

Who Wants To Be A Compliance Manager?

National Compliance Manager

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Agenda

- ▶ TPB
- ▶ FDS & Opt-In
- ▶ Best Interests
- ▶ SMSF
- ▶ Continuing Education
- ▶ LIF & Level Premiums
- ▶ AML/CTF and Cyber Security
- ▶ ASIC Surveillance
- ▶ The Year Ahead



TPB Renewals

Fact:

- ▶ Every adviser engaged in providing financial planning or product advice needs to be registered.
- ▶ The Transitional option for those who have never held a registration closes on 30 June 2017.
- ▶ Unless you can meet Pathway 304 you will need to undertake the Board Approved Australian Taxation Law and Commercial Law courses.
- ▶ These are currently offered through Kaplan and can be undertaken by distance learning.
- ▶ Each adviser should be aware by now of when they will be required to renew registration.

Pathways



Summary of qualifications and experience requirements for tax (financial) adviser registration (including renewal)

	Primary qualification	Board approved courses		Relevant experience
		Australian taxation law	Commercial law	
Transitional option¹				
Transitional option	Not required	Not required	Not required	Equivalent of 18 months of full-time experience
Standard option²				
301 Tertiary qualifications	Degree or post-graduate award (from an Australian tertiary institution) or degree or award that is Board approved (from an equivalent institution) in a relevant discipline	Required ³	Required	Equivalent of 12 months full-time relevant experience in the past 5 years
302 Diploma or higher award	Diploma or higher award (from a registered training organisation or an equivalent institution) in a relevant discipline	Required ³	Required	Equivalent of 18 months full-time relevant experience in the past 5 years
303 Work experience	Not required	Required ³	Required	Equivalent of 3 years full-time relevant experience in the past 5 years
304 Membership of a professional association	Individual is a voting member of a recognised tax (financial) adviser or a recognised tax agent association	Not required	Not required	Equivalent of 8 years full-time relevant experience in the past 8 years

¹ Available from 1 January 2016 to 30 June 2017 for new registration as a tax (financial) adviser

² Available from 1 January 2016 onwards for both new and renewal of registration as a tax (financial) adviser

³ Must include a component in the *Tax Agent Services Act 2009*, including the Code of Professional Conduct

Action

- ▶ InterPrac will handle the Bulk Renewals for Tax (financial) Advisers and those who are either not registered or are required to renew as at July 2017 have already been contacted and should be following the instructions and requested for information sent to those affected.
- ▶ For the next tranche (those due October 2017) if your only registration is that of a Tax (financial) adviser then you should be calculating which pathway is appropriate and undertaking the courses as required.
- ▶ To meet Pathway 304 which is the easiest pathway for most experienced advisers you will need to join either the AFA or FPA or an Accounting body that is a Recognised Professional Association. You must be a voting member of that organisation.

FDS and Opt-in

- ▶ This is a major issue for ASIC at the moment and they have informed the industry that they will commence prosecutions for breaches.
- ▶ Every client for which you have an on-going service arrangement must receive an Annual Fee Disclosure Statement on the anniversary date of the agreement.
- ▶ The FDS must contain:
 1. Details of the fees received
 2. Details of the services offered
 3. Details of the services actually provided
- ▶ The FDS is applicable to all clients for who you receive an on-going fee including those who may have previously been included in commissions received.

FDS fees that must be disclosed

- ▶ Essentially any fee that is charged in a given year that is not part of a product based fee (Insurance Commission, payment from MER or Administration Fee) and may include:

Ongoing Advice Fee.

Contribution Fee.

Member Advice Fee.

Initial Advice Fee*.

Plan Fee*.

Implementation Fee*.

One-off Advice Fee*.

** While these fees may relate to the initial advice given, where they are the basis for the ongoing arrangement and are charged within the twelve month period, they must be noted in the relevant years' FDS.*

Providing the FDS

- ▶ The format of the FDS is up to the adviser and InterPrac has examples but many can be obtained from the Platform the client uses. The keys to the FDS are they must be provided within 30 days of the Disclosure Date which is the anniversary of when the on-going fee arrangement was entered into.
- ▶ Advisers previously had the ability to set a common disclosure date for clients where it was not practical to identify the date of the agreement however this concession has now expired and ASIC expect that all clients will have had a disclosure date identified.
- ▶ Whilst a new agreement may bring forward and set a new anniversary date it should be accompanied with an FDS covering the previous 12 months fees received and services provided.
- ▶ Advisers can face a fine of \$50,000 per breach.

Opt-In

- ▶ New clients or old clients where a new agreement for on-going service is entered into from 1/7/2013 are also required to receive an Opt-In Notice every 2 years.
- ▶ The Opt-in Notice is required to be provided and returned within 60 days of the anniversary date and unless it is signed and returned within that period the collection of on-going fees cannot continue.
- ▶ FPA members who sign-up to the code of conduct and agree to the terms of the FPA on-going advice are provided with relief to opt-in as the FPA agreement provides a 3 year on-going service agreement and the provision of regular reviews and FDS notices.
- ▶ Not providing an Opt-in Notice for an eligible client is a breach.

Best Interest

- ▶ The best interest decision in ASIC V National Sterling Group was the first prosecution under the new “best interest” requirements.
- ▶ Best Interest cannot be covered just by including in the statement of advice that the adviser will act in the best interest of the client.
- ▶ Best Interest must be demonstrated by documenting evidence in the total client file how the Clients Best Interest was met.
- ▶ The provisions of s961B of corporations law contain the final requirement which is:
 - “Taking any other steps, that at the time of the advice, would be reasonably regarded to be in the clients best interests, given the clients relevant circumstances.

Best Interests Duty & the SoA

1. Identify the financial situation, objectives and needs of the client.
2. Identify the subject matter of the advice sought by the client and the financial situation, objectives and needs of the client reasonably considered relevant to the advice sought.
3. Made reasonable enquiries where it is reasonably apparent that the information pertaining to the client's situation is incomplete or inaccurate.

An SoA that doesn't spend time documenting the Scope of the advice, Goals and relevant personal circumstances cannot meet Best Interest.

Best Interests Continued

4. Assess whether you have the expertise to provide the advice and decline to provide advice if you do not.
5. Where considering it reasonable to recommend a financial product, make reasonable enquiries as to what financial product might meet the objectives of the client based on all judgements.
6. Recommendations are based on the information gathered and the client's relevant circumstances.
7. Taking any other steps, which at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.

Best Interests - Practical Considerations

- ▶ s961D defines “reasonable enquiry” in relation to a financial product as
- ▶ *“might achieve those of the objectives and meet those of the needs of the client that would reasonably be considered relevant to advice on the subject matter sought by the client, it does not require an investigation into every financial product available”*
- ▶ This needs to be considered in line with Conflicts of Interest and Alternative Remuneration.

Best Interests Considerations Cont.

- ▶ The advantages of the product must be stated in the Statement of Advice (SOA) provided to the client and related in terms of why it is appropriate to the particular client, along with how it meets their needs, objectives and financial situation.
- ▶ This is particularly important when considering Replacing a Product.
- ▶ Consider and document:
 - Why the existing product is no longer suitable
 - What are the costs of the replacement product compared to the existing product
 - What benefits will be lost and gained.
 - How does the new product meet the clients particular needs objectives and financial situation.

Best Interests Considerations continued

- ▶ Ultimately, the true test of whether or not you have acted in the clients' best interest is whether or not the client is in a better position than they were in prior to the consultation. This does not necessarily mean that an adviser must give perfect advice, but any benefit to the client must be more than trivial to meet the requirements of this statute.
- ▶ You should establish that the best interests' duty has been met based on your recommendations and that your advice will be of greater benefit to the client (including accounting for any costs associated with exiting their current position) and record the outcome as a part of your file notes to support your recommendation.

SMSF

- ▶ InterPrac have been included in the current surveillance program on SMSF's which will be a major focus of ASIC going forward.
- ▶ ASIC will target advice that doesn't cover:
 1. How the SMSF meets the clients Best Interests.
 2. ASIC believe an SMSF is unlikely to be appropriate for clients who have less than \$200k unless a specific purpose applies.
 3. Requirement to meet the sole purpose test must still be met whatever the investments the fund contains.
 4. Unlicensed provision of advice.

Continuing Education

- ▶ In addition to the TPB requirements.
- ▶ The Government recently passed the legislation in regard to:
 1. compulsory education requirements for both new and existing financial advisers;
 2. supervision requirements for new advisers;
 3. a code of ethics for the industry;
 4. an exam that will represent a common benchmark across the industry; and
 5. an ongoing professional development component.

Continuing Education - continued

- ▶ The new requirements will commence on 1 January 2019. From this date, new advisers will be required to hold a relevant degree before they are eligible to commence the supervision year and to sit the exam. Existing advisers will have two years, until 1 January 2021, to pass the exam and five years, until 1 January 2024, to reach a standard equivalent to a degree. The transition period recognises that existing advisers may need to complete the education requirements on a part-time basis while continuing to service their existing clients. The Code of Ethics will commence on 1 January 2020, with all advisers being required to adhere to the code from that day forward.

Action

- ▶ Every adviser should conduct their own personal review.
- ▶ Don't put off study believing it will all go away.
- ▶ Make enquiries of your education provider whether your existing qualifications meet the standard or what is necessary to upgrade to meet the standard.
- ▶ Think of your succession plan and how this may affect your plans.
- ▶ Consider when employing a new person what they would need to do to meet the standards.

LIF - Level Premiums & Insurance replacement

- ▶ ASIC is currently looking very deeply at a number of AFSL's that are engaged in providing Life Risk Insurance.
- ▶ Insurers are required to provide details of lapsed and cancelled policies and are targeting some advisers over their lapse rates.
- ▶ Level premiums are great - provided the policy will be held for the required period. Consider commencing on stepped and salary sacrificing the level premium until cash flow is assured and then switch policy to level premiums.
- ▶ AMP should not be used for level premiums.
- ▶ When writing Insurance within super - be aware of the effect on the retirement value.

AML / CTF

- ▶ Advisers have an obligation to:
- ▶ Identify both Individuals and Corporate Entities.
- ▶ Reports of suspicious matters.
- ▶ What is an example of a suspicious matter?
- ▶ You are not expected to be an Investigator - if in doubt refer to the National Compliance Manager

Cyber Security

- ▶ The level of threat has been increasing exponentially.
- ▶ InterPrac recently sent details of a Cyber Security Insurance policy and some key issues.
- ▶ As part of the business Risk Management plan every business should be aware of the threat of Cyber attack and ensure that they have processes in place.
 1. - Internal web and email policy.
 2. - Back up of client records to a secure separate facility.
 3. - Quality virus and firewall programs.

ASIC Surveillance Activities

- ▶ Websites, Social Media and advertising.
- ▶ InterPrac was stupidly dragged into an ASIC media win because an adviser didn't have the details of his website correct and approved by InterPrac.
- ▶ The new standard for ASIC is a 5 year ban and they have a mandate from the Government to get tough.
- ▶ They are seeking to have an avenue to ban advisers quicker by establishing what will amount to a banning panel.
- ▶ ASIC will get sick of the Banks shortly and will move on to the IFA's and will apply the same rules as regards compensation that they have applied to the Institutions.

The Year Ahead - or moving the goal posts

- ▶ Expect continued increased surveillance
- ▶ ASIC user-pays to cost each adviser \$960.
- ▶ Multiple Codes of Ethics to apply
- ▶ TPB
- ▶ Further education announcements

Questions?



Thank You

The logo for InterPrac features the text "InterPrac" in a bold, blue, sans-serif font. The text is centered within a circular graphic composed of three concentric, slightly offset blue rings. The background of the slide is white, with abstract blue geometric shapes on the right side.

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