

David Love
Investor Protection Unit
Corporations and Financial Services Division
The Treasury
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Dear Mr Love

Corporate and Financial Services Regulation Review Consultation Paper

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the consultation process for the proposed refinements to Financial Services Regulation.

The FSU represents 60,000 members employed in the finance sector across Australia. Our members deal with the day to day realities of financial services regulation and have an active interest in promoting a professional, efficient and fair marketplace for financial services.

Our interest in corporate regulation stems from our members' interest in working in soundly managed, accountable and sustainable companies and ensuring that the interests of all stakeholders are properly considered.

We are disappointed that so many important issues were canvassed with so little detail. Proposed changes to corporate law deserve full and detailed consultation; otherwise any outcomes may be less than optimal.

Our comments regarding specific proposals are detailed below.

1.20 Oral disclosure.

Comments are sought on the desirability of reducing oral disclosure requirements that apply to Financial Services Guides and Statements of Advice, for products with a cooling-off period.

The FSU generally supports the proposal to reduce the amount of oral disclosure required where a cooling off period applies, so long as consumers are specifically aware that a cooling off period applies.

Many FSU members are employed in call centres which obviously play an important role in the delivery of financial services. Anecdotal evidence from these members suggests that consumers often become annoyed and frustrated when lengthy scripts are read out to them over the phone, in some cases they even hang up abruptly.

1.26 Policy Statement PS 146 —training requirements.

Comments are sought on the streamlining of the training requirements in ASIC's Policy Statement 146.

The FSU believes it is important there are consistent minimum standards for staff training across the industry. Consumers should only receive financial product advice from people who have been properly trained and are qualified to give that advice.

Staff should receive quality training that enables them to provide appropriate advice to consumers. It's important that these principles are not undermined.

The FSU believes that ASIC needs to play a stronger role in ensuring that PS146 compliant training actually ensures that staff are appropriately trained to provide financial advice. The ASIC Training Register (ATR) needs to provide more information regarding the content and quality of PS146 compliant courses – thereby providing more transparency and assistance to industry.

The ATR encourages compliance over capability and doesn't currently ensure the quality of advice that PS146 was meant to encourage. An unfortunate example of training was given by an FSU member working in a banking environment, who said she was assessed online. She did her training, completed the assessment and failed. However, the training program did not tell her why she failed, so she just kept putting in different combinations of answers until she was passed. Thousands of finance employees would have undertaken this method of assessment. This situation highlights the divergence between achieving compliance and being capable of providing advice for consumers in the manner envisaged by the recommendations of the Financial System Inquiry (FSI).

There needs to be a stronger alignment between the Australian Qualifications Framework and PS146 to provide the best possible linkage between PS146 compliance and the development of industry recognised portable qualifications. For example, if someone does compliance training within the AQF, they can subsequently build on this training to achieve an industry recognised qualification that leads to other industry acknowledged learning pathways. However, if an individual undertakes compliance training outside the AQF then it is unlikely they can use this as a step towards gaining an industry recognised qualification. Their training is isolated from the broader training framework and although it may be PS146 compliant, it often holds no other significant value within the industry.

Unfortunately some companies have provided additional training to staff and then used this as an excuse to increase sales pressures on staff, a process that would seem to run counter to the intent of the legislation to minimise inappropriate sales. We recognise that the Australian Government and the relevant regulators have no direct control over staffing levels and sales targets, however, we believe they can play a valuable role in helping to encourage a culture of compliance with the letter and spirit of the law.

4.3 Extend the Business Judgment Rule.

Comments are sought on whether there should be a general protection for directors, excusing them from liability under the Corporations Act, subject to certain conditions.

It is difficult to have a definitive view on this proposal given the lack of detail around how such a provision is intended to be interpreted. The FSU has previously advocated that the Corporations Law should be amended to require (or specifically permit) directors to have regard to stakeholders such as employees and customers.¹

We believe there may be a danger that the current proposal for an additional defence could be misused by directors who claim they were acting in good faith. Given the

¹ Recommendation 5, Submission on Exposure Draft CLERP 9 (Audit Reform and Corporate Disclosure) Bill 2003; and Submission to the Inquiry into Corporate Responsibility, Parliamentary Joint Committee on Corporations and Financial Services, 2005.

behaviour of some boards over recent years we do not believe there is a prima facie case for directors having more avenues to avoid liability under the Corporations law.

FSU believes that the Corporations Law should be amended to proactively require directors to also have regard to the interests of people or organisations who the company may have or is likely to have a business or employment relationship, or who may be directly affected by the business of the company. At a minimum the law should be amended to specifically clarify that directors *can* have regard to these stakeholders.²

An amendment to provide some sort of duty or defence to provide greater stakeholder consideration would be welcome; however it is entirely unclear whether proposal 4.3 would fulfil this. Consequently we are not supportive of the proposal in its current form.

4.4 Greater flexibility for company meetings.

Comments are sought on whether some of the detailed provisions about the conduct of company meetings could be made replaceable rules (for example, requirements relating to notice of meetings, place, technology, proxy appointments).

The FSU believes that directors should be accountable to all shareholders – company meetings are a crucial forum to ensure this occurs. The FSU would oppose any potential mechanism that could allow directors to avoid scrutiny by ordinary shareholders.

If provisions about the conduct of meetings could be changed by several large institutional shareholders then the interests and views of small shareholders could potentially be sidelined or silenced. This may not be the purpose of the proposal; nevertheless we are concerned that it could be an unintended consequence.

In principle the FSU is opposed to such a proposal, however it is impossible to form a definitive position without specific detail.

If you have any questions in relation to this submission please contact our National Communication and Policy Manager, Rod Masson, on (03) 9261 5330.

Yours sincerely



Paul Schroder
National Secretary
31 May 2006

² As suggested by Peter Henley, 'Were Corporate Tsunami Donations Made Legally?' (2005) 30(4) *Alternative Law Journal*.