

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2014 - 2015

**Department/Agency:** ASIC

**Question:** BET 543

**Topic:** Existing enforcement provisions

**Reference:** Hansard page no. 48 - 03 June 2015

**Senator:** McAllister, Jenny

**Question:**

"Senator McALLISTER: I am sorry not to know this but it would help me to understand what existing enforcement provisions you are able to rely on in pursuing this—noting that there are other reforms that you have recommended for this area.

Mr Kell: I will just mention one but I am happy to provide follow-up information. A key provision is the new best interests duty that came in through FoFA, requiring the adviser to act in the best interests of the client. That is particularly important, for example, when you are switching products. When you are advising someone to switch from one life insurance policy to another, it needs to be in the best interests of the client, and there is a series of tests under that. That is one of the measures in our life insurance remit."

**Answer:**

Chapter 7 of the *Corporations Act 2001* (Corporations Act) provides a range of obligations that advice providers must comply with when giving personal advice to a retail client, including when giving personal advice about life insurance. These include:

- an obligation to act in the best interests of the client in relation to the advice, subject to a 'safe harbour', specifying that the adviser will have met their legal obligations if they meet certain requirements (s961B);
- an obligation to give appropriate advice (s961G);
- an obligation to warn the client if the information is based on incomplete or inaccurate information (s961H); and
- an obligation to give priority to the interests of clients when there is a conflict between the interests of the client and those of the adviser and various related parties (s961J).

These obligations were introduced as part of the Future of Financial Advice (FOFA) reforms. Similar obligations to those in ss961G and 961H existed prior to the FOFA reforms, but in a slightly different form.

An adviser who provides personal advice about life insurance must comply with these obligations.

As well as complying with these obligations, if an adviser recommends a client move from one life insurance product to another, the adviser must set out a range of additional information in the Statement of Advice. This includes the potential benefits that may be lost, any fees or charges that will be incurred and any other significant consequences to the client if the advice is acted upon (s947D). When giving personal advice to a client to switch from one life insurance product to another, we expect an adviser to disclose, for example, any

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cancellation fees, loss of cover and the loss of any other opportunities as a result of switching life insurance products.

How we choose to pursue breaches of these obligations will depend on a range of factors such as the nature of the alleged conduct, the conduct of the relevant person or entity after the alleged contravention, the available evidence and the enforcement options available to us under the Corporations Law.

The types of actions we may take include, for example:

- civil penalty action;
- banning an individual, either temporarily or permanently, from engaging in financial services;
- cancelling or suspending an Australian financial services (AFS) licence;
- imposing additional licence conditions on an AFS licensee; or
- negotiating a resolution or enforceable undertaking to improve practices and/or compensate impacted clients.