



14 January 2022

**Australian Law Reform Commission**

GPO Box 12953  
George Street  
Brisbane, QLD 4003  
Australia

**Review of the Legislative Framework for Corporations and Financial Services Regulation  
- S946B(1) Situations when Statement of Advice not required (further market related advice)**

I wish to raise an issue which was not covered in Commission *Interim Report A* (ALRC 137) dated November 2021, or the background paper (FSL3) dated October 2021.

The issue concerns [section 946B\(1\)](#) of the *Corporations Act 2001*. This sub-section covers further market related advice (**FMRA**<sup>1</sup>). Where FMRA is given to a retail client, a Statement of Advice (**SOA**) need not be given by the licensee to the client.

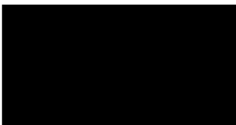
The issue is that this provision was abolished in 2005, yet it still appears in the Act. So for the uninitiated user, if they look-up the sub-section, they see the (apparently) operative provisions of FMRA, without knowing the following legislative history:

- *Corporations Amendment Regulations 2005 (No.5)* SLI 324 of 2005, came into effect 20 December 2005.
- The Regulations -
  - inserted a new definition of **further advice** into s761A, defined as 'advice to which s946B(2) or (2A) applies' (see Reg 7.7.10B),
  - deleted the definition of FMRA from s761A (see Reg.7.7.10C), and
  - inserted full detail and requirements of further advice, including a whole new s946B, including s946B(1)-(3A) (see Reg.7.7.10AE).

As noted in the [explanatory memorandum](#) to the Regulations, the effect was to broaden the application of FMRA to all advice situations and products, not just advice on listed market products.

Hopefully one day this can be fixed, and references to FMRA will be changed to further advice.

Yours sincerely,



**Doug Clark**  
Solicitor

*(The author worked in policy for the Stockbrokers and Financial Advisers Association 2000-2015 and was involved in the consultation leading up to the FSR amendments which commenced 11 March 2004 after a two-year transition, including the SOA requirements.)*

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<sup>1</sup> FMRA was previously known as execution related telephone advice (**ERTA**) which was added to the former *Corporations Law* in 1998, and expanded to apply to SOAs by the *Financial Services Reform Act 2001*. ERTA and FMRA were added after representations by the stockbroking industry, where advice is commonly given on listed products by telephone and not in writing.