# Top 10 Policy Concerns for Limited Licence Holders December 2017

Licensing for Accountants

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| Issue | Outline of concern |
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| 1. Tax advice (including contributions advice) (R7.1.29(4) and s766B(5)(c)) | ASIC has only provided guidance on one of the two taxation advice exemptions in its Information Sheet 216.<br><br>Not only is it unclear how the potentially broader exemption in S766(B)(5)(c) applies, but the way in which Regulation 7.1.29(4) has been interpreted does not treat accountants fairly. It effectively provides a broader exemption to those that are not licensed then those that are licensed.<br><br>Licensed or authorised accountants cannot rely on the tax advice exemption in 7.1.29(4), and instead must provide licensed advice that requires an SOA for exactly the same advice.<br><br>However, licensed accountants have become licensed so they can *expand* their services beyond the available exemptions. It was not expected that they would lose the benefit of exemptions available to unlicensed accountants. |
| 2. Super compliance exemption (R7.1.29(5)) | The current regulations unfairly benefit unlicensed accountants in relation to super compliance activities (this issue is similar to the tax advice issues outlined in row 1 above).<br><br>The drafters of the regulations seem to incorrectly assume that licensed accountants want to replace the super compliance exemption with the ability to provide broader advice to their clients. Licensed accountants want to have the ability to offer a range of services from compliance through to strategic advice, depending on the needs of the client, rather than only being able to offer a broader service that at times is not appropriate, or even necessary.<br><br>Some accounting firms with dedicated super divisions have taken the responsible step of becoming licensed. However, they are now required to refer basic super compliance work to an unlicensed accountant (if possible) if they wish to take advantage of the exemption. The experts in the firm are then only able to deal with the smaller proportion of clients that want advice. |

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| 3. Insurance in the existing "from" fund | One of the shortfalls of the old Accountants' "SMSF setup-advice" exemption (7.1.29A) was that it did not allow accountants to review a client's existing superannuation fund. Limited licensing goes some way to addressing this in that accountants are now able to consider the client's existing fund in making the recommendation to establish an SMSF.<br><br>However, as it currently stands, a Limited licensee's authorisations do not allow accountants to properly consider and advise on insurance in a client's existing super fund.<br><br>While referrals for insurance can work, licensed accountants should have the option to provide a complete service in relation to SMSF recommendations – which would include a review and recommendations regarding the specific insurance product contained in their clients' existing superannuation funds. |
| 4. Super Recommendations, other than an SMSF | Limited licensing authorisations not only allow accountants to recommend an SMSF, but they also provide the ability for a licensed accountant to recommend retaining an existing super fund after considering whether an SMSF is appropriate. However, in situations where neither of these are a good alternative (e.g.: the client has a low balance so an SMSF is not appropriate, but the client also has an expensive, inappropriate existing super fund), the advice that licensed accountants can provide is restricted in that they cannot recommend, say, a cheaper super fund that is not an SMSF.<br><br>So, the current licensing regime prevents licensed accountants from helping clients find a cheaper alternative, including vulnerable or low-income clients who arguably need the advice the most, but are least able to or likely to seek advice beyond their trusted accountant-adviser. |
| 5. Rollover advice where an SMSF already exists | When an accountant recommends an SMSF, they are currently able to review if it is appropriate to roll a client's existing fund into the SMSF (although they cannot consider existing insurance, so they cannot recommend the wind-up of a super fund without the client first seeking insurance advice – see row 3 above).<br><br>However, a licensed accountant cannot provide that same rollover advice if the client has both an existing non-SMSF superannuation fund, and also an existing an SMSF. |
| 6. Risk Profiling | Often, risk profiling should be undertaken with a licensed accountant's clients. However, the most common output of risk profiling is an asset allocation model that breaks down some assets into classes of product. |

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| | An accountant who does not have 'class of product' authorisations on their licence cannot use a risk profiling tool that results in an asset breakdown that includes classes of products (e.g. "20% Australian shares, 20% international shares"). The tool's output likely amounts to a recommendation that the client invest in classes of product (in the above example, classes of securities). |
| 7. Upgrading to a full AFSL | The limited licence regime was introduced to provide accountants with a solution to become licensed without the need to operate under someone else's licence with traditional advisory authorities (full AFSL).<br><br>However, some practices are finding that the limited licence is not meeting their needs and now want to operate under their own full AFSL. This is prohibitively expensive, because it requires the licensee to find a responsible manager with the necessary experience.<br><br>A licensee cannot also be an authorised representative of another licensee. Also, limited licensees obtained the limited licence so as to avoid needing a full licence or operating under someone else's licence.<br><br>There needs to be a mechanism that allows accountants to upgrade to a full AFSL without bringing in new Responsible Managers. Whilst existing limited licence Responsible Managers do not have specific product experience, ASIC should consider some sort of transitional acknowledgement, coupled with a licensed oversight component. |
| 8. Retail /wholesale eligibility for SMSFs | Clients can be treated as wholesale clients where (amongst other eligibility criteria) an accountant certifies that they earn more than $250,000 p.a., or have more than $2.5m in net assets.<br><br>The rules change when superannuation is involved. In most instances (such as super advice that covers contribution levels, life insurance cover or benefit payments), the client must be treated as a retail client.<br><br>The application of the wholesale client eligibility rules to SMSFs are causing confusion and frustration for accountants of high net worth clients with an SMSF. This is because the operation of the "control" tests, and some case law which deems individual trustees to be a single legal person tend to be overlooked or misinterpreted. |

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| 9. Authorised representatives -v- representatives | There has been much confusion with licensed accountants about whether they are employee/director representatives and/or <u>authorised</u> representatives. This is because accountants often established a separate entity to hold their limited licence. While this entity is typically part of a broader accounting group, it often does not satisfy the definition of 'related body corporate'. This means that employees or directors of the existing accounting practice are not deemed to be representatives of the licensee and require to be authorised in writing by the newco licensee.<br><br>While the requirements and restrictions on authorised representatives makes sense when a licensee is authorising people outside of their business, it simply causes confusion and frustration for accountants. They are already struggling to comply with the new licensing requirements (including being included in the Financial Adviser Register) without the added complication of identifying if, and when, to treat their advisers as authorised representatives. |
| 10. ASIC funding model | The ASIC funding model is based on the number of people included in the financial adviser register. This assumes that each person requires a similar amount of regulation.<br><br>Limited licensing, by its very nature, is limited because those that provide financial services under their limited licence are also accountants with many other roles. Often, an accountant will only spend 5% of their time providing financial services under their limited licence. The remaining time is spent providing tax advice.<br><br>The funding model seems unfair for the majority of accountants who operate in this way. Instead, a 'per office' and usage metric should be factored into the funding model.<br><br>Also, advisers who are subject to investigation by ASIC, should be compelled to fund the costs of the investigation (such as in the *NSG Case*) pursuant to s91 of the ASIC Act 2001 and INFO SHEET 204. Any such payment should reduce the overall cost that is used to calculate the per-adviser cost at the end of each financial year. |