the policy by adapting it more closely to the new regime and clarifying the way it works in some areas.

4 We do not plan to change any major element of the policy, and we will continue with our existing compliance timetable for the licensees and life principals referred to in [IPS 146]. We will issue a final policy statement before the new regime commences, which is expected to be on 1 October 2001.

5 This paper is designed to let you know how we will apply our policy under the new regime and to give you an opportunity to comment.

6 This paper needs to be read together with [IPS 146].

Our policy proposal — issues for consideration

| Policy proposal | Your feedback |
|---|---|
| <p>Financial product advice</p> <p>1 Our policy in [IPS 146] will apply to people who provide financial product advice to retail clients. This includes both general advice and personal advice.</p> <p>2 The policy will apply to anyone who provides advice directly to retail clients. This includes representatives and a person who provides advice as the individual holder of a licence.</p> <p>Note: For what is meant by providing advice – see our FSRB Policy Proposal Paper No 1 <i>Licensing: The scope of the licensing regime: Financial product advice and dealing</i> (April 2001).</p> <p>3 At this stage, we will not prescribe in the same level of detail the training needed by those who provide services other than advice to retail clients.</p> | <p>1A Should we restrict the [IPS 146] policy to advice or extend it to other activities? Which ones?</p> <p>2A Are there any practical problems in making sure people who themselves hold licences and give advice to retail clients meet the [IPS 146] training standards?</p> <p>3A Do we need to extend the [IPS 146] approach to other activities of licensees? Which activities and why?</p> |
| <p>Education levels of training – Tiers</p> <p>4 We will continue to use the descriptions Tier 1 and Tier 2 for the two levels of training standards that a program must contain, or that individuals who provide advice to retail clients must meet. However, we will make clearer the distinction between those levels.</p> <p>5 Those who provide financial product advice to retail clients should generally be trained to the higher standard, the Tier 1 level. This general rule should be subject to a limited exception for advice about specified products.</p> | |

| Policy proposal | Your feedback |
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| <p>6 The lower Tier 2 training standard is appropriate only for people who give advice to retail clients about the following products (as defined for the purposes of the Bill):</p> <ul style="list-style-type: none"> (a) motor vehicle insurance products; (b) home building insurance products; (c) home contents insurance products; (d) travel insurance products; (e) personal and domestic property insurance products; and (f) basic deposit products. | <p>6A Should any product be added to, or removed from, this list. Why?</p> |
| <p>Pre 1995 training</p> <p>7 Training undertaken before 1 January 1995 generally needs to be supplemented. This is to ensure knowledge and skills are complete and current, especially in the areas of regulation, compliance and disclosure.</p> | <p>7A What practical problems might arise from this proposal? How can they be solved?</p> |
| <p>Compliance date</p> <p>8 Those who provide financial product advice must meet the requirements of the policy if they are:</p> <ul style="list-style-type: none"> (a) representatives or licensees regulated under the current Law, or are life insurance principals or life agents – by 30 June 2002; and (b) representatives or licensees other than those in (a) who will be regulated by the Law (as amended by the Bill) – by the end of the transitional period under the Bill. | |
| <p>Foreign qualifications</p> <p>9 We will consider accepting foreign qualifications and courses that meet a similar standard to Australian qualifications and courses recognised under our adapted policy.</p> | <p>9A What if any issues will recognition of foreign qualifications and courses raise? How might we deal with those</p> |

| Policy proposal | Your feedback |
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| <p>courses recognised under our adapted policy.</p> <p>Transitional arrangements</p> <p>10 We cannot yet tell you about what affect the transitional arrangements might have on your training obligations.</p> | <p>issues?</p> |

Explanation

Financial product advice

1 The main focus of [IPS 146] is on the training standards licensees must make sure they and their representatives meet if they give retail advice to clients. The existing Corporations Law allows a person who holds a dealers licence to give advice, and our policy up to now has applied training standards to both advising and dealing.

2 The new regime in the Bill provides explicitly for classes of licence depending on the nature of the services provided, including advice. As we move into that regime, we have decided to make clear that the detailed standards in [IPS 146] will apply for the time being only to those who provide financial product advice. For our view on the meaning of “financial advice” and, what amount to “providing” advice, see our FSRB Policy Proposal Paper No 1 *Licensing: The scope of the licensing regime: Financial product advice and dealing* released in April 2001.

3 This new focus also allows us to apply the policy to any person who directly gives financial product advice to retail clients. This will normally mean representatives of a licensee, but also includes a person who holds a licence in their own name and gives advice. So the policy is relevant to:

- (a) licensees who use representatives to give advice to retail clients because it sets the training standard they must make sure their representatives must meet; and
- (b) people who are themselves licensees and give advice to retail clients, because it tells them what standards they must meet to give that advice. Note that they will normally have to meet other standards as a licensee in addition to those they need to give advice – see our FSRB Policy Proposal Paper No 2 *Licensing: Organisational capacities* issued in April 2001.

4 The policy will continue to set out details of the assessment-based training we regard as the only way a licensee can meet its training obligations for advice given to retail clients. If a person does any activity that includes giving advice of that kind, they must meet this standard.

5 We do not see the need at this stage to prescribe the same level of detail for those who do not give retail advice. But we will consider doing so if licensees who provide other services need more detailed

guidance on how they can meet their licence obligations, especially for training representatives.

Other financial services providers

6 This means that those who carry out activities that do not involve giving advice to retail clients – such as dealing, operating a registered scheme or providing a custodial or depository service – are not at this stage required to meet the detailed standards in [IPS 146].

7 However, you should note that:

- (a) under the Law, licensees must adequately train their representatives in relation to *all* financial services covered by the licence. Our policy on advice does not change this overriding duty in any way; and
- (b) our policy on advice may be useful as a guide for licensees developing training programs for representatives providing financial services other than retail financial product advice.

Other service providers

8 Consistent with the interim policy, people who do not provide financial product advice to retail clients, as defined in the Bill, do not have to meet the training requirements in [IPS 146]. This includes people who provide purely factual information, merely refer people to licensed advisers, or act only as a mere conduit. FSRB Policy Proposal Paper No 1 *Licensing: The scope of the licensing regime: Financial product advice and dealing* released in April 2001 provides further guidance on the activities that we consider fall outside the definition of providing advice.

Education levels of training – Tiers

9 Our final adapted policy will specifically apply the lower training standard to those who give advice about the general insurance products listed because these products are:

- (a) relatively straightforward;
- (b) do not have any investment component;
- (c) are subject to standard terms and conditions except for previously disclosed variations; and
- (d) of limited life, usually 12 months.

10 The final policy will also specifically apply the lower training standard to those who give advice about basic deposit products.

These products are also relatively straightforward and well understood by the public. Our approach is consistent with that taken in the Bill to the regulation of basic deposits.

11 Further, we consider a lower training standard is appropriate to general insurance and basic deposit products because, for these kind of products, consumers typically do not choose between types of products when deciding what to acquire. For example, a consumer who typically wants home contents insurance will not choose between that type of product and another type of product.

12 For advice on all other products – including specialist advice about one aspect of a product – those who give the advice must meet the standard in Tier 1.

Pre 1995 training

13 We have consulted extensively with industry on this issue. Due to substantial improvements in financial services training, the introduction of industry codes in the mid-1990s, changes to financial services regulation and the dynamic nature of the financial services industry, we consider that training undertaken before 1 January 1995 would generally need to be supplemented with formal gap training.

14 We are not saying that pre1995 training is irrelevant or that people who have completed older courses must do entirely new courses from scratch. However, the major changes since 1995 in the industry, in industry standards and regulation, and in the environment means some additional formal training is needed to supplement knowledge gaps.

15 The revised policy will provide that people who commenced their qualification prior to 1 January 1995 but completed a substantial part of the course after that date will generally not need to supplement the pre1995 subjects or modules.

Compliance date

16 Current holders of Corporations Law licences and life insurance principals have been aware since September 1999 of the requirement to comply with our training requirements. They are also subject to an explicit training obligation under the current Corporations Law and the *Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry* (Life Code). The original compliance date was extended to accommodate industry concerns. We therefore believe that the 30 June 2002

remains an appropriate date for the requirements of this policy to apply to people in this category.

17 We will align the commencement of obligations for other licensees with the transitional arrangements that the Government plans to announce in the next few months.

Foreign qualifications

18 We are aware of increases in the cross border provision of services, and emerging discussions about recognition of one another's standards. We are developing proposals for doing this, including how we can assess foreign qualifications and courses under this approach.

Transitional arrangements

19 At this stage, we cannot give details of how our training policy will apply to licensees and representatives affected by the transitional arrangements under the Bill. We will provide further information when we have information about the transitional arrangements. We understand that the transitional arrangements will be contained in legislation and regulations supplementing the Bill.

Key terms

In this policy proposal:

“ASIC” means the Australian Securities and Investments Commission;

“authorised representative” of a financial services licensee means a person authorised by the licensee, in accordance with 916A or 916B, to provide a financial service or financial services on behalf of the licensee.

Note: This is a definition contained in 761A

“Bill” means the *Financial Services Reform Bill 2001*, the Law as amended by the Bill or that bill as enacted as applicable and includes and regulations made for the purposes of the Bill;

“financial product advice” means a recommendation, a statement of opinion or an interpretation of information, or a report of any 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 particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence;

but does not include anything in an exempt document;

Note: This is a definition contained in 766B

“IPS 146” means ASIC Interim Policy Statement 146 *Training of authorised representatives*;

“Law” means the Corporations Law (including as intended to be replaced by the *Corporations Bill 2001*);

“representative” of a financial services licensee means:

- (a) an authorised representative of the licensee; or
- (b) an employee or director of the licensee; or
- (c) an employee or director of a related body corporate of the licensee; or
- (d) any other person acting on behalf of the licensee;

Note: This is a definition contained in 910A

“retail client” means a client defined as such under 761G.

What will happen next?

Stage 1

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| 26 April 2001 | ASIC policy proposal paper released |
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Stage 2

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| May/early June 2001 | Consultation period on the contents of this policy proposal paper |
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| 7 June 2001 | Comments due on the policy proposal |
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| 15 June to September 2001 | Drafting of final adapted policy statement |
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Stage 3

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| Mid to late September 2001 | Final adapted policy statement released |
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Your comments

You are invited to comment on the proposals and issues for consideration in this paper.

Comments are due by Thursday 7 June 2001 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.
