

19 September 2014

Tax Practitioners Board
PO Box 126
HURSTVILLE NSW 1481

Email: tpbsubmissions@tpb.gov.au

Dear Sir/Madam,

Re: Exposure Draft Proposed TPB Guideline TPB(PG) D05/2014 Course in Australian commercial law that is approved by the Board for tax (financial) advisers

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST is a Registered Training Organisation (RTO) and provides consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

AIST would like to thank the Board for the opportunity to respond to this exposure draft and the other, which considers the requirements for education in taxation law. Our response throughout this submission may refer in parts to our submission in response to *Exposure Draft Proposed TPB Guideline TPB(PG) D04/2014 Course in Australian taxation law that is approved by the Board for tax (financial) advisers* where these are similar.

AIST supports higher standards for qualified financial advisers, and we point out that in most cases, registered tax (financial) advisers will be a subset of this group. We support a requirement for relevant bachelor-level degrees for financial advisers. AIST also supports a mandatory national exam for financial advisers, and that this should be independently assessed and supervised.

AIST welcomes the proposed requirements which are contained in this exposure draft. In July 2013, we noted in our submission to the discussion paper issued by Treasury that the vast majority of required course content proposed for inclusion was either irrelevant, lacking a suitable level of relevance or included in other courses that financial advisers are likely to have

completed, such as base compliance with ASIC's *Regulatory Guide 146: Licensing: Training of financial product advisers* (RG 146).

Although we still retain concerns around the specific relevance of some items, we welcome the fact that the previous list of items that were proposed for this course no longer includes such items of little specific relevance as intellectual property law, bankruptcy and insolvency law and law relating to electronic commerce.

Similar to our comments in our submission on TPB(PG) D04/2014, AIST supports the provision implied in paragraph 32 where a "course" is said to be a series of components that make up the requirements, where such requirements may be duplicated or overlap. AIST reminds the Board that overlap or duplication is generally considered to be both wasteful and inefficient, and should be minimised as much as possible. We therefore see that the allowance for recognised prior learning (RPL) focus on experience only in paragraphs 33 and 34 is inappropriate, and does not actually address prior formal education.

We recommend that a paragraph addressing RPL gained through previous formal education be included to address this shortcoming. In our response to TPB(PG) D04/2014, we considered why this should address the possibility of allowing for bridging courses. We consider that this would also be appropriate in this guideline for similar reasons.

Key issues for feedback

1. AIST supports the need for registered tax (financial) advisers to learn the topics described at paragraph 12.

Although we generally support the proposed requirement for knowledge of the law of torts and contracts, the reasoning given in the document is not strong. Such reasoning as that given in paragraph 14 can be applied to any area of commerce.

In addition, the example given in paragraph 14 to capital gains tax events has no specific relevance to tax agent services provided by a registered tax (financial) adviser – whilst generally relevant; we note that similar conversations could be had around any contract based event (or consequence – e.g. fee effects), and not just those within the context of financial services.

We would support a broader dialogue of making education in these areas such as these available to all Australians engaged in any commercial activity given the equal importance of these topics.

We noted in our submission to Treasury of July last year that advice on business organisational structures is more likely to be found in a specialised space. In most instances, clients who are wishing to utilise non-standard financial products or structures are also likely to utilise legal professionals who are trained to a higher level again. Again, the case that is used to support the inclusion of this item at paragraph 15 is not, in our opinion, particularly strong.

AIST makes these comments despite our general support for education in these topics. We would also support these topics being optional and only required for registered tax (financial) advisers who are specialists.

2. We agree that this subject could be equivalent to one tertiary level unit.

Similarly to our comments on TPB(PG) D04/2014, we do not comment on the recommended number of hours that the Board is specifying for a single semester tertiary-level subject. We again note that the normal subject load for a law or business/commerce degree course at university is four subjects per semester. If subjects undertaken are all similar loadings at 100-130 hours, this would mean that full time students are looking at 400-520 hours of study per semester. This seems somewhat large and raises the question of how much provision employers will need to make for employees who need to undertake these units in full.

We similarly note that ordinary CPD accredited for the successful completion of relevant subjects undertaken at a tertiary level ranges from 24 to 60 hours of CPD, depending on the accrediting agency. This is a significantly smaller total of hours; however we also note that CPD generally includes instruction time, and not additional study, tuition or assessment and accompanying preparation time.

3. We agree that the requirements could be attained through this variety of providers.

As we noted in our response to TPB(PG) D04/2014, AIST believes it possible that registrants may have gathered all necessary competencies from several different courses. Consequently, it may be a combination of different types of provider used by registrants in meeting all necessary educational requirements.

However, in addition, we believe that a statement needs to be provided with the requirement for a relevant degree. AIST supports the need for financial advisers to have a relevant degree at a bachelor's degree level or higher. However, we note that the fields of law, business/commerce and other areas relevant to the practice of financial planning are large and consider it feasible that graduates with these degrees may not have necessarily completed a single subject that contains all required competencies.

On top of this, as we identified above, the need for financial advisers to undertake bridging qualifications to 'fill in the gaps'. We are not aware of any valid arguments for such a bridging qualification to be provided to financial advisers through a university, particularly where a registrant already has a relevant degree.

4. AIST supports a minimum education level requirement for a Board-approved course in commercial law for registered tax (financial) advisers to be Diploma-level or higher (level 5 of the Australian Qualifications Framework).

It is arguable that a requirement to be a registered tax (financial) adviser forms a future career path for any accredited financial adviser with the implementation of the TASA regime. However, we note that based upon current course content, and comments in this guideline, there are presently no requirements to undertake a subject such as this as part of the Advanced Diploma in Financial Planning.

AIST takes this opportunity to recommend that the Board undertake scoping work with regulators to ensure that this subject form a part of this course in the future as the qualification could be regarded as deficient without it.

5. AIST supports assessment of the proposed course in commercial law for tax (financial) advisers where independent supervision is required and in a manner demonstrating rigour and integrity.

What is written below has been reproduced from our submission in response to TPB(PG) D04/2014.

AIST supports higher requirements for financial advisers, as explained above, however, although we support a “national exam” as well as the requirements that we have addressed in this submission, we see no reason why, as we also indicated with instruction on these requirements, such an exam may not also be conducted in parts.

As a Registered Training Organisation (RTO) AIST recognises that at the end of all tuition, the key question is whether a student is competent to provide a service, based upon the skills and/or knowledge that they have learned. There is no compelling argument as to why assessment of a number of knowledge areas needs to be conducted at the same time, unless it can be shown that they are closely related.

We strongly recommend that assessment and supervision of assessment be carried out independently. AIST points out that any nationally recognised education must be above reproach, and would welcome assessment that was 100% independent, pointing out that rigour and integrity may be impaired in instances where assessors have (or are perceived to have) a conflict, or potential conflict of interest. Although we note the presence in the industry of vertically integrated assessment providers, we question whether these arrangements are free of any such perceptions.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer