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Financial Services Law

FINANCIAL PRODUCT ADVICE OR NOT? THAT IS THE QUESTION

Many freight forwarders have become aware of the impact of the changes introduced under the Financial Services Reform Act (**FSRA**). In particular, many entities who have been involved in offering insurance to customers as an incidental part of their transport business have sought advice on whether they will require an Australian financial services licence (AFSL) in order to validly continue those activities after 11 March 2004.

Another important aspect of the FSRA is the meaning of financial product advice.

The meaning of financial product advice under the FSRA is very broad and means:

“A recommendation or statement of opinion or report on either 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 product; or
- (b) could reasonably be regarded as being intending to have such influence.”

The definition could be triggered if, for example, a call centre employee advises a potential customer that your company offers “competitive insurance” or “insurance that is affordable”. In addition, if an employee responds in the affirmative to a customer’s question regarding the suitability of your insurance arrangements, the threshold may be breached.

If you are providing financial product advice, then you may be required to also provide a financial services guide, a statement of advice and a product disclosure statement.

As certain exclusions apply under the new regime for particular types of advice, further reviews should be undertaken by interested parties.