

FINANCIAL SERVICES REFORM ACT: HOW IT AFFECTS THE UNIVERSITY

THE NEW FINANCIAL SERVICES REGIME

A new Australian financial services reform regime came into effect in March 2004.

The new regime focuses on individuals and businesses who provide financial products (like bonds, shares, mortgage and investment schemes) and on those who provide advice regarding financial products (that is, financial advisors). These individuals and businesses need to be licensed under the regime to continue providing their products and services; if they fail to obtain a license the penalties can be severe.

While the primary intention of the regime is to regulate financial services businesses, the legislation is wide enough to catch organisations who provide products or advice as an incidental feature of their business.

Some universities have been caught out by the new regime. In fact ASIC (the corporate watchdog who has been given responsibility for operating the regime) has provided a special exemption to organisations like universities who inadvertently fell within the ambit of the regime.

WHAT TYPES OF UNIVERSITY ACTIVITIES MIGHT BE CAUGHT?

The regime currently applies to “non-cash payment facilities” which enable payments to be made to third parties.

To explain how this could affect us: the regime does not apply to services like pre-paid photocopy cards where payments can only be made to the one institution, nor does it apply to interest-free student loans. But it does apply to value-storage facilities like the La Trobe University Smart Card, through which payments can be made to third party business (such as Agora cafés). (ASIC has granted the University an exemption for this Smart Card facility).

As noted above, the regime applies to people and businesses who provide financial advice. Under the legislation this includes recommendations or statements of opinion that are intended to influence (or which could reasonably be expected to influence) a person in making a decision about a financial product. It does not, however, include statements of fact.

The line between these two types of conduct is finer than it may seem at first. For example, would it be financial advice if an affable Head of a Department distributed an email amongst her staff notifying them of a recent windfall she'd had with a share investment?

SEEK ADVICE IF YOU ARE UNCLEAR

The Legal Services office has already provided advice in relation to a number of concerns regarding the new financial services regime.

In some circumstances, we have recommended procedures be changed or that new procedures and initiatives be adopted to ensure we do not run afoul of the regime.

If you have any concerns about the Universities activities in this area or a proposed activity or venture please contact Legal Services and seek assistance.

This article is intended as a general guide. Please contact Legal Services on 9479 2495 if you would like any further information or if you require advice regarding a specific issue.