



Updated BFSLA opinion templates now available

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The Opinions Committee of the Banking and Financial Services Law Association (**BFSLA**) has updated the BFSLA opinion templates and they are now available on the BFSLA website.

Access the templates

You can access the templates here: [Opinions | BFSLA](#). Comparison versions showing the changes that have been made are also available on the website.

Why the templates were updated

The BFSLA opinion templates have been updated to reflect developments in law and market practice since they were first published. The templates are intended to provide suggested (and current) market-standard forms of closing opinions for typical banking transactions in Australia.

What's changed?

The templates were last published in 2015. Since then, there have been many developments in Australian law and market practice, including changes that have materially affected banking and finance transactions.

Key features of the update include:

- Incorporation of developments in law and market practice since 2015.
- Inclusion of drafting approaches that have already become common in many firms' opinions (and which in many cases, reflect accepted market practice).
- Optional wording in certain areas to accommodate differing views among Committee member law firms.

Scope of the templates

In undertaking this update, the Committee also considered the history, purpose and appropriate scope of legal opinions. A legal opinion is intended to represent a firm's professional assessment, having made the usual enquiries, that legal matters directly relating to the relevant company (or obligors), and the transaction documents, are in order.

What's not covered?

As has long been the case, closing legal opinions generally do not address approvals or requirements that might be required for the transaction to proceed, but are not directly relevant to the matters addressed in the opinion. Such matters are more appropriately addressed through more detailed legal advice (to be scoped separately as part of the solicitor-client retainer).

One example is the need for regulatory approvals, such as approvals from the Foreign Investment Review Board in certain transactions.

This approach is reflected more clearly in some of the qualifications included in the updated templates. However, where legal developments directly affect the drafting or enforceability of transaction documents, such as the unfair contract terms regime, the templates adopt a more nuanced approach.

Using the templates

As with any precedent document, the templates should be adapted to reflect the agreed scope of the engagement, the particular circumstances of the transaction and the client's instructions.

We expect that member law firms will continue to adapt their opinions to reflect their own legal analysis, internal policies and transaction-specific considerations.

The Committee's drafting approach

"Less is more". The Committee continues to adopt a drafting philosophy that favours clear, concise and streamlined drafting, with assumptions and qualifications included only where necessary.

What's next?

The Committee is currently working on an updated edition of the Principles of Opinion Etiquette, which is expected to be published in the coming months.

Acknowledgements

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