

LICENCES AND REGISTRATIONS

FOR PUBLIC PRACTITIONERS IN AUSTRALIA

INTRODUCTION

In addition to the CPA Australia By-Laws, a public practitioner may be required to satisfy a number of licensing requirements and other regulations when conducting public accounting services, depending on the services offered. Separate licensing or registration requirements must be met where a practitioner intends to practice as:

- a Registered Tax Agent, BAS agent or Tax (Financial) Adviser
- a Registered Company Auditor
- a Self-Managed Superannuation Fund Auditor
- a Liquidator or a Registered Trustee in Bankruptcy or
- an Australian Financial Services (AFS) licence holder.

This document provides a brief overview of the eligibility criteria for each of these registrations and how they specifically relate to the practice structures of sole practitioner, partnership, company, trust and partnership of discretionary trusts.

Understanding your obligations in these areas will assist you in identifying the appropriate criteria you need to meet in order to provide the services you wish to offer as a practitioner.

This guide considers licensing requirements relevant in Australia and unless otherwise stated all references to legislation or regulations are to legislation and regulations in Australia. Members practising outside of Australia must comply with the specific requirements of local laws and/or regulations.

CONTENTS

| | |
|--|----|
| Taxation advice | 3 |
| Tax Agent Services Regime | 3 |
| Key features of the regime | 3 |
| What is a tax agent service? | 4 |
| Who can become a registered tax agent? | 4 |
| What steps are involved in the registration process? | 7 |
| What are specialist registrations? | 7 |
| What are the rules for a registered BAS agent? | 8 |
| What is a BAS service? | 8 |
| Qualifications and experience for BAS agents | 8 |
| What are the rules for a registered tax (financial) adviser? | 9 |
| What is a tax (financial) advice service? | 9 |
| Qualification and experience requirements for tax (financial) advisers | 10 |
| Audit engagements | 11 |
| Who can provide audit engagements? | 11 |
| How do you become a registered company auditor? | 11 |
| How does an RCA maintain registration? | 13 |
| Assurance practitioners undertaking review engagements | 14 |
| Auditors of self-managed superannuation funds | 15 |
| Assurance practitioners undertaking other assurance engagements | 17 |
| Undertaking liquidations and being a trustee in bankruptcy | 18 |
| Providing financial planning advice | 19 |
| Who can provide financial planning advice? | 19 |
| What are the requirements to be able to provide financial advice? | 20 |
| New professional standards regime for financial advisers | 21 |
| Superannuation advice | 23 |
| SMSF advice – accountants’ exemption removed | 23 |
| Providing credit advice or assistance | 24 |
| Who can engage in ‘credit’ activities? | 24 |
| What are ‘credit activities’? | 24 |
| Specific exemptions and items not covered by the National Credit Act | 25 |
| What are the requirements to engage in ‘credit activities’? | 25 |
| Mortgage brokers | 26 |

TAXATION ADVICE

Tax Agent Services regime

The tax agent services regime regulates the registration of three discrete categories of tax practitioners being tax agents, BAS agents and tax (financial) advisers.

A registered tax agent is an approved entity providing a tax agent service comprising compliance and advisory services in respect of a taxation law administered by the Commissioner of Taxation or who represents a client in their dealings with the Commissioner in respect of such laws. In practice, most registered tax agents will to some extent provide a mix of compliance, advisory and representative services to clients.

By contrast, a registered BAS agent is an approved entity providing BAS services being compliance, advisory and representative services relating to a BAS provision (being essentially various indirect taxes administered by the Commissioner).

Finally, a registered tax (financial) adviser is an AFS licensee or an authorised representative of an AFS licensee who provides a tax (financial) service to a client being tax compliance and advisory services provided in the ordinary course of giving financial advice by that licensee or authorised representative.

The legislation regulating tax practitioners is principally contained in the *Tax Agent Services Act 2009* (TASA) although various transitional issues are separately dealt with in the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*. In addition, the *Tax Agent Services Regulations 2009* sets out the academic qualifications and practical work experience requirements which must be satisfied in order for a person to be a registered tax agent, BAS agent or tax (financial) adviser as well as various other administrative rules.

Key features of the regime

The key elements of the tax agent services regime are as follows:

- a national Tax Practitioners Board (TPB) regulates the registration of entities which provide either a tax agent service, BAS service or a tax (financial) advice service
- a legislated Code of Professional Conduct governs the professional and personal conduct of tax agents, BAS agents and tax (financial) advisers
- a wide and flexible range of disciplinary sanctions may be applied by the TPB for any breach of the Code of Conduct
- a range of civil penalties and injunctions may be imposed on unregistered entities providing services or on registered entities who make false or misleading statements or who employ unregistered entities
- a safe harbour applies to relieve taxpayers from administrative penalties on any tax shortfall arising from the acts (or omissions) of a registered agent in the absence of any recklessness or intentional disregard of the taxation laws. Such relief could potentially apply where a false or misleading statement is made carelessly provided all relevant information has been given to the practitioner, or where the practitioner fails to lodge a document by the required time provided the client gave the practitioner all the necessary information so that that the document could have been lodged on time.

Further details concerning the operation of the tax agent services regime including the registration of tax agents, BAS agents and tax (financial) advisers can be found on the TPB website at tpb.gov.au

What is a tax agent service?

Broadly, only a registered tax agent is able to provide a 'tax agent service' under the TASA.

The term 'tax agent service' is defined to mean any service that relates to ascertaining or advising an entity of its liabilities, obligations or entitlements under a taxation law, or representing an entity in their dealings with the Commissioner of Taxation, where it is provided in circumstances where the client can reasonably be expected to rely on that service. For these purposes, a 'taxation law' is any act or regulation which is generally administered by the Commissioner of Taxation.

A legal practitioner may provide a tax service which is a legal service even where that person is not registered as a tax agent. However, such a legal practitioner cannot prepare or lodge tax returns except where that practitioner is the trustee or legal personal representative of a deceased estate. Accordingly, a legal practitioner would also need to register as a tax agent if they wished to provide tax compliance services to other clients such as preparing and lodging individual income tax returns.

In addition, certain other services are specifically excluded from being tax agent services which include, amongst others, the audit of self-managed superannuation funds, the supply of in-house tax advice to related entities, the provision of services between partners in a partnership, and the provision of custodial or actuarial services.

Severe civil penalties may apply where a tax agent service is provided to a client by an unregistered entity. For example, a penalty may be imposed where an unregistered entity provides a service which they know (or reasonably ought to know) is a tax agent service; a fee or other reward is charged for providing the service; and it was reasonable for the client to rely on that service in the circumstances. The maximum penalty imposed for such a breach is currently \$52,500 for individuals and \$262,500 for a company.

Who can become a registered tax agent?

Sole practitioners, partnerships and companies are all potentially eligible for registration as a tax agent under the TASA. In addition, individuals and/or companies acting in the capacity as a trustee are also eligible to register as an individual or corporate tax agent although no registration can be issued to a trust as a separate entity. Partnerships of trustees of discretionary trusts are also viable practice structures under the regime.

The eligibility requirements of each category of potential registrant are discussed below.

Sole practitioners

An individual can apply to the TPB for registration where the individual applicant is at least 18 years of age, is a fit and proper person and has certain prescribed academic qualifications and work experience.

The term 'fit and proper person' is defined to be an individual who is of good fame, integrity and character who has also not been an undischarged bankrupt or served a term of imprisonment in the preceding five years. In addition, the individual must not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty, been penalised as the promoter of a tax exploitation scheme, implemented a scheme which is materially different to that set out in an issued product ruling or have become an undischarged bankrupt or been put into external administration.

The above definition of a 'fit and proper person' is also relevant to any application for registration by a company in terms of its directors or a partnership in relation to its partners, which is discussed further below.

Details of the specific requirements concerning an individual applicant's academic qualifications and work experience are set out in the *Tax Agent Services Regulations 2009*.

There are six potential pathways available for applicants seeking registration as a tax agent. These pathways include where the applicant:

- holds an accounting degree or postgraduate award from an Australian tertiary institution, has completed a TPB approved taxation law course and a TPB approved commercial law course and has accumulated 12 months full time relevant experience in the preceding five years
- holds a degree or postgraduate award from an Australian tertiary institution in a discipline other than accounting which is relevant to the tax agent services to be provided, has completed a TPB approved course in basic accountancy principles, a TPB approved commercial law course and a TPB approved taxation law course to the extent that the TPB considers it relevant to the taxation services to be provided, and has accumulated 12 months full time relevant experience in the preceding five years
- holds an accountancy diploma or higher award from a registered training organisation or an equivalent institution, has completed a TPB approved taxation law course, has accumulated two years of relevant full time experience over the preceding five years, and has completed a TPB approved commercial law course where the applicant was not previously registered as a tax agent under the former tax agent regime under Part VIIA of the *Income Tax Assessment Act 1936*
- has completed all academic requirements for admission to practice as an Australian legal practitioner as well as a TPB approved course in basic accountancy principles and a TPB approved taxation law course, and has accumulated 12 months full time relevant experience in the preceding five years
- has completed a TPB approved course in basic accountancy principles and a TPB approved taxation law course, has accumulated eight years full time relevant experience in the preceding 10 years, and has completed a TPB approved commercial law course where the applicant was not previously registered as a tax agent under the former tax agent regime under Part VIIA of the *Income Tax Assessment Act 1936* or
- is a voting member of a recognised tax agent association (e.g. CPA Australia) and has accumulated eight years full time relevant experience in the preceding 10 years.

For the purposes of the above tests 'relevant experience' means work which has included substantial involvement in one or more types of tax agent services, or substantial involvement in a particular area of taxation law to which one of those services relates. Such work experience must have been obtained as a tax agent or an Australian legal practitioner, or as a person working under the supervision and control of a tax agent or be work of a kind which is approved by the TPB.

It should be noted that agents who were registered before 1 November 1988 will not have to satisfy the above academic and work experience tests provided they were also registered agents upon the commencement of the TASA.

Finally, an individual seeking registration must maintain, or be able to maintain, professional indemnity insurance that meets the TPB's requirements.

Partnership

A partnership can also be registered as a tax agent if all the following conditions are met:

- each individual partner must be at least 18 years of age and be a fit and proper person
- each partner which is a company must not be under external administration or have been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the preceding five years. In addition, each director of the company must be a fit and proper person
- the partnership must have a sufficient number of individuals who are registered tax agents in their own right to provide tax agent services to a competent standard and to carry out supervisory arrangements

- the partnership must maintain, or be able to maintain, professional indemnity insurance which meets the TPB's requirements.

There is no set formula for determining the number of registered individuals that a partnership is required to have in order to satisfy the requirement that unregistered staff are supervised to a competent standard. Instead, it is a question of fact and degree in each case as to what would constitute a sufficient number of registered agents. In determining this issue, the TPB would consider, amongst other things, the size of the business, the services being offered, any conditions that may have been imposed on the entity's registration and any supervisory arrangements in place.

Individuals who are registered agents performing such a supervisory role is not limited to partners but may also include directors, employees, contractors and staff provided under service trust arrangements.

A change in the composition of the partnership does not affect the continuity of the partnership's tax agent registration. However, the TPB must be notified of any change in the composition of the partnership within 30 days of any such change taking place.

Company

A company is eligible to be registered as a tax agent if all the following conditions are satisfied:

- each director of the company must be at least 18 years of age and be a fit and proper person
- the company must not be under external administration and must not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the preceding five years
- the company must have a sufficient number of individuals who are registered tax agents in their own right to provide tax agent services to a competent standard and to carry out supervisory arrangements
- the company must maintain, or be able to maintain, professional indemnity insurance which meets the TPB's requirements.

Essentially, the requirement that the company have a sufficient number of registered agents to supervise work of unregistered staff to ensure that it is of a competent standard is applied in the same way that the equivalent requirement is imposed on partnerships.

Trust

An individual or corporate trustee can apply for registration as a tax agent but the trust itself cannot apply for registration as there are no separate registration rules for trusts.

The rules apply to an individual acting in the capacity as a trustee in the same way that they apply to individuals generally so that a trustee who is an individual can apply for registration if that person meets the registration requirements applicable to a sole practitioner. Similarly, a company can act in the capacity of a corporate trustee if it would be eligible for registration as a company.

Where the tax agent is a service trust, the corporate trustee of the trust will be required to discharge the requirement that it has a sufficient number of individuals who are registered tax agents to provide services of a competent standard and to carry out supervisory arrangements.

Details of the registration criteria for both individuals and companies are set out above.

Partnership of discretionary trusts

A partnership of discretionary trusts may be registered as a tax agent under the TASA irrespective of whether the trustees of such trusts are either individuals, companies or a mixture thereof provided all the other requirements for a partnership to register as a tax agent are satisfied.

What steps are involved in the registration process?

The TPB must notify an applicant within 30 days of any decision made in respect of each application for registration.

If the TPB is satisfied that the applicant satisfies all the eligibility criteria the TPB must register the applicant as a tax agent. A registration fee of \$500 is payable by an applicant who intends to carry on a business as a tax agent, and a \$250 registration fee is payable by an applicant who does not intend to carry on business as a tax agent.

In addition, an agent must notify the TPB of any change in circumstances that may result in it not continuing to meet all its registration requirements or where an event affecting its continued registration occurs. Such events include where an agent has been convicted of a serious taxation offence or an offence involving fraud or dishonesty, or has been the promoter of a tax exploitation scheme or implemented a scheme which is materially different to that set out in an issued product ruling, become an undischarged bankrupt or been sentenced to a term of imprisonment.

Any approved period for registration is capped to a three year term. An application form for re-registration must be lodged at least 30 days before the registration period expires, and applicants must be able to satisfy the relevant registration requirements at that time.

Where the applicant does not meet all the eligibility criteria any application for registration (or re-registration) will be denied. Registration will also be deemed to have been denied where an application for registration is not determined within six months of the TPB receiving such an application.

Any actual or deemed rejection of a registration application can be appealed to the Administrative Appeals Tribunal for review.

What are specialist registrations?

Separate rules have been introduced to allow for the registration of tax agents who specialise in a particular area (or areas) of taxation law.

The TPB can register an applicant but effectively place restrictions on the services they provide. In practice, the TPB will impose such conditions on registration where there are limitations in the academic or work experience of sole practitioners or of individuals providing tax agent services to a partnership or company. For example, where an agent only has expertise in GST and the R&D tax incentive any registration granted may specify that the agent can only consult in these areas.

In certain circumstances, the TPB may also require an applicant who applies for registration as a specialist tax agent to complete an approved course in one or more of basic accountancy principles, commercial law or taxation law.

Any decision to impose conditions on an agent's registration can be reviewed by the Administrative Appeals Tribunal.

What are the rules for a registered BAS agent?

It is recognised that some CPA Australia members may wish to register as a BAS agent rather than as a tax agent as they merely wish to provide BAS services.

Essentially, all the above registration rules concerning registration as a tax agent will apply to an individual, partnership, company or trustee seeking registration as a BAS agent.

However, there are different requirements concerning the academic and work experience requirements of individuals seeking registration as a BAS agent as opposed to a tax agent under the *Tax Agent Services Regulations (2009)*.

What is a BAS service?

The definition of a BAS service is limited to any service that relates to ascertaining or advising an entity of its liabilities, obligations or entitlements under a BAS provision, or representing an entity in their dealings with the Commissioner of Taxation in respect of a BAS provision, where the service is provided in circumstances where a client can reasonably be expected to rely on that service.

In this context, a BAS provision means a provision under the Goods and Services Tax, the Wine Equalisation Tax, the Luxury Car Tax, the Fuel Tax, the collection and recovery of Fringe Benefits Tax and the Pay As You Go (PAYG) withholding and instalment tax regimes.

Accordingly, the scope of services which a BAS agent can potentially offer a client is restricted to the above indirect taxes whereas a tax agent can consult on all taxes (including the above indirect taxes) if the relevant registration requirements are met, the tax agent has the competence to provide that service, and the agent is not subject to any conditional registration restricting their provision of tax agent services.

Qualification and experience requirements for BAS agents

Essentially, the minimum academic qualifications and work experience requirements to be a BAS agent are as follows:

- the individual must have been awarded at least a Certificate IV Financial Services (Accounting) or a Certificate IV Financial Services (Bookkeeping) from a registered training organisation or an equivalent institution, successfully completed a TPB approved GST/BAS course and have accumulated 1,400 hours of relevant experience in providing BAS services over the preceding four years as a registered tax or BAS agent or working under the supervision and control of such a person or
- the individual must have been awarded at least a Certificate IV Financial Services (Accounting) or a Certificate IV Financial Services (Bookkeeping) from a registered training organisation or an equivalent institution, successfully completed a TPB approved GST/BAS course, be a voting member of a recognised tax agent or BAS agent association (e.g. CPA Australia) and have accumulated 1,000 hours of relevant experience in providing BAS services over the preceding four years as a registered tax or BAS agent or working under the supervision and control of such a person.

If the TPB is satisfied that the applicant satisfies all of the eligibility criteria to be a BAS agent a registration fee of \$100 is payable if you are carrying on a business as a BAS agent and a \$50 registration fee is payable by an applicant who does not intend to carry on business as a BAS agent.

What are the rules for a registered tax (financial) adviser?

An entity providing a 'tax (financial) advice service' must be registered as a registered tax (financial) adviser from 1 January 2016 if they wish to provide such a service for a fee or other reward.

Most of the above registration rules concerning registration as a tax agent will also apply to an individual, partnership, company or trustee seeking registration as a tax (financial) adviser. In particular, a partnership or company registrant must have a sufficient number of individuals who are registered tax (financial) advisers to ensure that services provided by unregistered staff are of a competent standard and to carry out supervisory arrangements.

However, there are modified rules concerning professional indemnity insurance requirements because AFS licensees are already required to have adequate insurance coverage in place by the Australian Securities and Investments Commission (ASIC). Accordingly, additional cover will only be required to be obtained by such licensees to the extent that the cover does not already adequately indemnify a tax (financial) adviser against a civil liability arising from the provision of a tax (financial) service. Further details on the requirements of such professional indemnity cover are set out in TPB(EP) 05/2014.

Where an unregistered entity provides a tax (financial) advice service for a fee or other reward on or after 1 January 2016 it will be subject to the same range of civil penalties that apply to an unregistered entity providing a tax agent service. Accordingly, an unregistered entity cannot merely rely on issuing a disclaimer that it is not a registered tax (financial) adviser or registered tax agent to avoid the potential imposition of such penalties on the provision of a tax (financial) advice service from 1 January 2016.

What is a tax (financial) advice service?

A service is a 'tax (financial) advice service' if each of the following five elements is satisfied.

1. The service is a tax agent service other than a service of representing a client on tax matters with the Commissioner of Taxation.
2. The service is provided by an Australian Financial Services (AFS) licensee or an authorised representative of an AFS licensee.
3. The service is provided in the course of giving advice of a kind usually given by an AFS licensee or authorised representative.
4. The service relates to ascertaining or advising an entity on liabilities, obligations or entitlements that arise, or could arise, under a taxation law.
5. The recipient of the advice can reasonably be expected to rely on the service to satisfy obligations or liabilities or claim entitlements that arise, or could arise, under a taxation law.

The TPB have issued TPB (I) 20/2014 [What is a tax \(financial\) advice service?](#) which provides further information and guidance to what constitutes a tax (financial) advice service.

In particular, it states that an AFS licence authorises licensees to, amongst other things, provide financial product advice which may be regarded as personal advice or general advice. However, the mere provision of tax-related factual information will not of itself constitute a tax (financial) advice service such as the information disclosed on payment summaries or product disclosure statements.

If you are a registered tax agent, you do not need to separately register as a tax (financial) adviser where you do not have any conditions imposed on your registration. However, you can only provide a tax agent service relating to the provision of financial product advice if you are an AFS licensee or an authorised representative of an AFS licensee.

Qualification and experience requirements for tax (financial) advisers

An individual must satisfy the academic qualifications and work experience requirements of one of the following four pathways in seeking registration as a tax (financial) adviser.

1. Tertiary qualifications

- The individual must have been awarded a degree or postgraduate award from an Australian tertiary institution (or a degree or award that is approved by the Board from an equivalent institution) in a relevant discipline
- Successfully completed a TPB approved course in commercial law
- Successfully completed a TPB approved course in Australian taxation law
- The individual must have been engaged in the equivalent of 12 months full time relevant experience in the preceding five years
- The individual is, or was within the preceding 90 days, an AFS licensee or authorised representative of such a licensee.

2. Diploma or higher award

- The individual must have been awarded a diploma or higher award from a registered training organisation (or an equivalent institution) in a relevant discipline
- Successfully completed a TPB approved course in commercial law
- Successfully completed a TPB approved course in Australian taxation law
- The individual must have been engaged in the equivalent of 18 months full time relevant experience in the preceding five years
- The individual is, or was within the preceding 90 days, an AFS licensee or authorised representative of such a licensee.

3. Work experience

- The individual must have been engaged in the equivalent of three years full time relevant experience in the preceding five years
- Successfully completed a TPB approved course in commercial law
- Successfully completed a TPB approved course in Australian taxation law
- The individual is, or was within the preceding 90 days, an AFS licensee or authorised representative of such a licensee.

4. Membership of professional association

- The individual is a voting member of a recognised tax (financial) adviser association or recognised tax agent association (e.g. CPA Australia)
- The individual must have been engaged in the equivalent of six years full time relevant experience in the preceding eight years
- The individual is, or was within the preceding 90 days, an AFS licensee or authorised representative of such a licensee.

In the above context 'relevant experience' means work by an individual as a registered tax (financial) adviser or as a registered tax agent, or work under the supervision or control of such a person that included substantial involvement in the provision of one or more tax (financial) advice services or particular areas of the taxation law to which those services relate.

Where the TPB is satisfied that the applicant satisfies all of the eligibility criteria to be a tax (financial) adviser a registration fee of \$400 is payable if that person is carrying on a business as a tax (financial) adviser and a \$200 registration fee is payable by an applicant who does not intend to carry on business as a tax (financial) adviser.

AUDIT ENGAGEMENTS

Who can provide audit engagements?

In order to undertake an audit of the financial reports prepared under the *Corporations Act 2001* of a public company, large charity (revenue of \$1 million or more), a company limited by guarantee (with revenue or group consolidated revenue of \$1 million or more), or where a registration requirement arises from a member or by an ASIC direction), a registered scheme, a disclosing entity, an incorporated association (in which case thresholds vary for associations incorporated under state or territory legislation), a large proprietary company or a small proprietary company (only if at least 5% of shareholders have given a direction to prepare a financial report and to have it audited), you must be registered as a company auditor (RCA) by ASIC. For charities, the auditor may also be an Authorised Audit Company or a firm with at least one member who is an RCA and who is ordinarily resident of Australia.

A 'small proprietary company' is defined as a proprietary company that satisfies at least two of the following conditions:

- the consolidated revenue for the financial year of the company and the entities it controls is less than \$25 million
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is less than \$12.5 million or
- the company and the entities it controls have fewer than 50 employees at the end of the financial year.

Small proprietary companies therefore make up a significant majority of corporation law entities.

Who may undertake audits of non-corporations law entities (such as incorporated or unincorporated entities) varies considerably and will depend on a number of factors including states and territories legislation. In addition, some companies limited by guarantee, incorporated associations and charities are permitted to have a review rather than an audit of their financial report.

For more information see CPA Australia's publication on the [audit requirements for companies limited by guarantee and incorporated associations](#).

How do you become a registered company auditor?

To be eligible to register as a company auditor, the applicant must satisfy the requirements set out in Part 9.2 of the Corporations Act and lodge documents with ASIC, which establish:

- compliance with academic qualifications and completed a prescribed course in auditing or have other qualifications or experience that ASIC considers equivalent
- the applicant has met the requirements of the auditing competency standard approved by ASIC or prescribed practical experience
- capability to perform the duties of an auditor, and that the applicant is otherwise a fit and proper person.

ASIC Regulatory Guide [RG 180 Auditor Registration](#) sets out the requirements for registering as a registered company auditor.

Academic qualifications

Applicants are required to complete one of the prescribed auditing courses outlined in Regulation 9.2.03, *Corporations Regulations 2001*, in addition to holding a prescribed degree, diploma or certificate in accountancy.

The prescribed auditing courses include CPA Australia's CPA Program segment: 'Advanced Audit and Assurance'.

Alternatively, applicants may satisfy ASIC that other qualifications and experience is equivalent to the prescribed qualification.

Skills

Section 1280(2) (b) of the Corporations Act allows an auditor to prove skills through:

1. satisfying the all components of the approved auditing competency standard
2. prescribed practical experience or
3. equivalent practical experience.

Approved auditing competency standard

Under this approach the auditor needs to satisfy an ASIC-approved competency standard, which is '[Auditing Competency Standard for Registered Company Auditors](#)' issued by the joint accounting bodies, including CPA Australia. Competency refers to the knowledge and skills drawn on in performing competency tasks through performing indicative activities. The competency standard describes the specific tasks and activities required to competently perform an audit, under the review and supervision of an assessor who is a RCA. Applicants are required to complete a log book recording each task, including the assessor's assessment of their competence in the task, and related activities. The applicant submits the completed log book and the Assessor's Statement to ASIC for approval together with a certified copy of membership of either CPA Australia, Chartered Accountants ANZ (CAANZ) or the Institute of Public Accountants (IPA).

Guidance regarding the log book for recording audit tasks to assess practical experience for registration as a company auditor can be found on the [CPA Australia website](#).

Prescribed Practical Experience

Evidence must be provided demonstrating:

- at least 3,000 hours, during the five years immediately prior to application, of practical auditing experience under the direction of a registered company auditor
- at least 750 hours of practical experience supervising audits of companies or
- equivalent practical experience (RG 180.80-.87 sets out the experience generally considered to be equivalent and that which is generally not equivalent) to satisfy some of those hours.

This experience needs to have all been gained within the immediate five years prior to application. The applicant submits to ASIC a statement setting out their practical and supervisory experience along with supervisor declarations from each RCA who has supervised their work.

Capable and fit and proper person

ASIC needs to be satisfied that the applicant is capable of performing the duties of an auditor and that the applicant is also a fit and proper person. ASIC may assess an applicant's capacity to perform the duties as an auditor on the basis of a capability report explaining the scope and complexity of the applicant's audit experience and a statutory declaration from the applicant's supervisor or referee for each of the audits described in the capability report, who can verify the applicant's capabilities on such audits as prescribed by the Corporations Act.

The applicant is also required to provide a signed statement detailing any previous disqualifications, disciplinary action taken, litigation matter, administration, conviction, previous application or resignation or removal as an auditor.

It should be noted that an applicant will not be regarded as a fit and proper person if:

- the person has been convicted of any offence of which one element is dishonesty in the past 10 years
- the person has been found civilly liable for any breach of trust, breach of fiduciary duty, dishonesty, gross negligence or recklessness in the course of professional duties in the past 10 years.

ASIC cannot register a person who has been disqualified from managing a corporation under Part 2D.6 of the Corporations Act and may refuse registration of a person who is not a resident in Australia.

For more information on how to register as an auditor or an authorised audit company, go to [ASIC's website](#). Note that ASIC Regulatory Guide [RG 180](#) provides forms to meet the requirements for registrations as a RCA.

Sole practitioners

An individual seeking to register as a company auditor must be formally registered with ASIC.

Partnership

If a partnership is appointed auditor of a company registered in Australia, all the partners who are registered company auditors are deemed to be appointed (under section 324AB of the Corporations Act).

Audit firms (partnerships) do not need to be formally registered with ASIC (but at least one member of the firm must be a registered company auditor).

Company

Authorised audit companies must be formally registered with ASIC.

A company can carry out and prepare an audit and auditor's report if the company is an authorised audit company. A failure to comply with these requirements is a contravention by the company. A director of the audit company will also be liable if their company acts in contraventions of these rules. There are both fault-based and strict liability offences for failing to comply with these requirements.

Trust

The trust entity itself cannot register as an auditor. However, the trustee can register if it meets all the other registration requirements

Partnership of discretionary trusts

If a partnership of discretionary trusts is appointed auditor of a company registered in Australia, all the trustees of the partners who are registered company auditors are deemed to be appointed (under section 324AB of the Corporations Act).

How does an RCA maintain registration?

RCAs need to maintain standard conditions to maintain their registration. These conditions are:

- documenting and completing continuing professional development
- maintaining a specified level of professional indemnity insurance

- documenting, maintaining and following quality assurance procedures required by [ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information](#)
- documenting, maintaining and following procedures with complaints by audit clients.

In addition, an RCA must submit an annual statement to ASIC using [Form 912](#) online, within 30 days of their registration date.

ASSURANCE PRACTITIONERS UNDERTAKING REVIEW ENGAGEMENTS

Relevant for ALL practice structures.

Since 2010, when changes were made to the Corporations Act to introduce a review requirement for second tier companies limited by guarantee, a number of other statutory requirements have been introduced requiring a similar review of financial statements of entities that meet certain criteria.

Companies limited by guarantee with revenue or part of group consolidated revenue over \$250,000 but less than \$1 million and which are not a Commonwealth company or subsidiary, can have their financial report reviewed, rather than audited. Small companies limited by guarantee (see definition below) do not need to have their financial report audited or reviewed but may elect to do so if directed of at least 5% of the members. An auditor does not need to be a registered company auditor to perform a review engagement, however, generally they need to be a member holding specified designations from one of the three professional accounting bodies in Australia and must meet competency requirements.

A 'small company limited by guarantee' is defined as a company:

- limited by guarantee for the whole of the financial year
- which was not a deductible gift recipient at any time during the financial year
- with revenue of less than \$250,000 or, if included in consolidated financial statements of a consolidated entity, with consolidated revenue of less than \$250,000
- with certain exceptions (see Corporations Act s.45B).

Similarly, charities registered with the Australian Charities and Not-for-profits Commission (ACNC) and certain associations incorporated with revenue over \$250,000 but less than \$1 million may elect for a review rather than an audit and those with revenue under \$250,000 have no audit or review requirements. Thresholds for audit or review requirements and the qualifications of the auditor or assurance practitioner who may conduct those audits or reviews for incorporated associations vary between states and territories and depend on the applicable legislation under which they are governed. A summary of the reporting and audit or review requirements is provided in the CPA Australia publication: [Companies limited by guarantee and incorporated associations reporting and audit/review obligations](#).

Members conducting review engagements, who are not RCAs, are required to meet competency requirements set out in [Competency requirements for assurance practitioners undertaking review engagements](#) published by the three professional accounting bodies, including CPA Australia. These members need to have, and be able to demonstrate, competencies in the five key areas of: client acceptance and retention, planning, controls evaluation, testing and conclusion.

In order to address the five key areas adequately the assurance practitioner must be familiar with the requirements of [Australian Auditing Standards](#) (ASAs), [Standards on Review Engagements](#) (ASREs) and [ASQC 1](#)

[Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Service Engagements.](#)

Practitioners must also be familiar with, and abide by, the requirements of the pronouncements of the [Accounting Professional and Ethical Standards Board](#) (APESB), including [APES 110 Code of Ethics for Professional Accountants](#) and the quality control obligations imposed on firms by [APES 320 Quality Control for Firms](#). The requirements of the latter standard with regard to assurance engagements are particularly important. Further, [APES 210 Conformity with Auditing and Assurance Standards](#) imposes the obligation to utilise the ASAs and ASREs in the conduct of all Australian audit or review engagements.

AUDITORS OF SELF-MANAGED SUPERANNUATION FUNDS

Relevant for ALL practice structures.

Under the *Superannuation Industry (Supervision) Act 1994* (the SIS Act), all self-managed superannuation funds (SMSFs) must be audited annually by an approved SMSF auditor. An approved SMSF auditor is a person registered with ASIC under section 128B of the SIS Act.

SMSF auditors have been required to register with ASIC since 1 July 2013.

ASIC Regulatory Guide [RG 243 Registration of self-managed superannuation fund auditors](#) sets out the requirements for registration, how to apply for registration and lists on-going obligations for approved SMSF auditors.

To qualify for registration an applicant must be a natural person and an Australian resident who:

- holds prescribed academic qualifications being a degree, diploma or certificate in accounting of not less than three years from a university or institution prescribed in Regulation 9.2.02 of the Corporations Regulations 2001, which includes a course of study in audit. Alternatively, if the degree, diploma or certificate does not include a course of study in audit the applicant must have either satisfactorily completed a 'relevant course' in audit specified under Regulation 9A.02 of the *Superannuation Industry (Supervision) Regulations 1994* (the SISR) (including the audit and assurance courses in the CPA Program), or successfully completed the SMSF specialist audit program conducted by the SMSF Professionals' Association, now the SMSF Association. ASIC may also consider a degree, diploma or certificate other than those listed under Regulation 9.2.02 of the Corporations Regulations 2001 to determine whether those qualifications (gained in Australia or overseas) are equivalent to the prescribed qualifications
- has prescribed practical experience being at least 300 hours of work in auditing SMSFs during the three years immediately before the date of application under the direction of an approved SMSF auditor. ASIC may also treat this requirement as being met if the applicant has practical experience which is regarded as equivalent to such work experience as may be the case with certain overseas work experience
- has passed a competency exam conducted by or on behalf of ASIC within a 12 month period prior to the date of application provided the applicant has not previously attempted and failed the exam twice during the above 12 month period.

In addition, ASIC must be satisfied that the applicant is a fit and proper person who is unlikely to contravene any of their obligations as an approved SMSF auditor and is capable of performing the duties of an approved SMSF auditor, and who is also not subject to a disqualification or suspension order.

It should be noted that ASIC may also impose conditions on a person's registration as an approved SMSF auditor at any time including, amongst others, completing a training course or passing a competency examination within a specified timeframe.

Approved SMSF auditors must also comply with the ASIC competency standards which are detailed in ASIC Class Order [CO 12/1687](#) Competency standards for approved SMSF auditors.

These competency standards, in summary, require the auditor to:

- identify whether a new SMSF engagement should be accepted or an existing SMSF engagement be retained based on the auditor's knowledge and skills to perform the engagement and whether there are any risks to the auditor's independence
- plan the engagement by identifying the engagement objectives, identifying any risks needed to be addressed during the engagement, addressing those risks through the nature and extent of the planned audit work tailored to the particular engagement, determining an appropriate materiality level, deciding on a preferred engagement approach and documenting the engagement plan
- understand the internal control procedures to determine if they can be relied upon and whether they are sufficient to protect the assets of the SMSF
- identify the nature, timing and extent of audit procedures necessary to gather evidence in support of the financial statement assertions and the SMSF's compliance with the SIS Act, and gather sufficient appropriate audit evidence
- form an opinion of the SMSF's financial report and compliance with the SIS Act and determine the appropriate form of the auditor's report on the financial report and compliance and if any matters require reporting to the trustee or ATO
- document and retain engagement working papers sufficient to enable an experienced SMSF auditor who had no previous involvement with the engagement to gain an understanding of the work performed, procedures adopted and the opinion reached.

The above competency standards are closely aligned to the 'Competency Requirements for Auditors of Self-Managed Superannuation Funds' issued by the three professional accounting bodies (including CPA Australia) other than the final requirement to document working papers. Compliance with these competency requirements are mandatory for members of the above accounting bodies wishing to audit SMSFs, including CPA Australia public practice certificate holders whose compliance will be monitored as part of their quality assurance review.

In addition, approved SMSF auditors must also satisfy the following ongoing obligations relating to their training, competency and independence as required under section 128F of the SIS Act:

- undertake continuing professional development (CPD) being 120 hours of CPD during each three year period to enhance an auditor's technical skills or professional services delivery which must include 30 hours of development on superannuation and at least eight hours of development on auditing SMSFs
- hold current professional indemnity insurance which would be regarded as adequate and appropriate under the SIS Regulations
- comply with any conditions imposed by ASIC on registration
- comply with any competency standards issued by ASIC
- comply with any auditing standards made by the Auditing and Assurance Standards Board that are applicable to an SMSF auditor
- comply with the auditor independence requirements prescribed under the regulations.

An approved SMSF auditor must also provide ASIC with an annual statement declaring whether the auditor has adhered to independence standards.

As a corollary, such an auditor must comply with the Accounting Professional and Ethical Standards Board's APES 110 (Code of Ethics) for Professional Accountants, and complete the Australian Taxation Office (ATO) approved form, [Self-managed superannuation fund independent auditor's report](#) (NAT 11466), when reporting on audits of self-managed superannuation funds. The audit report now includes a specific commitment that the auditor has complied with auditor independence requirements prescribed under the SISR.

An auditor must also lodge an [auditor/actuary contravention report](#) (ACR) via the ATO's online electronic superannuation audit tool (eSAT) where the auditor:

- thinks the financial position of the fund may be, or may be about to become, unsatisfactory or
- forms the opinion that a contravention of the SIS Act or the SISR specified in the contravention report may have occurred, may be occurring or may occur and the contravention meets the prescribed reporting criteria.

An approved SMSF auditor may also report anything else that will assist the ATO in performing their duties under the SIS Act or the SIS Regulations.

Further details on the registration and competency requirements of approved SMSF auditors can be found on the [CPA Australia website](#).

ASSURANCE PRACTITIONERS UNDERTAKING OTHER ASSURANCE ENGAGEMENTS

Certain other audit or assurance engagements require specific registrations and the practitioner should make sure that they hold any relevant registration when accepting each engagement.

Registrations are required for the following engagements:

- **Clean Energy Regulator schemes**

Audits under schemes administered by the Clean Energy Regulator including the Emissions Reduction Fund, the National Greenhouse and Energy Reporting scheme, the Renewable Energy Target and the Safeguard Mechanism must be conducted by a registered greenhouse and energy auditors. To be eligible to register auditors must demonstrate their knowledge of the relevant legislation as well as their knowledge of and experience in auditing. Details on the types of knowledge and evidence are laid out in the National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2017. Refer to the Clean Energy Regulator's website for [How to register as an auditor](#).

- **Legal Practitioners' Trust Accounts**

External examiners are required to conduct legal practitioner trust account examinations, the requirements for which are set out under relevant legislation in each state or territory. For legal practitioner trust accounts in Victoria and NSW the *Legal Professional Uniform Law* and *Legal Profession Uniform General Rules 2015* provides the classes of person who may be appointed as an external examiner, including members of an Australian accounting body holding a public practice certificate and RCAs, all of whom must complete the required [course of education](#). See the [Legal Services Council website](#) or [the Law Society of NSW website](#).

- **Unions and Employer Associations Financial Reports**

Audits of Unions and Employer Associations' financial reports under the *Fair Work (Registered Organisations) Act 2009* must be registered auditors. For the Registration requirements see the Registered Organisation Commission website: [Registration of auditors](#).

UNDERTAKING LIQUIDATIONS AND BEING A TRUSTEE IN BANKRUPTCY

If you wish to undertake a company liquidation you must be registered as a liquidator. If you wish to act as a trustee in bankruptcy you must be registered as a trustee in bankruptcy.

The appointment of liquidators is regulated by the *Insolvency Practice Rules (Corporations) 2016*, consequential to the passing of the *Insolvency Law Reform Act 2016* (Schedule 2, in particular), referring in particular to Division 20 – Registering liquidators. Section 600K inserted into the *Corporation Act 2001* gives recognition and effect to the Practice Rules from 2017. Of particular note is the mechanism established under the Insolvency Practice Schedule (Corporations) of the *Insolvency Law Reform Act 2016* whereby ASIC may convene a committee to consider applications for registration as a liquidator (refer 20-10 and 20-20). The qualifications, experience, knowledge and abilities of applicants for registration are spread between the Schedule (20-20) and Rules (20-1) – the latter amplifying matters identified in general terms in the former.

To be a registered liquidator an individual would need to satisfy all of the following conditions:

- will take out (i) adequate and appropriate professional indemnity insurance; and (ii) adequate appropriate fidelity insurance against liabilities that the applicant may incur working as a registered liquidator
- completed the academic requirements for the award of a tertiary qualification that includes at least three years of full time study (or its equivalent) in commercial law and accounting, and in addition, completed the academic requirements for at least two course units accredited under the Australian Qualifications Framework Level 8 in the practice of external administration of companies, receivers, receivers and managers, and trustees under the *Bankruptcy Act 1966*
- has not within the 10 years before making the application, been convicted of an offence involving fraud or dishonesty, been an insolvent under administration and had his or her registration as a liquidator or trustee under the Bankruptcy Act cancelled
- has during the five year period immediately preceding the application been engaged in at least 4,000 hours of relevant employment at a senior level
- is not a disqualified person under Part 2D.6 of the *Corporations Act (2001)* and is otherwise a fit and proper person
- establish that the applicant is resident in Australia or in another prescribed country.

For more information on how to register as a liquidator visit the [ASIC website](#) and refer in particular to ASIC's regulatory guide [RG 258 Registered liquidators: Registration, discipline and insurance requirements](#).

The appointment of a trustee in bankruptcy under the *Bankruptcy Act 1966* has been subject to similar reforms given effect through the *Insolvency Law Reform Act 2016* (Schedule 1, in particular). The Act provides for four types of practitioner administering personal insolvencies:

- registered trustees

- controlling trustees
- registered debt agreement administrators
- official trustee in bankruptcy.

An individual applying to be a trustee in bankruptcy must apply for registration in an [approved form](#) to the Inspector General in Bankruptcy. The Inspector General will thereafter establish a committee to consider the application. Here again the reforms brought about by the passing of the *Insolvency Law Reform Act 2016* are underpinned by Insolvency Practice Rules (Bankruptcy) 2016 bringing about from 2017 an essential alignment of qualification, experience and other relevant attributes, contingent of course on the differences in company external administration and personal insolvency practice.

For more information on how to become a registered trustee under the Bankruptcy Act, go to the [AFSA website](#).

Sole practitioners

The positions of trustee in bankruptcy and liquidator are personal appointments.

Partnership

Individuals are registered as both trustees in bankruptcy and liquidators. Accordingly, individual partners may be registered but not the partnership as a whole.

Company

As these are personal appointments, the individual employees may be appointed, but not the company.

Trust

The trust entity itself cannot register as a trustee in bankruptcy or a liquidator, however, the trustee can if it is an individual.

Partnership of discretionary trusts

Individuals can be registered as both trustees in bankruptcy and liquidators. Accordingly, individual trustees of the partners may be registered but not the partnership as a whole.

Liquidator of a specified company

Registration of a liquidator can be limited to acting as liquidator for the body corporate specified in the certificate of registration.

Practitioners must also be familiar with, and abide by, the requirements of the pronouncements of the [APESB](#), such as APES 110 Code of Ethics for Professional Accountants and APES 330 Insolvency Services.

PROVIDING FINANCIAL PLANNING ADVICE

Who can provide financial planning advice?

Financial planning advice is a highly regulated industry, particularly when it comes to providing financial advice to the public. Before you can provide advice that could influence a client's decision to purchase a financial product you must meet [minimum training standards](#) and hold an Australian Financial Services (AFS) licence, or be authorised as a representative of an AFS.

What are the requirements to be able to provide financial advice?

If you are offering advice that could influence a client's decision to purchase a financial product you must meet both initial minimum and ongoing training standards as currently defined in ASIC Regulatory Guide 146 Licensing: Training of financial product advisers (RG 146).

RG 146 is an educational component, it is not a licence to provide advice.

RG 146 defines the initial minimum training standards that an individual must meet in order to provide financial planning advice. It is divided into two educational levels:

- **Tier 1:** this level of education is required for people advising on all financial products except those defined under Tier 2
- **Tier 2:** this level of education is required for people advising on general insurance products (except accident and sickness), consumer credit insurance, basic deposit products and non-cash payment products.

To be able to provide retail financial advice on financial products defined under Tier 1, you must comply with the Tier 1 education level of RG 146.

RG 146 also has three key components:

- generic knowledge requirements
- specialist knowledge requirements
- skills requirements.

General knowledge

Generic knowledge refers to having the knowledge of the environment in which the financial adviser operates and to understand the context in which the advice is given.

Specialist knowledge

Specialist knowledge refers to the specific areas that ASIC has identified a financial adviser needs training in before they can provide advice in that area. There are several specialist knowledge areas in which you may need training, depending on the type of advice being provided. They are:

- financial planning advice
- securities
- superannuation
- managed investments
- derivatives
- insurance: life and general
- foreign exchange
- self-managed superannuation funds (SMSFs).

Even though ASIC set out the minimum training requirements in RG 146, ASIC has placed the onus on the licensee to determine what training its representatives will need to complete to meet these requirements.

See [CPA Australia's website](#) for more information.

Skills requirement

The skills requirement of RG 146 states that financial advisers providing personal financial advice to retail clients should be able to apply appropriate skills in relation to their activities and the products and markets in which they operate.

Ongoing training

It's important that you keep up-to-date with training. Section F of Regulatory guide 146 is all about continuing training guidance. Which means those giving advice should maintain, update and deepen their knowledge and skills on an ongoing basis.

There are three areas of ongoing training:

- maintaining the knowledge and skills
- updating the knowledge and skills
- deepening knowledge.

In addition, there are specific requirements that each licensee must have:

- a nominated person responsible for training
- annual training plans for each adviser (including needs evaluation)
- records of training programs.

New professional standards regime for financial advisers

Following the enactment of the [Corporations Amendment \(Professional Standards of Financial Advisers\) Act 2017](#) a [professional standards regime](#) for financial advisers will commence to apply from 1 January 2019.

The new scheme will apply to all relevant providers who are natural persons who are authorised to provide personal advice to retail clients on relevant financial products.

A relevant provider will include AFS licenses and their authorised representatives as well as employees and directors of an AFS licensee, whilst a relevant financial product is any financial product other than a basic banking product, general insurance product, consumer credit insurance or a combination thereof.

The new regime will be governed by a newly established standards body being the [Financial Advisor Standards and Ethics Authority](#) (FASEA).

The key features of the new regime are as follows:

- new education and training standards will be required to be met by all individuals who provide personal advice on relevant financial products to retail clients. Such persons must complete a bachelor or higher degree or equivalent qualification approved by FASEA, pass an exam approved by FASEA and undertake a professional year of supervised work and training that meets the requirements set by FASEA. In this context, it should be noted that a person who has completed a foreign qualification may apply to FASEA to be a relevant provider on the basis that the foreign qualification is equivalent to the Australian degree or higher qualification ordinarily required to be completed by a person seeking to be a relevant provider. New advisers will be subject to these requirements from 1 January 2019 and must hold an appropriate degree before commencing the supervision year and sitting the exam. Special transitional rules apply to existing advisers who are allowed to provide financial advice as at 1 January 2019 as they will have until 1 January 2021 to sit the exam and until 1 January 2024 to meet the requirement of holding a degree or higher qualification. Furthermore, such existing advisers will not be required to complete a professional year of supervised work and training

- all relevant providers are obliged to complete any Continuing Professional Development requirements set by FASEA
- all relevant providers must comply with a Code of Ethics to be developed by FASEA who will also monitor and revise such ethical standards where necessary. Such a Code will commence to apply on 1 January 2020 and compliance with the Code will be monitored and enforced under schemes approved by ASIC
- an obligation will be imposed on an AFS licensee to ensure that its relevant providers comply with the new education standards and are covered by a compliance scheme
- the use of the titles 'financial adviser' and 'financial planner' will be restricted so that they can only be used by persons who are relevant providers
- appropriate sanctions will apply where a relevant provider or licensee fails to comply with the requirements imposed on them under the new regime.

Further details of the above requirements and changes will be provided as they are released by FASEA.

Sole practitioners

To provide financial planning advice, a sole practitioner must either:

- obtain an AFS licence or
- be appointed as an authorised representative of an AFS licence holder.

Partnership

Generally, to provide financial planning advice, a partnership must either:

- obtain an AFS licence or
- be appointed as an authorised representative of an AFS licence holder.

Section 761F of the Corporations Act provides that a partnership is registered as if it was a person, but each individual partner can be liable for any breach.

Company

To have employees provide financial planning advice, a company must either:

- obtain an AFS licence or
- be appointed as an authorised representative of an AFS licence holder. Before providing financial planning advice, employees are then required to be appointed as sub-authorised representatives (which require the consent of the AFSL holder).

Trust

To provide financial planning advice, the trustee of the trust must either:

- obtain an AFS licence or
- be appointed as an authorised representative of an AFS licence holder.

Depending on whether the trustee is an individual or a company, the above requirements in relation to sole practitioners and companies will also apply.

Partnership of discretionary trusts

To provide financial planning advice, a partnership must either:

- obtain an AFS licence or
- be appointed as an authorised representative of an AFS licence holder.

SUPERANNUATION ADVICE

Relevant for ALL Practice Structures

SMSF advice: Accountants' exemption removed

Regulation 7.1.29 of the *Corporations Regulations 2001* previously allowed a recognised accountant to recommend that a client establish or wind up an interest in a Self-Managed Superannuation Fund (SMSF) without being licensed under the Australian Financial Services (AFS) licensing regime.

However, the accountants' exemption was repealed effective 1 July 2016.

Accordingly, if an accountant recommends a client establish or wind up an SMSF on or after 1 July 2016 without being appropriately licensed that accountant will be in breach of the law and could be liable for significant penalties. This breach also includes the provision of related advice, such as a recommendation that a member commences a pension or make additional superannuation contributions.

In addition, the provision of such unauthorised advice may risk the accountant's membership with that entity's professional accounting association (including CPA Australia) and any liability arising from the making of such unauthorised advice may not be covered under the accountant's professional indemnity insurance policy.

It should also be noted that penalties for providing unlicensed financial product advice include up to two years imprisonment refined the \$36,000 for individuals or hundred and \$80,000 for companies.

Furthermore, ASIC has warned accountants that from 1 July 2016 that they must hold a limited Australian financial services (AFS) licence or be an authorised representative of an AFS licensee to provide financial product advice on SMSF's

Accordingly, an accountant essentially has three options in terms of the provision of any advice on SMSFs and related matters from 1 July 2016 in that the accountant can either:

- apply and obtain an AFS licence which will include satisfying certain work experience requirements
- become an authorised representative of another entity's AFS licence
- refer clients seeking financial product advice to an appropriately licensed entity or individual
- recruit or enter into a joint venture with a licensed financial adviser.

Prior to 1 July 2016, accountants holding a Public Practice Certificate with one of the three professional accounting bodies were able to apply for a limited AFS license, with the membership of their professional body being recognised to satisfy the experience requirement.

Various resources are available on the [CPA Australia website](#) to assist a recognised accountant to determine which of these three options is the most appropriate for their particular circumstances.

For example, if you wish to become an authorised representative there is a guide on the key factors which you should consider when approaching any potential AFS licensee as well as the RG 4146 compliance solution which has been designed to set out the training requirements set by ASIC in respect of RG 146.

An AFS licence is not required when a financial service is not provided, such as when factual information is being provided to a client. In addition, there are four key exemptions provided within the Corporations Act 2001 and Regulations, which allow certain types of SMSF advice and services to be provided without an AFS licence:

- taxation advice (section 766B(5)(c) & regulation 7.1.29(4))
- traditional accounting services (regulation 7.1.29)
- broad asset allocation advice (regulation 7.1.33A)
- referrals (regulation 7.6.01(1)(e)).

Refer to [Financial advice and regulations: Guidance for the accounting profession](#) for full details of the scope and operation of the exemptions.

PROVIDING CREDIT ADVICE OR ASSISTANCE

Who can engage in ‘credit activities’?

ASIC is now the regulator of consumer credit and finance broking under the National Credit Code (which is included in Schedule 1 to the *National Consumer Credit Protection Act 2009* (National Credit Act)).

Products regulated under the National Credit Code include home loans, personal loans, credit cards, consumer leases, overdrafts and line of credit accounts, among other products and services.

The Code also captures the provision of credit to purchase, renovate, improve or refinance a residential investment property.

Importantly, section 5(1) of the Code states that the Code only applies to the provision of credit that is:

- provided to a natural person or strata corporation
- is provided or intended to be provided wholly or predominantly:
 - for personal, domestic or household purposes or
 - to purchase, renovate or improve residential property for investment purposes or
 - refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes
- a charge is or may be made for providing the credit
- the credit is provided in the course of a carrying on a business of providing credit in Australia or as part of, or incidentally to, any other business carried on in Australia.

In this context section 5(4) of the Code provides that the ‘predominant’ purpose for which credit is provided is the purpose for which more than half of the credit is intended to be used.

What are ‘credit activities’?

If you engage in ‘credit activities’ as defined under section 6 of the National Credit Act, you must hold an Australian credit licence (ACL) or be an authorised credit representative.

A *credit service* is defined as a *credit activity*. You will provide a *credit service* if you either provide *credit assistance* to a consumer or act as an *intermediary* (refer section 7 of the National Credit Act).

It is important that members gain a thorough understanding of what is captured under the definition of 'credit activities', for example, you will be providing credit assistance to a consumer where you suggest the consumer *remain* in their *current credit contract / consumer lease*.

Specific exemptions and items not covered by the National Credit Act

There are specific categories or organisations which are exempt from the licensing requirements in certain circumstances.

Registered tax agents are one such group. Other groups and organisations include:

- a trustee in bankruptcy, provisional liquidator or liquidator
- a lawyer
- a point-of-sale retailer.

For full details refer to Part 2-4 of the *National Consumer Credit Protection Regulations 2010* and Appendix 3 of ASIC Regulatory Guide [RG 203: Do I need a credit licence?](#)

Some types of credit are also excluded, as stated in section 6 of the Code, including, amongst other things, insurance premiums payable by instalment and employee loans.

Margin lending is also excluded as such facilities are now regulated as a financial product and therefore requires issuers and advisers of margin lending facilities to hold an Australian Financial Services (AFS) licence or be an authorised representative of such an AFS licensee.

What are the requirements to engage in 'credit activities'?

People engaging in credit activities must either apply for, and be approved for, a credit licence before commencing business or be a representative of a credit licence.

You will only be granted a licence if you meet the requirements set out in the National Credit Act.

When assessing an application for a credit licence, ASIC will take into account a range of considerations which are listed in Table 1 of ASIC Regulatory Guide [RG 204: Applying for and varying a credit licence](#).

In particular, Table 1 of the above Guide provides that you must be able to comply or fulfil various obligations and requirements which include, amongst other things, the following:

- your general conduct obligations in respect of
 - your broad compliance obligations
 - your internal systems
 - you and your staff being fit and proper people to engage in credit activities
 - your resources
- your management of conflict of interests
- your dispute resolution system
- your risk management system
- your compensation arrangements for losses suffered by clients.

Credit licensees are also responsible for ensuring that their representatives are adequately trained and competent to engage in the credit activities authorised by their licence, which is discussed in ASIC Regulatory Guide [RG 206: Credit licensing: Competence and training](#).

However, ASIC has not set minimum training standards for credit representatives, rather it is up to the credit licensee to determine:

- what initial and ongoing training is appropriate to ensure compliance
- how to embed this as part of the recruitment and training systems.

If industry training standards currently exist for specific sectors of the credit industry or for specific products, ASIC expects that the representatives will be trained to at least this level.

Mortgage brokers

A mortgage broker is generally a member of the credit industry sector that provides third-party home loan credit assistance where the credit is secured by real property and neither the licensee nor its representatives are the credit provider.

Representatives who provide mortgage broking services must meet minimum training requirements as set by ASIC:

- at least a Certificate IV in Financial Services (Finance/Mortgage Broking)
- 20 hours of CPD per year.

CPA Australia also provides a number of resources to assist members with the regulation of [consumer credit](#).

Sole practitioners

Generally, to engage in credit activities a sole practitioner must either:

- obtain an ACL or
- be appointed as a credit representative of an ACL holder.

Partnership

Generally, to engage in credit activities a sole practitioner must either:

- obtain an ACL or
- be appointed as a credit representative of an ACL holder.

Section 14 of the *National Consumer Credit Protection Act 2009* provides that the Act (except for the National Credit Code) applies to a partnership as if the partnership were a person, but with some changes, including that the obligations that would be imposed on the partnership are imposed instead on each partner but may be discharged by any other partners.

Company

To have employees engage in credit activities, a company must either:

- obtain an ACL or
- be appointed as a credit representative of an Australian credit licensee. Before engaging in credit activities, employees are then required to be sub-authorised, which required the written consent of the licensee.

Trust

To engage in credit activities, the trustee of the trust must either:

- obtain an ACL or

- be appointed as a credit representative of an ACL holder.

Depending on whether the trustee is an individual or a company, the above requirements in relation to sole practitioners and companies will also apply.

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