



9 July 2014

Mr. Gerry Antioch
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Email: taxagentservices@treasury.gov.au

Dear Mr Antioch,

Exposure Draft: Tax Agent Services Amendments (Tax (Financial) Advisers) Regulations 2014

The Financial Services Council thanks the Treasury for the opportunity to submit our response to *Exposure Draft: Tax Agent Services Amendments (Tax (Financial) Advisers) Regulations 2014* (“*exposure draft*”).

The Financial Services Council has a number of significant concerns regarding the operation and impacts of the TASA regime and the exposure draft on the financial services industry and wish to take this opportunity to communicate these concerns.

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 (“FSC”) promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency. As the representative body of Advice Licensees – our members are responsible for more than 80% of financial advisers/planners in Australia (including accounting professionals licensed today to provide advice).

We note that issuance of a draft Regulation instrument on a significant reform measure – akin to the Future of Financial Advice and the Financial Services Reform Act over the 30 June period with two week consultation does not enable the industry to duly consider these critical matters and we note that there are likely to be significant unintended consequences as a result of the hasty consultation.

Further, we note that none of the recommendations or comments and concerns raised by the FSC and its members in our submission to Treasury on the draft regulations issued in June 2013 have been incorporated in this draft instrument. As such we refer Treasury to the FSC's submission dated 11 July 2013 (this submission will be accompany this one via email) for consideration again.

Balancing consumer protection with an efficient and viable future profession

The FSC supports reasonable enhancements to advice competency to enable quality advice to consumers (noting that this regime is not limited to financial advisers).

It is important to ensure that any new legal and regulatory regime obligations do not impose unreasonable regulatory burdens or unnecessary compliance costs on the financial services industry and advice profession. We note that the regime should balance the consumer protection the regime intends to deliver with the cost of implementation and note that in many cases an orderly transition for existing practitioners helps to balance the costs. What is also critically important is that no competency standards should be set such that it inhibits future entrants to financial services/financial advice profession. Without clarity around the scope and application of the new TASA laws, the whole industry faces new and additional costs without commensurate benefits to consumers and indeed may prevent new entrants – which is surely not the intent of this regime.

Registration and maintaining compliance is only part of the compliance cost: substantial sources of compliance cost include changing all regulated disclosure documents and other disclosures, changing internal compliance systems, policies and procedures and training advisers and staff on the new regulatory requirements. Significantly, as expressed in a number of submissions by the FSC to the Treasury and the Tax Board, unless the supervision framework adopts a consistent approach with the ASIC regime, it could fundamentally, and adversely, impact on the cost of 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 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.

We reiterate that there remain several aspects of the TASA regime that potentially could cause legal problems and administrative complexity for Australian financial services (AFS) licensees.

Definition of tax (financial) advice

The definition of a tax (financial) advice service should not be ambiguous. We submit that the law as legislated captures providers and services which are not intended to be caught. We submit that 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, amendments that were agreed then with the now government, with respect to the definition.

Competency of advice should not be developed piece meal

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 Tax Practitioners Board (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 Tax Practitioners Board/TASA regimes, as part of any broader changes with the professional standards framework for financial advisers.

With the enactment of Tax Amendments Law (2013 Measures No.3) Act 2013 (TASA), which amends TASA 2009 to capture tax (financial) advisers and these draft regulations, it is important to recognise that financial services advice providers will now be required to comply with two (2) disparate competency frameworks (one stipulated by the Tax Practitioners Board and the other by ASIC).

Both competency frameworks are:

- being developed independent of one another – by different parties and over different consultation periods;
- largely cover the same formal education requirements (differences are unknown at present as the contents of the courses are not yet known); and
- have different phase in periods.

Prior to the enactment of TASA, ASIC was the sole regulator of financial advisers' activities including determining advice providers' competency which integrally includes the provision of tax advice in the context of financial planning. Indeed ASIC announced in late June 2013 their proposal to substantially increase adviser competency in Consultation Paper 212: Licensing: Training of financial product advisers – Update to RG146. Whilst the another Treasury team is currently considering the matter of competency, these regulations are clearly being finalised separately to the ASIC process such that a holistic competence regime redesign can therefore not be achieved.

Notwithstanding these significant concerns, within the context of continuing education (a subset of the competency framework) we are pleased with the steps the Tax Practitioners Board has taken to create a pragmatic approach to continuing education within *TPB(EP) 06/2014 continuing professional education*

policy requirements for tax (financial) advisers, albeit we note that transitional arrangements still need to be considered.

Specifically, we have reservations about the Board approved courses required of a tax (financial) adviser. As previously submitted, there is no inherent rationale for the need for a separate Commercial law course at degree level. We recommend that Treasury consider the material already submitted by the FSC on this matter (included with this submission also for convenience) and note that elements of a commercial law subject such that advisers currently gain awareness of in meeting their initial competency requirement (RG146) is more than sufficient for this class of tax agent. It is our view that if a financial adviser requires degree level training of a commercial law subject beyond awareness training, we contend that that type of financial adviser/planner would be more appropriately registered as a full tax agent. **We submit that the education/experience requirements stipulated for a tax (financial) adviser should not be set so high as to ensure the few who provide sophisticated tax advice are competent. We submit that the tax (financial) adviser category should be designed for the majority of advice provided by this category and that it is appropriate for financial advisers/planners who provide more sophisticated tax advice to register as full tax agents.**

Qualification and membership

The FSC is generally comfortable with the registration requirements proposed in the draft regulation with a few exception documented in this submission. Further we note that currently, financial advisers are not required to hold a tertiary degree, and therefore, we consider it is appropriate for either qualification to be deemed adequate for registration. **We note that our position remains that 12months supervision aligned to the ASIC model is more appropriate than that proposed in these regulations** (see the FSC submission 2013 included with this submission).

The FSC is also generally supportive of the concept of recognising professional associations as a registration option for meeting the experience and education requirements. However, it is worth noting that a number of the organisations recognised by the TPB that financial advisers are typically a member of may not currently meet the criteria that is set in the regulations e.g. 1000 voting members (of whom at least 500 are registered tax (financial) advisers). We also highlight that the definition should include 500 members that are either registered tax (financial) advisers or registered tax agents to ensure that bodies such as the CPA and the Institute are included.

Course

The FSC queries the appropriateness of setting tax (financial) adviser's competency requirements in a consistent manner with those of registered tax agents. Financial advisers provide tax advice (if at all) incidental to and in the context of financial advice and arguable the remainder of the financial services industry currently caught by the regime does not provide tax advice but is potentially caught by the vague definition. Where a financial adviser is providing more complex tax structuring advice, we believe these advisers should register as a tax agent.

We submit that it is not appropriate to require the completion of a full tax law AND commercial law subject for this category of tax agent.

We recognise that the Tax Practitioners Board may have flexibility in what competency they will deem appropriate for a tax (financial) adviser to undertake in tax law and commercial law courses for registration. However, the Tax Board does not set the education courses third parties, such as universities provide. Further, the drafting of the regulations may still force the Tax Practitioners Board to actually undertake two courses because of the way the regulation is drafted – rather than say a course which combines the training a tax (financial) adviser should undertake to be competent.

Given the differences between the work undertaken/and knowledge requirements for full tax agent registration vs registered tax (financial) advisers, the FSC will only support the completion of a combined Tax and Commercial law subject which incorporates the learning objectives relevant to the financial planning context (rather than requiring generic tax and commercial law subjects) and reject the requirement for completion of two separate subjects. This would ensure that the knowledge outcomes are reflective of the new class of tax agents being developed and are complementary and appropriate to the advice provided by a financial planning/advice. We do not support the requirements of a commercial law subject as required by a full tax agent or lawyer.

For example:

The tax law and commercial law subjects include learning objectives not relevant to tax advice provided by financial advisers. For example, administrative aspects of the taxes including returns, tax collection and withholding mechanisms, assessments, objections, rulings, penalties and audits and GST are included in the Australian tax law subject completed by tax agent registrants and not relevant to tax advice provided by financial advisers given they are restricted from providing these services by virtue of the definition of tax (financial) service in the TASA.

We note that the commercial law subject currently required of tax agents does not cover the tax and legal aspects of superannuation which are important for financial advice but arguably not the domain of TASA. We also note that tax and legal matters in superannuation are competencies already required under RG 146. Furthermore, commercial law subjects such as knowledge of intellectual property and bankruptcy and insolvency law, which is covered under the commercial law course are arguably not relevant to tax (financial) advice (other than an awareness of these matters perhaps) provided by the majority of advisers in the financial planning context. It is important to recognise that there are different financial advice models in the market and therefore the tax (financial) advice category should not be structured to ensure that the few financial advisers who specialise and generally provide complex tax advice are adequately educated, but should be structured for the majority of financial advisers who generally provide simple tax advice on super, investments and insurance. For the few financial advisers that provide complex tax strategic financial advice we submit that those financial advice providers should be required to be registered as full tax agents. This ensures that consumers are

better protected whilst developing an efficient (yet enhanced) competency obligations on the financial services industry and on financial advisers.

We submit that the regulations should read:

“(a) The individual has successfully completed a competency in commercial law that is approved by the Board; and

(b) The individual has successfully completed competency in Australian taxation law that is approved by the Board, and”

Or

“(a) the individual has successfully completed competency in a course in commercial and Australian taxation law that is approved by the Board, and”

In addition we submit that the regulations stipulate that the Tax Practitioners Board (TPB) is to create of a list of approved courses to be published and maintained by the (TPB) that meet the TPB subject requirements, and the incorporation of a Recognition of Prior Learning (RPL) process for courses not yet reviewed/considered by TPB but that do meet the underlying subject matter requirements. The RPL process would then be used over time to increase the list of approved courses. Recognition of prior learning should be able to be taken into account where your degree/diploma covers content required for completion of the taxation and/or corporate law subjects requirements.

Supervision

The supervision requirements applicable to a tax (financial) adviser should be consistent with the compliance, supervision and quality assurance framework implemented by AFS licensees for the purposes of meeting their Corporations Act obligations. 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. If it can not be legislated or amended by regulation, we submit that it is imperative the Tax Practitioners Board work with the industry to ensure tax (financial) advice supervision obligations are congruent with the ASIC obligations on Licensees and their representatives.

Although we are pleased to see ASIC and the Tax Practitioners Board working together (albeit neither regulatory instruments require them to work together other than on the technology build between the two agencies), it would appear there is a misconception that sharing of authorised representative details via an IT solution and notifying each other of any complaints received meets the policy intent of the TASA amendments related to Tax (Financial) Advisers. We contend the policy intent was far more comprehensive as evidenced by language peppered throughout the Explanatory Memorandum of the Bill:

“1.81 In determining its compliance processes, the TPB should ensure these processes are as efficient as possible to avoid any unnecessary duplication with ASIC’s processes.”

This suggests any supervision model proposed by the Tax Practitioners Board should recognise requirements already required of an AFSL by ASIC and only apply additional obligations for tax related advice where it is necessary to provide adequate consumer protection with reference to the tax related advice. We contend no such circumstances exist and therefore the obligations already imposed on an AFSL be deemed sufficient.

A consequence of any significant differences between the two regimes, which currently exists, is that a financial adviser/planner **may be prohibited** from providing advice in their client’s best interest because they may not be able to provide tax advice.

Despite representations on this ambiguity over the last 3 years – this matter remains unresolved.

Sufficient Number

It is not clear to us how the ‘sufficient’ number requirement works for licensees whose employees and/or representatives provide financial product advice (be it to a consumer or via the issue of ‘information’ which is caught within the definition of a tax (financial) advice service).

Whilst the supervision and sufficient number matters remains unresolved it is challenging to comment on the draft regulations as the industry really has no idea how the regime is to work and whether it would do so efficiently.

In light of this uncertainty each licensees may take a different view with some seeking to register every Authorised Representative and representative/employee and ensure that everyone is trained to the appropriate level to meet the re-registration deadlines and others only registering what they believe to be a ‘sufficient number’. As a consequence, as well as creating inconsistent approaches within the industry, more cost and time out for training may be incurred than reasonably required.

Industry Cost:

The FSC estimates it will **cost \$147million** for the industry just to train the existing financial advisers in the transition period. This figure was calculated using UNSW Law School 2014 fee costs, two courses would cost \$8,160 (12 units @ \$680 per unit) and assumes there are approximately 18000 financial advisers in the market¹.

¹ Note more the 18000 financial advisers many need to undertake training but we do not have the numbers so we are erring on the conservative (eg representatives, in-house supervisors etc).

The above cost does not take into account cost of disclosure changes to Financial Services Guides, letter heads, Statement of Advice templates, periodic disclosure documents (to change to the TASA approved warning during transition, then change again once notification occurs), out of office (opportunity cost of not earning an income) or other ongoing costs to maintain competency or registration costs.

Further, up-skilling every representative is not only impractical within the transition period it does not address the matter for new entrants post the transition – as the industry remains uncertain about what advice a new entrant will be able to provide a retail consumer whilst they are obtaining their ‘relevant’ experience.

Relevant Experience

We are generally comfortable with the definition of ‘relevant experience’. However, we remain unclear on how the ‘substantial involvement’ requirement will be interpreted and what is required to be considered under the ‘supervision and control’ of a registered tax agent.

*It will be critical that the TBP have the flexibility to interpret the terms ‘substantial involvement’ and ‘under the direct supervision’ so as to ensure that the barrier to entry is not set so high that it reduces accessibility and affordability of advice by unduly impacting the ability of new advisers to enter the industry. For example, we submit that a person working in para planning should be classified as meeting the relevant experience and substantial involvement criteria. **We submit the inclusion of the role of a paraplanner as an example in the Explanatory Statement would be helpful and that the regulations ensure that the TBP have the flexibility to interpret the terms ‘substantial involvement’ and ‘under the direct supervision’.***

Training providers

We are concerned that pedagogical differences currently evident in the few providers advertising their TASA-compliance courses (how they would know the course is compliant ahead of the regulations and the Tax Practitioners Board’s guidance is another matter) being taken, possibly due to a gap in knowledge of vocational education standards by some training providers proposing to offer approved TASA training for financial advisers. We contend that application of training standards should align to standard vocational assessment of competency and not seek to use competency assessment to differentiate themselves commercially.

For TASA to deliver on its consumer protection objectives, consumers need to have confidence that vocational standards are applied consistently and that a registered tax (financial) adviser meets minimum standards in relation to competency levels that have been deemed appropriate and are assessed in a standard manner. Any superior stance is likely to result in inconsistencies, an issue that has been evident in training required to comply with the Financial Services Reform of 2002.

These differences also have the real potential of resulting in unnecessary costs to the industry – which are likely to be borne by the consumer in higher advice costs. **We submit that regulations should stipulate training providers (that are not self-accrediting higher education providers) must comply with AQTF Essential Conditions and Standards for Initial / Continuing Registration or the VET Quality Framework.**

Charging of fees during the notification period

We believe it is not the intent of the regime to levy registration fees during the transition period. We submit the regulation and Explanatory statement needs to be clearer on this point.

The TPB have advised that registration fees during the notification period work as follows:

1. Item 49 of the *Tax Laws Amendment (2013 Measures No. 3) Act 2013 (Amendment Act)* prescribes the criteria an entity must meet to be eligible to register under the notification period – there is no reference to an application fee being payable.
2. Paragraph 1.156 of the explanatory memorandum to the *Tax Laws Amendment (2013 Measures No. 3) Bill 2013* states explicitly that ‘These entities will not be required to pay an application fee’.
3. The proposed amendment to regulation 9 of the *Tax Agent Services Regulations 2009 (TASR)* is irrelevant for the purposes of notification as item 49 of the Amendment Act is not contingent upon any provisions under TASR.

With reference to the first dot point, the absence of mention of a fee does not infer any actual absence of a fee requirement, especially when it is mentioned in the *Tax Agent Services Regulations 2009 – Explanatory Statement* (as follows):

Application fees

Item [15] brings tax (financial) advisers in line with tax agents and BAS agents, by making a fee payable on the lodgement of an application for registration. The application fee is the same, whether the applicant is already registered with the Board or seeking registration for the first time.

The registration application fees for a tax (financial) adviser who carries on a business as a tax (financial) adviser is \$400 and a tax (financial) adviser who does not carry on a business as a tax (financial) adviser is \$200.

With reference to the second dot point, there would seem to be some comfort taken from the explicit fee exemption stated:

1.156 During the notification period, financial services licensees and authorised representatives that provide tax (financial) advice services may register with the TPB as registered tax (financial) advisers. To register, the entity need only notify the TPB that they are providing such services and that they are either a financial services licensee or an authorised representative. These entities will not be required to pay an application fee. *[Schedule 1, item 48 and item 49, subitem (1)]*

However the regulations do make the position unclear when the Explanatory Statement seems to contradict by speaking of individuals needing to pay a fee regardless of whether it is a renewal or first time registration. **Therefore the FSC seeks an amendment to the regulations to specify clearly that registration fees are not payable in the transition period.**

As a final general comment, we query whether representative as referred to in the regulations also always includes Authorised Representatives? **If not, we submit that the Regulations be amended to define that representatives also means authorised representatives (i.e. in Part 3, Division 1 of the regulations).**

Please find following further details which requires urgent address by the Tax Practitioners Board given they interact with these regulations. We would welcome the opportunity to speak further with respect to our views. If you have any questions regarding this letter, please do not hesitate to contact me or Andrew Bragg on (02) 9299 3022.

Yours sincerely

CECILIA STORNILO
SENIOR POLICY MANAGER

OTHER CRITICAL MATTERS WHICH REQUIRES ADDRESS BY THE TAX BOARD (previously advised to Treasury for their information): Supervisory models - Sufficient number issues

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 TPB Exposure Draft Information Sheets and Explanatory Papers is how many representatives need to be registered to meet the “sufficient number” requirement.

Financial advisers that charge or receive a fee must register. Although somewhat unclear due to the different fee arrangements in place across the industry, this will mostly likely mean that most authorised representatives are required to register as they may directly or indirectly (via their licensee) charge/receive the fee for the advice. Exception may include sub authorised employees of a CAR where the corporate entity charges/receives the fee or where the licensee itself is entitled to the fee but pays a ‘split’ of that fee to the Authorised Representative. In the first scenario the CAR would need to register, and have a “sufficient number” of registered employees to supervise those non registered employees providing tax (financial) advice services.

For the bank channels, while the AFSL would need to register, it is not clear 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. Despite these differences in the 'responsibility' for the advice, often the fee charged under both models is the same i.e. the licensee is entitled to and receives the fee, of which a portion may be passed on to the representative or authorised representative. In addition, the general obligations for licensees in regard to supervision and monitoring are identical for representatives and authorised representatives.

The Corporations Act prescribes a number of general obligations on an AFSL (s912A), including the requirements 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 out 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 their representatives need will depend on the nature, scale and complexity of their 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 licensees 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.

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.

The following suggestion has been made to the TPB for consideration to include in guidance relating to sufficient number and supervision requirements:

For the avoidance of doubt, it is acceptable for sufficient number requirements to be met by individuals registered as tax (financial) advisers where those individuals are employed by or contracted to a related entity of a tax (financial) adviser (eg an AFS licensee), provided their role is to carry out supervisory arrangements under TASA in relation to the related entity.

An example would be where:

- individuals are employed by a company within the same corporate group as several companies that are registered as tax (financial) advisers (such as AFS licensees);
- those individuals are also registered as tax (financial) advisers;
- they conduct compliance and/or advice coaching roles, and provide those services for those AFS licensees within the same corporate group; and
- they carry out supervisory arrangements on those AFS licensees for the purposes of TASA.

The TPB feels that no amendment is necessary because paragraph 2.56 of the Explanatory Memorandum to the Tax Agent Services Bill 2008 (original bill) confirms that the registered individuals that form the sufficient number may include partners, directors, employees, contractors and staff provided under service trust arrangements. However, staff provided under the service trust arrangements are not covered by the scenarios highlighted above. Staff/employees may actually be

employees of a related body corporate rather than the trust itself and therefore an amendment/or at the least clarification is required with this matter.

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, new entrants 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. These requirements are likely to have a significant impact for small business owners in the future.

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.

To ensure an efficient and congruent supervision regime for financial services (remembering this regime is not limited to financial advisers/planners but defined more broadly), we submit that the Tax Board Guidance 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.

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.