



Response to Treasury discussion paper:
Registration requirements for registered
tax (financial) advisers

July 2013

AIST Submission

AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$500 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

Contact

Richard Webb, Policy & Regulatory Analyst

03 8677 3835

Tom Garcia, CEO

03 8677 3800

1 Executive summary

AIST welcomes this discussion paper, which outlines the proposed registration requirements for registered tax (financial) advisers. Broadly, we welcome the removal of the requirement (which presently applies to registered tax agents) to have completed a basic accounting subject as a requirement and believe that this is a sensible outcome.

We have provided a number of recommendations in this submission, which may be summarised as follows:

- The requirements for advisers who provide tax advice as part of a financial advice service which specifically caters to superannuation fund members' needs should be built around the following foundations:
 - Intrafund advice is designed to be simple in nature, and cater to members' specific superannuation issues; and
 - To ensure fairness across the member base of a superannuation fund, costs of compliance should not adversely affect members' needs.
- The requirement to be an AFS licensee or representative of an AFS licensee is unnecessarily complicated, may be unenforceable and is unnecessary given the definition of a tax (financial) advice service and we recommend that this requirement be abandoned.
- We recommend that guidance be immediately provided around the 'significant number' threshold with regards to supervision.
- AIST has provided detailed feedback around the commercial law education requirement and recommended its removal.
- We recommend that a Board-approved bridging course in taxation law be developed in order to accommodate advisers who may have completed taxation planning subjects as part of diploma/advanced diploma programs.
- AIST recommends guidance be provided as to what constitutes appropriate supervision for the purposes of work experience.

AIST has also provided feedback as to appropriate membership criteria with regards to the membership of professional associations option. We note that superannuation professionals will increase to include more superannuation professionals and recommend that superannuation professionals are represented on the Board, along with accounting and tax associations.

2 Introduction

AIST welcomes this discussion paper and the opportunity to comment on it.

In past submissions, we have noted that the requirements for tax (financial) advisers have not been attractive enough, relative to ordinary tax agents to recommend it to members. We note that the attractiveness of being registered as a tax (financial) adviser is affected by four things:

- The privileges and responsibilities available to registered tax (financial) advisers compared to ordinary registered tax agents, given that for the purposes of the provision of tax advice as part of a financial advice service, one registration type may be substituted for the other;
- The registration requirements require in return for the privileges and responsibilities of such registration – why wouldn't a practitioner choose to register as a tax agent if it is more difficult to operate as a registered tax (financial) adviser?
- The cost of compliance to ensure that existing practitioners are able to operate under the new regime; and
- The time it will take for advisers or their supervisors to be suitably trained or educated.

To this, we add a fifth and a sixth:

- As the body that represents the interests of trustees of Australia's not-for-profit superannuation industry, AIST's members, particularly those with MySuper products, have a duty to ensure that they are able to provide their members with a suitable and affordable advice service. In the context of compulsory superannuation that exists in Australia, the registration requirements thus represent public policy when applied to advisers who represent superannuation funds; and
- The Future of Financial Advice (FOFA) reforms include, as a centrepiece, the requirement for advisers to act in the best interest of their members. The new designation of registered tax (financial) adviser must support this, rather than the other way around.

It is these influences on the attractiveness of the new designation that is most important: If funds are unable to provide a suitable intrafund advice service, this materially impacts the effectiveness of the MySuper and FOFA reforms.

To this end, we strongly recommend that Treasury ensure that an approach is considered which is built around the following foundations for advisers who work with superannuation fund members:

1. Intrafund advice is designed to be simple in nature, and cater to members' specific superannuation issues. Likewise, registration requirements must embrace these aims; and
2. To ensure fairness across the member base of a superannuation fund, costs of compliance should not adversely affect members. To this end, registration requirements must consider members' needs alone.

3 Recommendations

AIST welcomes the details provided in this discussion paper around registration requirements for registered tax (financial) advisers. AIST¹ has been involved in consultation on this measure since we commented on an Options Paper issued by Treasury in November 2010 and we embrace the greater scrutiny being applied to this aspect of financial advice. AIST once again welcomes the opportunity to provide input on this discussion paper.

3.1 The requirement to be a financial services licensee or representative

AIST welcomes the flexibility provided to registered tax (financial) advisers whereby individuals who change employers may avoid the need to re-register with the TPB provided that they again meet the requirement to be a representative of an AFS licensee within 30 days. However, we again make the point that this requirement will only be required for registered tax (financial) advisers, and that there is no equivalent requirement for ordinary registered tax agents.

We are unaware of any licensing or registration regime in Australia that has greater compliance requirements in exchange for reduced responsibilities or privileges and believe it to be unfair to expect this for registered tax (financial) advisers and not anything similar for registered tax agents.

In addition to this, we believe that this requirement is unenforceable, as there is no requirement presently for an AFS licensee to be notifying anyone about who their representatives. We also wish to draw your attention more closely to the additional bureaucracy itself. With respect to both renewals, and ongoing AFS licence requirements, the TPB will be required to ask for evidence of AFS licence information, and presumably, will need to verify it. This will require significant processing man-hours. We understand that the TPB may be resourced to address re-registration of ordinary registered tax agents and registered BAS agents, however the AFS licence information is a special requirement which will be unique to registered tax (financial product) advisers. We continue to express doubts regarding the TPB's capacity to enforce AFS licensing requirements.

Lastly, we wish to draw attention to the requirement necessary for a tax (financial) advice service to be provided: A tax (financial) advice service can only be provided as part of what would be advice of a kind that is normally provided by a financial services licensee. It is therefore unimportant that registered tax (financial product) advisers provide details of their AFS licence information to the Board, as the provision of such a service implies that the person providing it is either an AFS licensee, or is the representative of an AFS licensee.

¹ AIST (2010) *Response to options paper – Regulation of Tax Agent Services provided by Financial Planners*. [pdf] Melbourne: Australian Institute of Superannuation Trustees. <http://is.gd/S7cRCp> [Accessed: 8 March 2013].

It is for these reasons that we recommend that this requirement be abandoned.

3.1.1 Existing obligations under the Corporations Act

AIST welcomes the guidance provided with regards to ‘organisational competence’ and believes that this may be suitable to understand who is obliged to be licensed.

However, we believe that there are significant differences between the responsible manager model and the ‘supervising representative’ model under TASA. As explained on page 2 of the discussion paper, the TASA requires that there be a ‘significant number’ of individuals who are registered tax (financial) advisers in order for the entity to be registered, however unlike ASIC’s guidance on responsible managers, we are not aware of guidelines on when this ‘significant number’ threshold is achieved.

AIST recommends that guidance around the ‘significant number’ threshold be immediately provided in order for AFS licensees to be able to ascertain numbers, costs and associated logistics.

3.2 Educational and experience requirements

AIST has previously provided feedback to the TPB with regards to their draft guidelines on taxation law education for registered tax (financial) advisers². We agree that for this measure to work, a thorough grounding in taxation law is appropriate and have welcomed the TPB’s draft guidelines. However we have concerns regarding the proposed education requirements in commercial law.

AIST welcomes the removal of the requirement for education in basic accounting. We believe that this is a prudent and logical outcome.

3.2.1 General requirements for education in commercial law

As we explained in our submission to the TPB, we are uncertain as to whether somewhat tenuous arguments are being provided for the need for certain education requirements in the law. In this submission, we will address the proposed requirements for the commercial law subject from the viewpoint of a practitioner who may be asking, ‘why must I study this?’

Broadly, there are 15 very different areas of law explored in this subject. We make the point that there are 13 weeks in the normal academic semester, and devoting less than a normal 2 hours of instruction time in a week, not counting tuition, would result in an insubstantial amount of attention being provided to each area of law.

² Garcia, T. 2013. *Re: Exposure Draft: Proposed TPB Guideline TPB (PG) D04/2013*. [pdf] Melbourne: Australian Institute of Superannuation Trustees. <http://tinyurl.com/ly3mwq7> [Accessed: 11 Jul 2013].

In addition, we are not aware of such a commercial law subject in existence and strongly recommend that the lead time to develop such a course be factored into the transition process for the implementation of the registration requirements.

Lastly, we believe that the risk that such a course will not be available by the time that the new regime passes out of the transitional phase and 'goes live' is enough to warrant consultation on a fallback position. That is, what happens if the course has not been developed?

We offer our feedback on the proposed learning areas from a practitioner perspective, below.

1. 'Australian legal systems and processes' (Item 1)

We believe that no more than an initial view of this area would be possible. We believe that anyone currently practising in this area will have already learned most of this at school and therefore this item should be removed.

2. Legal concepts of business organisational structures (Item 2) and corporations law (Item 8)

The primary reason for the inclusion of this course is the suggestion that financial advisers may provide advice on investment structures. We believe this to be the exception rather than the rule, and as evidence, we point to our members who would generally only provide advice on one structure alone: The fund that they represent. We believe that suitable knowledge of APRA-regulated superannuation funds would be provided as part of adviser training required as specified in ASIC's *Regulatory Guide 146: Licensing: Training of financial product advisers* (RG 146) and therefore believe that this item should be removed.

A case can be made for the deeper understanding of corporations law as part of a future career progression for advisers who wish to specialise in niche financial areas such as equities analysis, however, such advisers are likely to be consulting to the vast minority of investors.

3. The law of torts (Item 3), law of real and personal property transactions (Item 4) and contracts and remedies for breaches of contracts (Items 6 and 7)

Torts are a complex area of law which normally requires two semester long subjects to complete at a university. Contract and property law each a similar amount of work again. We point out that any argument that can be provided which would demonstrate that a tax adviser should understand this area of law in order to do their job can be applied to all professions equally. Whilst we are concerned that debate around the appropriateness of education in these subjects for all Australians is not yet taking place, we believe that it is not specific enough to this discussion paper or registered tax (financial) advisers and should therefore be removed.

4. Non-tax legal aspects of superannuation (Item 8)

We are not aware of what this item could contain outside of the requirements as stated in RG 146. We are unable to support the inclusion of this item without further information.

5. Competition and consumer law (Item 9)

Whilst we understand the inclusion of this item, we believe, more generally, that a thorough knowledge of competition and consumer law should be a pre-requisite for anyone operating in any line of business. This item is too general for financial advisers and should be removed.

6. Finance law (Item 10) and insurance law (Item 12)

We are uncertain what finance law would be taught outside of banking and insurance law that wouldn't already be included within the requirements of RG 146 and recommend the removal of this item on this basis.

7. Law relating to electronic commerce (Item 11)

AIST is unable to understand the specific relevance of this item and recommends its removal.

8. Intellectual property (Item 13)

Intellectual property is an area of increasing importance. Nevertheless, this is a highly specialised area of law and we doubt that even a basic understanding could be imparted within such a subject as this and would recommend its removal.

9. Bankruptcy and insolvency law (Item 14)

Bankruptcy and insolvency law is not generally required as part of an accounting degree, even though accountants may go on to be insolvency specialists. In practice, insolvency specialists study this subject at an advanced level, rather than a basic knowledge. For this reason, we believe that this item should be removed.

10. Additional practical experience

AIST supports the 12 month practical experience requirements, however points out that the 30-day window for notifying the Board of a change of AFS licensee is restrictive and could act against individuals who need to register.

3.2.2 Tertiary qualifications (Option 1)

AIST supports the requirements for registrants who wish to register with a relevant degree. We believe that the stated requirements are reasonable and well-explained.

3.2.3 Diploma or higher award (Option 2)

AIST is concerned at requirement (b) which requires registered tax (financial) advisers to have completed a Board-approved course in Australian taxation law. A significant portion of financial advisers will have completed a taxation planning subject as part of a diploma or advanced diploma in financial service/financial planning. Consequently, we believe that for many advisers, the requirements may cover areas of study that have already been covered.

AIST recommends that consideration of a Board-approved bridging qualification be created in order to ensure that unnecessary doubling up on course content is minimised.

3.2.4 Work experience (Option 3)

AIST supports the requirements for advisers who wish to register under the work experience requirements. We believe that the stated requirements are reasonable and well-explained, however we recommend that the notion of 'supervision' must be better explained as it is a new notion to the financial services industry.

3.2.5 Membership of a professional organisation (Option 4)

AIST notes that some professional organisations that may seek to become an accredited professional organisation do not grant voting rights to all members. We therefore recommend that requirement (a) be changed to merely being members of such an association.

As a member-based organisation, AIST may in future seek to become an accredited professional association and welcome guidance from the Board on what is necessary for accreditation.

AIST notes that the numbers of professionals required to be registered with the Board will swell to include superannuation professionals and recommends that superannuation professionals are represented on the Board, along with accounting and tax associations.