AUSTRALIAN BANKERS' ASSOCIATION INC.

afa Association of Financial Advisers

FSC FINANCIAL SERVICES COUNCIL

17 April 2014

ROSEMARY HALLOWAY
Secretary of the Board
Tax Practitioners Board
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Dear Ms Halloway,

INDUSTRY SUBMISSION – TASA

We are pleased to provide comments to the Tax Practitioners Board (TPB) on the proposed approach to aspects of the Tax Agent Services Act (TASA) regime, and in particular, the exposure draft documents:

- Exposure draft: TPB Information Sheet (TPB (I) D20/2014) What is a tax (financial) advice service?
- Exposure draft: Explanatory Paper (TPB (EP) D5/2014) Proposed continuing professional education policy requirements for tax (financial) advisers
- Exposure draft: Explanatory Paper (TPB (EP) D6/2014) Proposed professional indemnity insurance policy requirements for tax (financial) advisers
- Exposure draft: TPB Information Sheet (TPB (I) D21/2014) Code of Professional conduct – Confidentiality of client information

It is important to ensure that any new legal and regulatory regime obligations do not impose unreasonable regulatory burden or unnecessary compliance costs on the banking, financial services industry and advice profession. Without clarity around the scope and application of the new TASA laws, the whole industry faces new and additional costs.

Registration and maintaining compliance is only part of the compliance cost, the substantial compliance cost is associated with changing all regulated disclosure documents and other disclosures, changing internal compliance systems, policies and procedures, and unless the supervision framework adopts a consistent approach with the ASIC regime, it could fundamentally, and adversely, impact on the provision of financial advice and other consumer disclosure material, especially in regional areas.

These additional costs will increase the cost of advice and decrease access to information and advice for Australian consumers and businesses, and therefore compromise the Federal Government's and the industry's efforts to promote the affordability and accessibility of financial advice. It is also important to ensure that any new legal and regulatory requirements do not create legal uncertainty.
There are several aspects that potentially could cause legal problems and administrative complexity for Australian financial services (AFS) licensees.

First, the definition of a tax (financial) advice service should not be ambiguous. The definition should be clarified in the law and subsequent guidance. Importantly we are still awaiting regulations and related consultation that was announced by the previous government with respect to the definition. It is pleasing that the TPB has taken a pragmatic approach to providing guidance around the expected definition of a tax (financial) advice service in Exposure Draft Information Sheet (I) D20/2014.

Second, the training requirements applicable to a tax (financial) adviser should be integrated within the existing training and competency framework for financial advisers. It is important that one aligned training and competency framework is set for financial advisers to ensure that the financial advice profession has a consistent and comprehensive training and competency framework. Specifically, we consider that the TPB must work with the Treasury and the Australian Securities and Investments Commission (ASIC) to ensure that relevant legislation and subsequent regulatory guidance is developed to address these legal, technical and practical matters and to enable a financial adviser to meet their training requirements under both the ASIC/FSR and TPB/TASA regimes, as part of any broader changes with the professional standards framework for financial advisers. Notwithstanding these significant concerns, within the context of continuing education (a subset of the competency framework) we are pleased that the TPB has taken a pragmatic approach to continuance education within Exposure Draft Explanatory Paper D5/2014, albeit we note that transitional arrangements still need to be considered.

Third, the supervision requirements applicable to a tax (financial) adviser should be consistent with the compliance, supervision and quality assurance framework implemented by AFS licensees. Specifically, we consider that the legislation should be amended to adopt the licensee driven supervision model implemented in 2002 pursuant to the FSR regime, which would enable licensees and financial advisers to meet their supervision requirements under both the FSR and TASA regimes. The TPB should also provide guidance around the application of this supervision model, including pre and post vetting of advice by a supervisor, training and relevant experience, compliance and audit, and complaints management.

We appreciate the efforts of the TPB in working with the industry to introduce the TASA regime in a sensible and targeted manner. However, we remain concerned about a number of aspects of the proposed regime, especially the current commencement and implementation timing (1 July 2014 onwards) given substantial aspects of the regime are yet to be confirmed. Further, the TPB should recognise the existing arrangements that already exist for AFS licensees and their authorised representatives.

Our submission contains detailed comments on the Exposure Draft Explanatory Papers.
We consider that it is important that the Explanatory Papers take into account the existing Financial Services structural framework for financial advice, for example, where the PI insurance is typically arranged by the AFS licensee, rather than the individual tax (financial) adviser, where the supervision model is implemented by the AFS licensee, rather than the individual tax (financial) adviser, where the training and competency framework is integrated and part of the AFS licensees' obligations, and where the code of conduct is part of a professional standards framework.

We have been working with the former Government, and current Government, on implementing changes to ensure that a financial adviser who provides a tax (financial) advice service is appropriately regulated under the TASA regime and registration and compliance is consistent with the existing ASIC/FSR regime. This approach will ensure that the policy intent is maintained and regulatory burden

and red tape is reduced to avoid unnecessary administration and system complexity and compliance costs. We consider that the commencement and transition dates should be extended to allow sufficient time to complete the design of the TASA regime as it applies to tax (financial) advice services and for AFS licensees and their authorised representatives to implement the necessary changes, including disclosure changes.

The TASA regime will also have a budget impact, which needs to be assessed and taken into account by the Federal Government.

Whilst not a subject of these Exposure Drafts, we note this submission also provides our recommendations on the critical matter of supervision and sufficient number (for registration purposes).

Please find our submission enclosed. We would welcome the opportunity to speak further with respect to our views. If you have any questions regarding our submission, please do not hesitate to contact us.

Yours sincerely

Diane Tate
Acting CEO,
Australian Bankers' Association Inc

Phil Anderson
Chief Operating Officer,
Association of Financial Advisers Limited

Senior Policy Manager,
Financial Services Council

INDUSTRY SUBMISSION

Exposure Draft TPB Information Sheet (TPB (I) D20/2014)
What is a tax (financial) advice service?

Exposure Draft Explanatory Paper (TPB (EP) D5/2014)
Proposed continuing education policy requirements for registered tax (financial) advisers

Exposure Draft Explanatory Paper (TPB (EP) D6/2014)
Proposed professional indemnity insurance requirements for tax (financial) advisers

Exposure Draft TPB Information Sheet (TPB (I) D21/2014)
Code of Professional conduct – Confidentiality of client information

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April 2014

Exposure Draft TPB Information Sheet (TPB(I) D20/2014) What is a tax (financial) advice service?

Definition

Section 90-15 of the *Tax Agent Services Act 2009* defines a tax (financial) advice service as provided by a financial services licensee or a representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:

(a) the service relates to:
(i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a *taxation law; or
(ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and

(b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
(i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
(ii) to claim entitlements that arise, or could arise, under a taxation law.

A tax (financial) advice service is not a tax advice service.

Application of the definition

For a new competency regime to successfully capture participants, it is necessary to clarify the application of the TASA regime so that it does not inadvertently capture financial services provided by AFS licensees not intended to be caught, and in particular, the provision of "factual tax information".

It is important to reiterate that terminology embedded in TASA can be misinterpreted by the Financial Services industry accustomed to the language and terminology defined in the Corporations Act. Legal ambiguity neither affords the consumers nor the parties intended to be regulated any benefits; only costs. On this basis we welcome the efforts of the TPB in providing guidance to the sector clarifying when TASA applies as documented in the Exposure Draft Information Sheet (TPB(I) D20/2014) "What is a tax (financial) advice service?"

However, we note the information sheet is being finalised before the Government completes the regulatory regime (by releasing regulations for those services which are caught by the definition but intended to be exempted as agreed by both major political parties prior to TASA being legislated in June 2013) and a TPB YouTube video has been made publically available, prior to the completion of the consultation process on the Information Sheet.

We contend that the definition of what is a tax (financial) adviser requires amendment in the law and guidance contained in the Exposure Draft Information Sheet as follows in this section.

What is not a tax (financial) advice service

We contend that the regime remains legislatively incomplete.

It is our understanding that at least the following services are to be expressly exempted from the definition of a tax (financial) advice service by regulation/legislation by the Government.

- Tax advice provided by a superannuation/pension fund - pursuant to the issue of a payment summary (including advice provided showing where to report the tax information to enable the member to complete their tax return and general advice the member may rely on for entitlement and financial decisions);
- General advice provided by a superannuation fund's representative pursuant to 'intra-fund advice' provisions;
- Advice provided by an insurer - pursuant to payments of income protection/salary continuance insurance payments and corresponding issue of payment summary and advice therein;
- Advice provided by managed investment schemes - tax information provision of periodic statements and pursuant to buying and selling of registered interests which give rise to CGT and (general) advice provided therein by the responsible entity to their investor client; and
- Any other as identified by the Government in consultation, which we note has not yet occurred.

We note the TASA states that a legislative instrument will be used to exempt items from the definition of tax (financial) services. Given the TPB is explicitly named as being able to include items but not exempt them from the definition, clarity as to the TPB's powers in this respect would be helpful.

On the basis that these activities are expected to be exempted, we seek to ensure that the Information Sheet notes these activities in the Appendix as activities which are not a tax (financial) advice service.

Factual Information

We are pleased that the Exposure Draft Information Sheet states that "factual information" and "general advice" provided by an AFS licensee (AFSL) or their authorised representative is exempt from the definition of a tax (financial) advice service. This information and advice is unable to contain information that relates to an individual's personal needs and circumstances. Furthermore, the Exposure Draft Information Sheet states that tax information provided as part of "personal advice" provided by a financial adviser, may or may not meet the definition of a tax (financial) advice service – it would only meet the definition if the tax information provided applies and interprets tax laws in relation to a client's personal circumstances (irrespective of whether the financial product advice about financial products and services relates to the client's personal needs and circumstances and contains a recommendation, statement of opinion or report).

However, we note that there remains a level of ambiguity regarding what is and is not a tax (financial) advice service and make a number of recommendations to provide clarity regarding what is a service which should be caught and which is not in this section.

Advice or financial product advice, as defined in section 766B of the Corporations Act is either: general or personal advice. An adviser may also provide factual information. The legal requirements on the adviser differ depending on what type of advice is provided and the type of product that is the subject of the advice (and in certain circumstances differs depending on who is providing the advice).

However, most financial advice providers, including bank staff, have to date provided financial product advice and not tax agent service including factual information or general advice (as defined in the Corporations Act). Indeed only those financial advisers who have previously registered as tax agents have provided tax advice, with the remainder of the financial advice profession providing factual tax information in the context of financial planning and referring their clients onto a tax agent for tax advice.

In practice, tax information may be provided that is incidental to the factual information, financial product advice (general advice or personal advice) or credit assistance provided by financial advisers. AFSL including banks, fund managers, superannuation funds, and insurance companies also provide factual tax information in various documents, statements and materials which may be made generally available across different channels, including freely available from a financial institution's website, or pursuant to the financial product they issue/administer to their clients/members, not necessarily via a financial adviser.

Without clarification, it is possible that the registration requirements would capture a wide range of activities or functions across banking and financial services businesses and operations, including information and advice offered in relation to retail banking and lending for individual customers; wealth management, retirement and estate planning, risk management and related advice; and finance and capital management, business planning, risk management and related advice for business customers.

For example, tax information can be provided in a number of contexts and in a number of ways by a "financial adviser" or other staff not trained as a "financial adviser", including:

- Information about not providing a Tax File Number (TFN) when opening a bank account, information about how interest on a savings account may be subject to tax, or information about the concessional tax treatment of first home saver accounts (in a basic banking context);
- Information about how different companies or entities are taxed (e.g. in a small business context, or for a personal investor versus a trust or company when investing in a managed investment scheme);
- Information about the concessional tax treatment of superannuation funds (in a superannuation context);
- Information about how life risk insurance premiums may be tax deductible (in a wealth management context);
- Information about how the earnings on securities and investments may be subject to tax (for example in a stock broking or wrap investing context and generally regarding how assets may be taxed in investment vehicles);
- Information about how a mortgage offset account (a separate savings account to a borrower's home loan) can offset interest applied to the savings account to the loan (in a credit and basic banking context);
- A document or statement containing factual information about tax liabilities or summary information about the performance, interest or earnings relating to a financial product (in the context of AFSL and their authorised representatives meeting various legal and regulatory requirements as well as fulfilling commercial and administration functions);
- A document or statement by a product manufacturer AFSL containing factual information for inclusion in an individuals tax (as a result of pensions payments, commuting a super account, receipt of an income protection claim); and

- A document, resource or tool containing general information about tax liabilities in relation to certain classes of financial products (in the context of financial literacy information).

This tax information may be included as part of the provision of "factual information", "general advice" or "personal advice". It needs to be recognised that the term "generally available information" (in a tax context) may refer to information that can be provided by a financial adviser or staff in the provision of factual information or "financial product advice".

An AFSL might provide customers or clients with information which may be relied upon for understanding their financial decisions or tax entitlements, but which is of a factual nature (i.e. not a tax agent service).

Importantly, this factual tax information can involve application or basic explanation of tax laws and may be provided by financial advisers in the form of "factual information" or "general advice" (in a financial services context) or via generally available information and other publicly available sources, including brochures, materials, market reports, website resources, etc. However, it does not take into account a person's relevant circumstances. This factual information and general advice is provided to customers or clients due to various legal and regulatory requirements. Additionally, this information and advice is important to promote understanding of banking and financial services and enhance financial literacy across Australia.

First, we believe that it is necessary to clarify that AFSLs and their representative such as a financial advisers, in the course of their business, may provide information that applies a tax law. For example, a financial adviser may provide basic information about tax laws in a regulated disclosure document or other disclosure. Therefore, "factual tax information" should relate to information that does not involve the application and interpretation of tax laws. The important factor is that a financial adviser has not interpreted the laws as relevant to the individual's personal circumstances. The Information Sheet should be amended to refer to application AND interpretation, not application OR interpretation.

Second, we believe it is necessary to clarify that financial advisers may provide factual tax information in the course of providing financial information that may be defined as "factual information", "general advice" or "personal advice" under the Corporations Act. Factual tax information can be provided in a number of contexts and in a number of ways, by financial advisers and staff, including in certain circumstances when the financial adviser provides personal advice. For example, a bank or financial institution may provide a marketing brochure in their branch or a webpage on their bank website which relates to a deposit product and contains factual tax information about not providing a TFN when opening the account.

Similarly, a bank teller or bank specialist may provide "general advice" to a bank customer about the banking group's superannuation products, which includes information about the concessional tax treatment of superannuation. Similarly, a bank financial planner may provide "personal advice" to a bank client outlining a financial plan that provides recommendations relating to the client's personal needs and circumstances, which includes information about the tax treatment of different assets (i.e. income versus capital), but does not relate specifically to the client's particular tax situation. A financial adviser could provide personal advice relating to an investment strategy and recommending financial products, yet not provide tax advice which relates to their client's personal circumstances. In this instance, the client may be referred to a tax agent about their related tax matters. The Information Sheet should reiterate that it is not the form of advice that dictates whether the TASA regime applies

(noting that an adviser in the course of providing factual information and general advice would not provide a tax (financial) advice service due to the nature of the information and advice), it is the form of the tax advice that is paramount.

Third, we believe it is necessary to clarify that there are a number of regulated disclosures which financial institutions are required to provide to their customers and clients and other disclosures which are not required but facilitate awareness of financial products and services and financial literacy more generally. These regulated disclosures may include factual tax information or client tax-related information, including a terms and conditions document, product disclosure statement, financial services guide, statement of advice, payment summaries, account or annual statements, workshop materials, presentations, reports, consumer fact sheets and booklets, etc. The Information Sheet should provide examples of the types of documents provided by financial advisers where factual tax information is provided (we note that the Appendix contains a list of such documents).

Support services to the delivery of a tax (financial) advice service

It is important to understand that in the delivery of a tax (financial) advice service by an AFSL or their representative to the end client, the AFSL or representative may place reliance upon other services.

These services may involve personal advice to the extent that they address the specific circumstances of an individual, but are provided to the AFSL or representative – not the end client.

The AFSL or representative may then include this "advice" in the advice they ultimately provide to the end client.

Examples of such services may include:

- Work carried out by a paraplanner (either in-house or external), where the paraplanner will prepare a Statement of Advice (or other advice document) that an adviser will ultimately sign-off and provide to the client.
- Discussions with a technical services function. Many financial institutions offer a technical service (or help desk) function where advisers can call and discuss strategy options for a client. This service helps the adviser to ensure that they are correctly applying the law in developing an appropriate strategy for the end client. This discussion may cover taxation related issues, such as the deductibility of superannuation contributions or the availability of small business CGT relief. The adviser may then use the output of these discussions in developing the ultimate advice to be provided to the end client.

Services such as the above may be provided:

- by an institution free of charge to advisers (for example where they are provided in-house to the institution's own advisers);
    - for a discrete fee;
    - as a part of a bundled licensing fee (for example as part of an annual fee payable by an authorised representative to an AFSL); or
    - provided free of charge, with the cost to deliver being funded through an overall administration fee (e.g. where the service is provided by a platform operator).
- By a standalone separate paraplanning company.

As the adviser is ultimately responsible for the provision of the advice to the end client, it should be made clear that the provision of these types of services as listed above should not be included within the definition of a tax (financial) advice service, and that the individuals providing such services should not be required to register under TASA.

RECOMMENDATIONS

Recommendation 1: What is not a tax (financial) advice service?
That the definition of a tax (financial) advice service should not extend to the activities or functions beyond "financial planners" providing personal advice to their retail clients, and therefore, broadly capture other activities or functions across the banking and financial services industry.

We consider that the TASA regime should recognise three distinct categories of advice and establish requirements accordingly, including:

- Factual tax information – this is information which is generally available, factual and incidental to the service provided by the Financial Services Industry including fund managers, insurers, super funds, banks and banking groups and their staff and authorised representatives as part of the provision of factual information, general advice or personal advice under the Corporations Act.

- Tax (financial) advice service – this is advice provided by an AFSL or their authorised representatives (a financial adviser), in the course of providing a financial service (personal advice) which relates to the client's personal circumstances and involves the application and interpretation of tax laws as relevant to those personal circumstances.

- Tax agent service – this is tax advice provided by a registered tax agent.

Exempt "factual information", "general advice" and "intra-fund advice"

We note that the Information Sheet seeks to exempt certain financial services from the definition of a tax (financial) advice service, such as certain information or advice provided by banks, superannuation funds, managed investment schemes, and insurers as well as certain documents or statements provided by an AFSL or their authorised representative which is "factual information" or "general advice" (i.e. does not constitute the provision of personal advice) and advice provided by a superannuation fund's representative which is "intra-fund advice". We support this approach to provide clarity to the scope of the TASA regime.

Clarify tax (financial) advice service – application and interpretation of tax laws

Recommendation 2: Clarify that the definition of tax (financial) advice service relates only to tax information that <u>applies and interprets</u> tax laws by:
Appendix item 3: be amended to read "…given by a financial services licensee or a representative of a financial services licensee that involves application **and** interpretation of the taxation law…"
Appendix item 4: be amended to read "Factual information which does not involve the application **and** interpretation of the taxation laws…"

The application of a tax law is not sufficient for this to be a tax (financial) advice service. For example, information about the concessional tax treatment of superannuation would apply a tax law relevant to superannuation, but it does not interpret the tax law or apply it to the individual's personal circumstances. This factual tax information is generally available.

Exempt factual tax information

Recommendation 3: Exempt "factual tax information" from the definition of tax (financial) advice service.
"Factual tax information" should include the provision of factual tax information, general tax advice, client tax-related factual information and any other service that does not take into account an individual's personal circumstances.

Taxation information that is generally available and incidental to the provision of financial product advice should not be caught by the TASA regime. Specifically, the guidance should be clarified so that advice which is not factual tax information should involve the application and interpretation of tax laws by a financial adviser relating to their client's personal circumstances (and conversely, information or advice that involves the mere application or explanation of tax laws should be deemed factual tax information) – see Recommendation 2. Further, the exemption should apply regardless of whether the information or advice can reasonably be expected to be relied upon and regardless of whether the information is provided by a person or another source, including online information and computer programs and calculators. See Recommendation 5.

A tax (financial) advice service is personal advice in certain circumstances

Recommendation 4: A tax (financial) advice service is personal advice in certain circumstances
Amend the Appendix item 2 to state that the definition of tax (financial) advice service only relates to a service that is provided in the course of giving "personal advice" only where the advice relates to the client's personal circumstances and involves the application and interpretation of tax laws in relation to those personal circumstances.

The guidance should also be clarified that even if a financial adviser provides personal advice, this does not automatically mean that they are also providing a tax (financial) advice service in the instance where the adviser only provides factual tax information.

Clarify "relied upon"

Recommendation 5: Relied Upon
Specifically, Element 5 should be amended to read: "Individual or entity can reasonably be expected to rely on the service for tax purposes, including satisfying liabilities or obligations that arise or claim entitlements that arise, or could arise, under a taxation law."

AND

In paragraph 23, delete the words “or advice” in the first line such that the paragraph reads “Whether personal advice ~~or advice~~ about Tier 1 or Tier 2 products falls within the definition of tax (financial) advice service for the purposes of the TASA …”

Clarify that an individual or entity may rely upon the tax information, but not for defined tax purposes. The definition of tax (financial) advice service should not relate to circumstances where an individual or entity may reasonably be expected to rely on the information or advice (a Corporations Act test of what is financial product advice).

In practice, all information and advice provided by a financial adviser may be relied upon, regardless of whether the consumer/client pays for the information/advice. However, it is not intended to be relied upon in the same way as tax advice.

Without clarity of the term “relied upon”, the Corporations Act test will likely be used by financial advisers instead of the TASA test.

Therefore, we contend that the guidance should be clear - that the definition should relate to the provision of a tax (financial) advice service as part of the provision of personal advice only where the client’s personal circumstances have been taken into account with the recommendation and advice.

Clarify relates to personal circumstances

Clarify the application to “financial product advice” being where tax information is personalised. It is clear in Appendix A plus paragraph 8 that general advice is not a tax (financial) advice service. However, paragraph 17 needs to be reworded as it currently implies that general advice is captured.

Recommendation 6: Clarify “relates to personal circumstances”

Paragraph 17 should be amended to delete the dot points.

Alternatively, paragraph 17 should be amended at the second and third bullet points as follows:
- In the course of advising a client about the suitability of particular financial products that are appropriate given their relative circumstances:
- In the course of advising a client about non-financial products such as real estate that are appropriate given their relevant circumstances.

The point being made in the guidance is that it does not matter the type of personal advice, whether that is strategic or scaled advice, that if the advice contains tax information which <u>applies and interprets</u> tax laws and relates to the individual’s personal circumstances, this is a tax (financial) advice service. The dot points cause confusion and do not add to the commentary. Additionally, the second dot point conflicts with the exemption of general advice (general advice can contain information which explains the “relative merits of particular financial products” in a general way). The exemption for factual information and general advice recognises that this form of advice cannot contain tax information that is personalised.

Support services is not a tax (financial) advice service

Recommendation 7: Support services are not a tax (financial) advice service
We submit the Information Sheet should provide in the body and an example in the Appendix, that the provision of these support services such as para planning services be exempted from the definition of a tax (financial) advice service, and that the individuals providing such services should not be required to register under TASA.

Other comments on the Information Sheet
We note that accountants who provide financial product advice are now required to obtain an AFSL – but have a number of years before they are required to mandatorily comply. In the meantime, should the provider register as a full tax agent? Or conditional tax (financial) adviser? Or are they excluded from having to comply with TASA until they are fully licensed with ASIC?

We note the definition refers to advice of a kind usually given by a financial adviser. This is challenging, as what is the definition of usually given by a financial adviser. We submit that the Information Sheet should be clear to exempt credit advice, where someone has both an AFSL authorisation and also a credit authorisation. It is very problematic to extend the registration obligation outside of financial product advice simply because the provider is an AFSL also. The obvious example that comes up is direct property advice. Many AFSLs specifically exclude their advisers from giving direct property advice.

The list of bullet points under paragraph 22 is too long and unclear. There are some references here to off-the cuff statements and provisional opinion. Of course in an AFSL context, if personal advice is provided then it needs to be done by way of a Statement of Advice (SoA) or Record of Advice (RoA). If general advice is exempt, and it is only personal advice that is caught.

The list of bullet points under paragraph 22 is too long and unclear. There are some references here to off-the cuff statements and provisional opinion. Of course in an AFSL context, if personal advice is provided then it needs to be done by way of a Statement of Advice (SoA) or Record of Advice (RoA). If general advice is exempt, and it is only personal advice that is caught.

We note that reference to the tax advice having to be paid for is a part of the definition but the Information Sheet is silent on the matter. We do not understand why this is the case?

Exposure Draft Explanatory Paper (TPB (EP) D5/2014) Proposed continuing education policy requirements for registered tax (financial) advisers

Role of the AFS Licensee

We note that TASA has little regard for the role and obligations of an AFSL. Specifically, we note that AFSLs have significant obligations under section 912A of the Corporations Act for education and training.

Recommendation 8: Role of the AFSL is central

We submit that as written, the Explanatory Paper suggest all obligations sit with an individual tax (financial) adviser when reference and note should be made about the AFSL, who will ultimately carry responsibility for both the AFSL and their authorised/representative's registration.

Continuing Education Policy (CPE) hours

We support the standard of 60 CPE hours over a three year period or aggregation of CPE activities over a triennium on the basis that these obligations are an appropriate standard of education for the advice profession.

We support this standard on the basis that the areas of advice across wealth accumulation, wealth protection and wealth transfer all involve consideration of the tax implications (that is the application of tax) in order to ensure the advice is appropriate to the client's needs (in the case of adviser's providing personal advice).

With the breadth of the advice areas and the relevance of taxation impacts we support the intent which is to ensure that financial advisers are providing competent financial product **and** tax (financial) advice in the knowledge that that is what consumers expect and need. It is reasonable in most cases for the consumer to rely on the tax (financial) advice provided in the context of financial advice/planning (be it strategic advice and/or financial product advice), and therefore, financial advisers ongoing CPE needs to be set at an appropriate standard

Recommendation 9: CPE Hours

We support the TPB's standard of 60 CPE hours over a three year period or aggregation of CPE activities over a triennium. Further we support the TPB's pragmatic approach to recognise other CPE training completed as appropriate for the TPB's CPE policy.

CPE obligations for registration

TASA obligations to maintain contemporaneous relevant experience is additional to a financial adviser's obligations under the Corporations Act. We note that the TPB requires that records be maintained and CPE be completed between registration and re-registration periods.

We note that not every AFSL uses the Australian financial year period for CPE. Some use alternate financial years (e.g. when owned by international entity) or calendar years.

Recommendation 10: CPE obligations for registration
We believe the CPE periods should be flexible and enable the AFSL /registered adviser to align their TASA training with those of their obligations under the Corporations Act and/or with their professional membership body requirements. This will significantly ease the administrative burden of multiple regulators and regimes in order to streamline the recording and reporting of completed CPE hours.

Record Retention

We note that the TPB requests that records be maintained for six years after the end of the triennium– at paragraph 34. We note that current practice in the profession is to maintain CPE records (for the provision of financial product advice) for 5 years. A new obligation to maintain records – particularly on services provided incidental to financial product advice for nine years (six years after the three year period ends) seems to be excessive and an additional regulatory cost to the industry without commensurate increase in consumer benefits. Further, it is inconsistent with other record keeping requirements for corporate and tax purposes.

Recommendation 11: Maintenance of records
We recommend that records be kept for a total of five years which is consistent with the main function of the AFSL and their representatives' business – that of providing financial product advice.

We note that record keeping obligations requires evidence of CPE from individual tax (financial) advisers – paragraph 35. We believe that this should be altered to reflect current industry practice and be directed to the licensee. As noted previously, the AFSL already has this obligation in the law and recognition of this practice is an efficient means to regulate (not creating new/additional red tape).

Recommendation 12: Records should be maintained by the AFSL
We note that paragraph 35 should read that the adviser or their AFSL may provide the records to the TPB for registration purposes.

CPE for certain categories of conditional advisers

We note that paragraphs 19-21 of the Explanatory Paper provides different obligations for a conditional adviser, however, a conditional adviser is not defined.

We assume that a conditional adviser may be one that fits the definition "a tax (financial) adviser who has a condition imposed on their registration in respect of the subject area in which the tax (financial) adviser may provide tax (financial) advice services." The TPB recognises that a tax (financial) adviser with a condition imposed may not provide a broad range of tax (financial) advice services. Is this the definition of a conditional adviser as referenced in paragraph 19-21?

On what basis or what condition – would enable a tax (financial) adviser to undertake less CPE than the standard tax (financial) adviser? Does a conditional adviser need to use a different consumer warning/disclaimer?

There could be a large proportion of the industry who deems themselves to be caught in this category. Without any specific definition this may cause confusion and a significant amount of incorrect applications.

Whilst we recognize the need for some objective measure to determine which tax (financial) advisers might have a reduced CPE obligation, we remain concerned that the conditional adviser registration model is necessarily the most appropriate. We consider that this issue is one that requires further consultation and consideration of alternative options.

Recommendation 13: Conditional Adviser
We recommend that a "conditional adviser" be more clearly explained. When or what may result in the TPB recongising an adviser as a conditional adviser? The definition noted in the Key Terms section of the Explanatory Paper is insufficient to provide adequate guidance. At the very least the example at paragraph 21 should stipulate why Blake the adviser is being recognised as a conditional adviser.

The TPB should consider including in the Explanatory Paper what the process of application for the conditional adviser is to be.

Recommendation 14: Process determining a conditional adviser
We recommend the Explanatory Paper note that the application process needs to be in a written submission and should explain what process the TPB will undertake to make its decision in a transparent manner.

Initial registration

We would like to see the initial training that is done after registration included in the CPE assessment (paragraph 25). There is no reason to exclude primary course training for gaining initial registration. If they have completed the training before they are registered then there is a better argument to exclude it.

With a diverse background of education and experience there may be relevant situations where the completion of a course prescribed by the TPB for registration purposes is a valid CPE activity.

We agree with the principle of 'no prior education or knowledge, then not a continuing professional education activity'. However the majority of advisers/planners through their formal education or ongoing professional development have received a considerable amount of tax education and training. The assumption that they have not is illogical and incorrect.

In the scenario of paragraph 25 - it would be inconsistent with other professional bodies to not recognise prior learning and not allow the recognition of CPE for the completion of additional formal education. As the majority of financial advisers/planners will have completed either the Diploma or Advanced Diploma of Financial Planning as a minimum which includes taxation modules, then any additional education would be relevant for CPE.

Recommendation 15: Initial training for registration
We submits that the registration requirement for a tax (financial) adviser is, effectively the same as those for a personal advice provider under the Corporations Act and as such it would make reasonable sense and be an efficient means for the TPB to regulate a new industry, to recognise any additional training course (for registration purposes) to be counted as CPE.

Transition arrangements for continuing education policy

By virtue of the requirement to have completed CPE requirements to be eligible for re-registration post the notification and transitional period, tax (financial) advisers will be required to commence the CPE requirements from the notification phase and complete the required 45 or 60 hours prior to re-registration. Given that Treasury are yet to release their initial education requirements for tax (financial) advisers, financial advisers will be required to complete their continuing education prior to completing any initial entry education.

In the normal course of accreditation of financial advisers with ASIC, an adviser is required to complete the initial education standards before any requirement to complete ongoing education. We believe that this is a sensible sequence of education that the TPB should adopt.

The TPB have provided transitional arrangements for full tax and BAS agents for CPE we would request that a transitional arrangement is also provided for tax (financial) advisers.

Recommendation 16 Transitional arrangement
We recommend that the TPB implement a transition arrangement for CPE and remove the requirement that CPE must be completed to substantiate registration for the first re-registration for tax (financial) advisers who enter the TASA regime during the transitional period.

Extenuating circumstances

In a profession where there is a number of women taking career breaks for maternity reasons as well as men taking career breaks for personal and professional reasons, we believe the limited examples of situations which would be considered 'extenuating circumstances' are insufficient.

With respect to the relief provisions discussed in paragraph 39, we also seek clarity regarding when/how an extenuating circumstances application should be made.

Recommendation 17: Extenuating circumstances
We recommend a requirement be placed on the individual that in the case where CPE was not maintained they are required to demonstrate currency of knowledge before commencing tax (financial) advice activities.

CPE Activities

We note paragraph 12 (b) in particular of the Explanatory Paper which notes that CPE contributes to maintenance of contemporary and relevant knowledge and skills required. However, training provided by a supervisor (likely to be skills training) is not included as an example of a CPE activity the TPB recognises. Given the significance given to operating under a supervisor, it seems unbalanced to not recognise even in part the training which a supervisor may be able to provide.

Recommendation 18: CPE Activities
We recommend that supervisor training be recognised as a CPE Activity.

Exposure Draft Explanatory Paper (TPB (EP) D6/2014) Proposed professional indemnity insurance requirements for tax (financial) advisers

The proposed professional indemnity insurance requirements for tax (financial) advisers ((EP) D6/2014) is in many ways reflective of ASIC Regulatory Guide 126 (**RG126**) *Compensation and insurance arrangements for AFS licensees*. It may be the case that some of what has been included in this document from RG 126 is not actually required. We do recognise that there is a fundamental difference in that the ASIC requirements under RG126 are focused at the obligations of the licensee, whereas this explanatory paper is focused at individual tax (financial) advisers. The difference is particularly important, including the fact that in most cases PI Insurance is arranged by the licensee rather than the individual adviser.

We believe that a higher level of reliance be placed upon the arrangements that already exist for financial advice licensees. This Explanatory Paper needs to recognise the central role of licensees, where the PI insurance is typically arranged by the licensee rather than the individual tax (financial) adviser. For example, where it refers to being covered under a policy held by another registered tax (financial) adviser entity, it should specifically refer to the licensee as the primary example.

The other key issue is the fact that this paper does not acknowledge the AFSL obligations with respect to Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR). The complaint arrangements available under the AFSL regime importantly include the capacity for compensation. RG 126 is built clearly in the context of the existence of the IDR and EDR processes and the provision that PI Insurance is a potential solution to enable payouts that are made to consumers under either a complaint being addressed in the IDR or EDR phase. It seems problematic to discuss PI Insurance without context of the complaints arrangement.

One other underlying complication is that the tax element of financial advice cannot be easily isolated from the other elements of financial advice; they are very much interrelated. This means that it is not practical for a complaint to be put in one category or the other. We remain unconvinced as to how this may work in practice.

While we will talk to the issue of timing further below, it is necessary to make the point that we retain concerns about the achievability of the current implementation timeframe given the absence of the necessary regulations and clarity on a number of critical factors.

Overall Comments

Our key overall comments are as follows:

- The points in the PI Insurance Explanatory Paper could be expressed in a briefer form. We note that the coverage from the section on the Key Principles onwards, has been drawn from RG 126. The discussion prior to this section seems to be impacted by duplication. For example, pages 6 and 7 refer to TPB requirement and TPB objectives in multiple places.
- For easy reference it would be beneficial to have the sections or paragraphs numbered.
- The document uses the term “agent” in a number of places. For example in the first heading on page 5. We recommend that this be changed to “tax (financial) adviser”.

- Since AFSLs are already required to hold PI insurance (or equivalent arrangements) and clients of financial advisers are currently covered under the IDR and EDR AFSL complaints process, (this process has historically covered complaints that included issues related to tax advice), we consider the suggestion on page 4 that these PI insurance requirements will improve the standard of compensation arrangements to be incorrect. We also disagree with a similar comment under the heading "What this means for consumers of tax (financial) advice services" on page 5.
- We question whether there is greater opportunity to more fully rely upon ASIC's procedures to confirm the existence of adequate PI Insurance. It does not seem to make sense from an efficiency perspective to have this obligation rest with two separate regulators.

Transitional Arrangements

With respect to the transitional arrangements, we are confused by the focus upon the two and a half year period 1 July 2014 to 31 December 2016. We expect that almost all PI Insurance policies will be for a 12 month period, so each entity will need to renew their policy by 30 June 2015. It does not make sense in this context to refer to a longer period where this is simply not going to be applicable. We suggest that the flexibility being provided during the transition period be modified to enable it to be more practical and balanced.

We are concerned that there may be a significant benefit for an AFSL who is due to renew their cover just prior to 30 June 2014, as opposed to just after 1 July 2014. Changing a renewal date in a short timeframe, in the context of a high level of pressure in the PI Insurance market and regulatory uncertainty is not a readily practical outcome. For this reason we would suggest that the transitional arrangement be modified so that all policies that are renewed after 1 July 2015 need to comply with the TPB requirements. This will allow financial advice AFSLs a longer period to prepare, but also ensure that all policies are compliant by 30 June 2016.

Recommendation 19: Transitional Arrangement
We recommend that the transitional arrangements should require a licensee to comply with the TPB standards on PI Insurance for any renewal after 30 June 2015.

In the second paragraph under the heading "What this means for agents" on page 5, there is a comment that "any registered tax (financial) advisers who are obtaining PI Insurance cover for the first time prior to or during the implementation period of 1 July 2014 to 31 December 2016 will be required to obtain PI insurance cover that meets the TPB's requirements." The reference to prior to 1 July 2014 appears incorrect, as it will not be possible to register beforehand and it is not reasonable to require them to comply prior to the obligation commencing.

Recommendation 20: Transitional Arrangement
Amend reference on page 5 to "from 1 July 2014", which would be more reasonable.

The Legislative Framework

Recommendation 21: **Legislative Framework**
Under the section on "What 'maintain' means" on page 5, we recommend that the second bullet point refer to PI Insurance cover that is held by the tax (financial) adviser's licensee or another tax (financial) advice entity.

This is much more likely to be held by an entity, rather than an individual.

The TPB's PI Insurance Requirements- recommended amendments

In the coverage on pages 7 and 8 on the notification and transitional periods there is little distinction between the different requirements at each of these stages. We also question why this is being addressed here as well as earlier on pages 4 and 5. There seems to be inconsistency or confusion with respect to the statement in the eligibility for registration column under the notification period in the table on page 8.

What does the text "You do not need to maintain, or will be able to maintain PI insurance in order to be eligible for registration" mean?

Under the heading "What this means for consumers of tax (financial) advisers", in the first paragraph, the last sentence states "This might not occur where the tax (financial) adviser is otherwise unable or unwilling to compensate a client…" It is important to note that the obligation to compensate rests with the financial advice AFSLs, and that this may be as a result of a decision by the EDR scheme, which the AFSL is contractually bound to comply with. The meaning of this sentence is unclear and requires amendment or clarification.

In the third paragraph on page 9 there is a statement that the TPB will require tax (financial) advisers to provide evidence of their PI Insurance on an annual basis. When it is considered that in the majority of cases the PI Insurance will be arranged and held at the AFSL level it seems inefficient to require this to be provided at the individual adviser level. It would make much better sense for this obligation to apply at the AFSL level.

The content of the section on Compliance during the implementation period (1 July 2014 to 31 December 2016) is duplication of an earlier section.

Initial Assessment Process

The obligation to undertake an initial assessment of what is an adequate level of cover should be done at the financial advice licensee level rather than the individual tax (financial) adviser level. As PI Insurance is typically acquired or arranged by the AFSL, it does not make sense to have individual advice businesses undertake this assessment. When this is assessed at the licensee level, it is possible to leverage the larger scale of the licensee entity in undertaking this assessment.

Recommendation 22: Initial Assessment Process
The obligation to undertake the initial assessment process should apply to the licensee.

Recommendation 23: Initial Assessment Process
In step 7 on page 13, the second occurrence of the word "resources" needs to be deleted.

Table 5: Features of adequate PI Insurance cover and minimum requirements

With respect to the minimum level of cover of $2 million, this is the minimum requirement for financial services licensees under ASIC's requirements in RG126, not the individual adviser requirement. We contend that $2 million is therefore not appropriate to apply as a minimum level at the individual tax (financial) adviser level.

Recommendation 24: Minimum Requirements
Apply the minimum level of PI Insurance requirement at the licensee level.

We also question the capacity to determine the total revenue from tax (financial) advice services. Financial advisers charge on a bundled basis – that is they charge the client/consumer for the advice a portion/part of which may relate, because it is incidental to the advice, to tax advice. Therefore there is no simple way to determine how much of the fee is directly attributable to tax (financial) advice services.

Recommendation 25: Features of adequate PI Insurance cover and minimum requirements
Table 5 requires amendment to remove references to total revenue from tax (financial) advice services.

Alternative Arrangements: recommended amendments

Once again, we ask the question as to whether the TPB can place reliance upon ASIC approval of an alternative arrangement. It seems inefficient for this assessment to be done by both ASIC and the TPB In the section on applications for alternative arrangements on page 17, there is a reference to franchise operations. We request clarity as to what this reference relates to and the applicability to tax (financial) adviser arrangements.

In terms of an actuarial assessment of an alternative arrangement, can you please clarify whether this can be undertaken by an actuary employed within the larger group? We would recommend that this is possible in the context of the responsibilities and obligations of an actuary.

With the example of an industry compensation fund, we suggest that in the context of the obligation for licensees to belong to an EDR scheme, that an industry compensation fund is most unlikely. We would suggest the removal of this section.

Self-insurance arrangements

We note that the TPB paper does not recognise self insurance arrangements which are common, specifically with large institutional entities. This should be specifically addressed.

Recommendations 26: Self-insurance arrangements
The TPB guidance needs to provide flexibility to acknowledge AFSL self insurance arrangement for the purposes of satisfying the PI/Code of Conduct requirements.

Exposure Draft TPB Information Sheet (TPB (I) D21/2014) Code of Professional conduct Confidentiality of client information

We note that this Exposure Draft TPB Information Sheet was issued for consultation without our awareness and as such our comments on this paper are briefly noted here (however, we reserve the right to submit further on this paper).

Scope

The introduction to this Information Sheet indicates that it is intended to apply to registered tax agents and BAS agents. Does this mean that these obligations only apply to tax and BAS agents and not to tax (financial) advisers? Or is the Information Sheet to be amended in due course to apply to tax (financial) advice services also?

If the obligations noted in the Information Sheet are to apply to tax (financial) advisers also, we note that the obligations do not distinguish between tax and other matters. Given that AFSLs carry privacy obligations pursuant to the Privacy Act and other Corporations Act/ASIC obligations – clear delineation of the role of ASIC versus the TPB is required.

Recommendation 27: Intended scope
Does Information Sheet TPB (I) (D) 21/2014 apply to Tax (financial) advice services?

Privacy and confidentiality

At present, many advisers get their clients to review and sign some kind of privacy statement, which might cover this. The TPB should be aware that there are a long list of people or entities who might see client files or something related to the clients affairs, including para-planners, product providers, life insurers, underwriters, medical practitioners, compliance consultants, licensee staff, system providers, FOS and ASIC. This seems to suggest that advisers would need to put in a new "terms of engagement" letter. This might be duplicating what is already done via the Financial Services Guide (FSG). There is also the implication that the client needs to sign something to give approval. This should be clarified in the context of existing financial advice practices.

Tax agent compliance in their personal affairs

The TPB Exposure Draft is intended to apply to registered tax (financial) advisers and does not reference tax (financial) advisers nor apply any examples that are relevant for tax (financial) advisers. We request that the guidance reference application to tax (financial) advisers and include examples relevant to tax (financial) advisers or a separate code is created as per the recommendation above.

Recommendation 28: Code of Conduct is not appropriate for tax (financial) advice services
We do not see the requirement to comply with tax laws in the conduct of their personal affairs relevant as a competency metric for tax (financial) advisers in the context of the tax services they provide and recommend that a separate code of conduct, that contains measures that relate solely to the tax services provided by tax (financial) advisers be created.

We note the following discrepancies between the Privacy Act (which AFSLs comply with) and the TPB's proposed Information Sheet:

- The Privacy Act requires written client consent to be obtained in relation to sensitive information as opposed to personal information. Where only personal information is being collected a collection statement as required under the Privacy Act should suffice.

- The collection statements required under Privacy Act only requires details in relation to how the information is "disclosed" and "used" rather than the specific information that is being disclosed or used.

- The Privacy Act requires disclosure to clients where their information is being sent offshore. The entity disclosing the information to offshore entities is required to ensure that the offshore entity meets minimum privacy requirements of Australia.

- The Privacy Act allows personal information to be shared with law officers as required for an individual's safety, health or to locate a missing person. There is no requirement to have a court order.

- All of the examples are irrelevant to tax (financial) advisers and need to be reworked.

Recommendation 29: Align to Privacy Act
We recommend the TPB align with the Privacy Act requirements to avoid creating regulatory confusion, conflicting obligations and to minimise regulatory red tape.

We also note that dot point 18 in the Information Sheet is irrelevant to financial advisers. The APES Board is only relevant for JAB members

OTHER CRITICAL MATTERS: Supervisory models - Sufficient number issues

The objective of TASA is to bring all tax advice providers under the auspice of the national regime to "ensure the consistent regulation of all forms of tax advice irrespective of whether it is provided by a tax agent, BAS agent or entity in the financial services industry"[1] and "ensure consumer protection through adequate supervision to provide competent services"[2]. The regime aims to ensure that all tax advice providers therefore are registered and have the requisite education and experience to provide that advice.

TASA affords the industry the capacity to operate under a supervisory model rather than register every single financial advice provider. This is generally a welcome concept. Unfortunately, it does not recognise the difference in approach for AFSLs who may appoint 'authorised representatives' to provide specified financial services on their behalf. This approach aligns with the "nominee model" that operated prior to the introduction of the Tax Agents Services Regime (TASR).

We acknowledge the need for robust monitoring and supervision processes for new and existing advisers and for ongoing training and development of advisers' competencies and knowledge.

However, we note that monitoring and supervision practices in the financial advice/planning industry are potentially distinct from those employed in the accountancy industry. Without knowledge of the TPB's proposed requirements for the advice industry we raise the following matters to your attention for consideration – and note that these are important matters that need to be publically consulted to ensure that there is not a decline in the supply of financial advice providers in the market and particularly, that rural and remote locations are not left without these crucial services.

We remain uncertain how the industry is to supervise its new entrants and advisers wishing to up-skill. This uncertainty may create a supply side issue in the availability of advice providers. We submit the following recommendations provide a pragmatic solution to these obligations to ensure that tax advice providers do meet appropriate competency levels for the benefit of consumers in a manner which does not put advice out of the reach of Australians.

Further, as the advice industry re-assesses their advice model in light of the Future of Financial Advice (FoFA), TASA and MySuper reform changes, which include the potential to provide scalable advice, the reality is that the supervisory and monitoring processes will need to be tailored to meet the need of the advice business and its target client. We submit that the AFSL is best placed to tailor the supervision and monitoring model and as such enables scalable advice and facilitate greater access to advice (by keeping costs in check) rather than duplication or variations of supervision models for different regulatory regimes regulating the same activity (competency).

Sufficient number

The major issue that is not addressed in the Exposure Draft Information Sheets and Explanatory Papers is how many representatives need to be registered to meet the "sufficient number" requirement.

[1] Draft Tax Laws Amendment (2013 Measures no. #) Bill 2013: Tax agent services, page 3.

[2] Tax Agent Services Act 2009 (TASA) and related Regulations – a proposed new regulatory framework for financial advisers providing taxation advice, Page 24

Financial advisers that charge or receive a fee must register. This will require most authorised representatives to register as they charge/receive the fee for the advice. The only exception would be sub authorised employees of a CAR where the corporate entity charges/receives the fee. In this scenario the CAR would need to register, plus a "sufficient number" of employees to supervise those non registered employees providing tax (financial) advice services.

For the bank channels, while the AFSL would need to register the unknown is how many representatives would also need to register to meet the sufficient number requirement.

We note that the TPB is required under the Act to take into consideration an AFSL's obligations under paragraphs 912A (1)(d) to (f) of the Corporation Act when determining the sufficient number of individuals that need to register. These obligations require the licensee to:

- Have adequate resources to provide financial services *and carry out supervisory arrangements*
- Maintain the competence to provide financial services, and
- Ensure that its representatives are adequately trained, and are competent to provide the financial services

Supervision

AFSL models within advice generally fall into two types, representative models and authorised representative models. The Corporations Act 2001 dictates that in a representative model (generally known as an employee model where individuals are employed by the AFSL to provide advice) the AFSL is responsible for the advice provided by those employed individuals. In an authorised representative model (generally evidenced by small business based practices) the individual authorised representative is the provider of the advice to the client and holds responsibility at law for that advice alongside the AFSL.

The corporations Act prescribes a number of general obligations on AFSLs (s912A) including the requirements on an AFSL to ensure it takes reasonable steps to ensure that its representatives comply with financial services laws, ensure that its representatives are adequately trained, and are competent, to provide those financial services and have available adequate resources to provide the financial services covered by the licensee and to carry our supervisory arrangements (s912A (c),(d),(f)). ASIC have also provided detailed guidance into how an AFSL practically complies with these obligations through their Regulatory Guide RG104. To meet their supervisory requirements, ASIC instructs AFSLs that the level of monitoring and supervision your representatives need, will depend on the nature, scale and complexity of your business and that ASIC does not believe that every activity of a Representative needs to be scrutinised (RG104.72-104.73). Financial advice firms have built their operating models taking into account ASIC's guidance to meet their legal requirements under the Corporations Act. AFSLs currently have in place well established supervisory arrangements to meet their requirements under the Corporations Act. Currently these arrangements do not legally require any single individual authorisation to substantiate their supervisory models.

The current requirements under TASA required that where a corporation seeks to register as a tax (financial) adviser, a sufficient number of individually registered tax (financial) advisers are required to support that registration. In the employee representative model, where the corporation holds the financial service AFSL and is legally the provider of the advice, it fits that the corporation would seek registration as a tax (financial) adviser. However the sufficient number concept does not accord with financial advice firms current supervisory operating models and would require significant redesign to

incorporate TASA requirements. This leaves employee representative models with two clear choices being, redesign operating models to meet sufficient number requirements which may result in significant cost or individually register each employee representative as a tax (financial) adviser which is not the current intent of TASA as those individuals are not the provider of the advice under Corporations Law.

As both these options are not desirable for employee representative models we suggest that change is required. This change should preferably sit in legislation or could be accommodated via a specific exemption from the TPB.

Recommendations 30: Sufficient number and supervision.

Recommendation 1. Legislative change to remove the requirement to have a sufficient number of registered individuals where registering an entity as a tax (financial) adviser. We submit that financial advice firms already have significant legal obligations for supervision under the Corporations Act and the imposition of an additional and different supervision obligation under the sufficient number requirements is not necessary where AFSLs are the provider of advice to clients and will register as a tax (financial) adviser.

Recommendation 2. Specific TPB exemption from the legislative requirement of sufficient number: TPB should release a guidance paper on how to comply with supervisory models and include in guidance papers that the TPB recognises AFSL section 912A obligations and will not enforce the requirement to have a sufficient number of individual registered representatives to support an entity registration as a tax (financial) adviser.

Experience Requirements to substantiate registration for Authorised Representative models

We are particularly concerned around the prospects for new entrants that wish to enter the financial planning environment as an Authorised Representative and operate a self-employed financial planning model. We acknowledge that Authorised Representatives are the providers of the advice under the Corporations Act. However, in most cases the fee for that advice is paid to the licensee and then a portion is passed on to the adviser. In addition the supervision and monitoring structures for AFSL supervision of Authorised Representatives generally replicate models applied in a Representative structure. However, regardless of these similarities, in meetings with the TPB, members of the Board have indicated that all Authorised Representatives will need to be registered.

What is most concerning, and has the ability to restrict the supply side of advice providers, in all areas, including regional areas, is that in order to meet registration requirements (as currently drafted by Treasury) a minimum level of tax (financial) adviser experience is required. Therefore, should this entry component come into effect as it currently stands, this will restrict Authorised Representatives entering the financial planning market, where they have not previously worked under a supervisory model. That is because they will not be able to get experience in tax (financial) advice until they are registered, but they can not be registered until they get the experience. In contrast, Representatives will be able to gain experience as they will be able to provide tax (financial) advice without the need to be registered. These requirements will therefore impact the growth of this type of the industry by limiting new advisers to only enter the market in employed representative roles. This is likely to have a significant impact for small business owners. It is important to note that, while the AFSL environment

does not currently have an experience requirement, there are significant obligations on the AFSL to ensure that their representatives (including Authorised Representatives) are adequately trained and supervised. This will generally not only include a base level requirement to have RG 146 training and ongoing CPD, but also a requirement to undertake orientation training and be subject to pre-vetting of their advice.

The TPB should recognise the AFSL model and structures that currently exist to train and supervise both Representatives and Authorised Representatives in designing and implementing the experience requirements.

Recommendations 31: Experience Requirements to substantiate registration for Authorised Representative.

Recommendation 1: Should the TPB deem that all Authorised Representatives are required to registered, we require the TPB to provide a specific ongoing exemption for new Authorised Representative entrants, similar to the current one afforded under the transition provisions, that allows an Authorised Representative to meet their experience requirements during the first registration period and on re-registration in 3 years, the Authorised representative, at that point, would need to prove that they met the experience requirements.

Recommendation 2: Otherwise we require the TPB to acknowledge that whilst the Licensee and Authorised Representative may have remuneration arrangements in place that pass through a designated amount of advice fees received by the AFSL, this does not meet the definition of an Authorised Representative receiving a fee or reward and as such they do not need to register and can operate under a supervisory model. Again, our concerns with supervisory models, as detailed in sections above, would remain and would also require addressing for this to be a viable option for Authorised Representatives.

The Australian Bankers' Association (**ABA**) represents the banking industry in Australia. The ABA works with our 27 member banks, including the major banks, regional banks, mutual banks and international banks, to ensure the banking industry is recognised widely as an essential and responsible contributor to Australia's prosperity, both through its role as a critical enabler of economic activity and growth and as an important economic sector in its own right. Our aim is to work with our member banks to:

1. Drive the positioning of the banking industry as a critical enabler of economic activity and growth
2. Deepen the understanding and acceptance of banking as an important sector of the economy in its own right
3. Enhance the reputation and standing of the industry with decision makers, opinion influencers and the wider community
4. Ensure that through the ABA the industry has a strong and credible voice
5. Ensure that through the ABA the industry is able to respond effectively to policy and regulatory issues that might impact members' own goals and strategies.

The Association of Financial Advisers Limited ("**AFA**") has served the financial advice industry for over 65 years. Our aim is to achieve *Great Advice for More* Australians and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians' reach their potential through building, managing and protecting wealth.

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees.

The Council has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency