

ISA & AIST SUBMISSION

Consultation Paper 214

Updated record-keeping obligations for AFS licensees





About Industry Super Australia

Industry Super Australia (ISA) is an umbrella organisation for the industry super movement.

Formerly known as Industry Super Network, ISA manages collective projects on behalf of sixteen Industry SuperFunds. These include research, policy development, government relations and advocacy as well as the well-known Industry SuperFunds Joint Marketing Campaign.

ISA's objective is to maximise the retirement savings of more than five million Industry SuperFund members.

About AIST

The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose mission is to promote and protect the interests of Australia's \$500 billion not-for-profit superannuation sector. AIST's membership includes the trustee directors and staff of industry, corporate and public-sector funds, who manage the superannuation accounts of nearly two-thirds of the Australian workforce.

As the principal advocate and peak representative body for the not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

Contacts:

- **Robbie Campo**, Deputy Chief Executive, Industry Super Australia

- **Richard Webb**, Policy & Regulatory Analyst, AIST

Introduction

ISA and AIST welcome the opportunity to provide a submission in relation to ASIC's **Consultation Paper 214: *Updated record-keeping obligations for AFS licensees*** (CP214).

As a consequence of the Future of Financial Advice (FoFA) and Stronger Super reforms, product providers, banks, financial institutions and advice providers are subject to new laws which establish higher minimum conduct requirements and have prohibited the payment or receipt of a number of payments or benefits which have been proven to cause an inappropriate conflict of interest and bias advice recommendations. CP 214 sets out new record-keeping obligations to reflect the new FoFA and Stronger Super requirements.

In summary, ISA and AIST submit:

- Record-keeping is necessary to ensure that a licensee can demonstrate that it is meeting all its legal requirements. Record-keeping is also critical to enable ASIC to effectively supervise and monitor the industry. We support ASIC's proposal to update record-keeping obligations via class order.
- The maintenance of appropriate records in relation to personal advice provided to retail clients is central to compliance and enforcement of these obligations. ISA and AIST support the proposal to require records be kept to demonstrate compliance with the new conduct, conflicted remuneration and intra-fund charging requirements in the Corporations Act and SIS Act.
- Record-keeping is necessary to promote enforcement across the industry, particularly with regards to systemic and deliberate breaches of law.

Keeping records for the conduct requirements

In relation to records which document compliance with the conduct requirements, industry has some experience of keeping such records even though the underlying conduct requirements have been amended by the FoFA reforms.

ISA and AIST support the proposed requirements for record-keeping.

Keeping records for the conflicted remuneration provisions

ISA and AIST agree that records should be kept in circumstances where the licensee believes that the conflicted remuneration provisions do not apply (s1528–1531) or that the remuneration is not conflicted (s963B or 963C, or Div 4 of Pt 7.7A). (*paragraph 32 a-b*). This means that any advice business should be able to account for its income derived under grandfathering arrangements or under arrangements not caught by the conflicted remuneration provisions.

We propose that examples of the level of detail required in records should be incorporated into CP214 to provide clear guidelines for licensees of their obligations. (*paragraph 32 a-b*)

Keeping Records for Intra-fund Advice

The Stronger Super Reforms have entrenched the capacity for super fund trustees to provide and collectively charge intra-fund advice to existing members. Advice which does not fall under the definition of intra-fund advice, in s99F of the SIS Act, must be separately charged to the member and either deducted from their super account (with the member's express approval and if within the sole purpose test) or charged directly to the member.

We support that AFS Licensees or super fund trustees who provide intra-fund advice will be required to observe the proposed record-keeping requirements. (*paragraph 34*)

We note that the current draft refers to all financial advice provided by a trustee as 'intra-fund' whereas it is important to distinguish advice which is collectively charged and falls within the technical definition of intra-fund, and other financial advice provided to super fund members.

Record-keeping obligations when giving intra-fund advice

ISA and AIST support, in principle, the record keeping obligations with regards to intra-fund and financial advice but propose the following amendments: (*para B3*)

We propose that the heading 'Record-keeping obligations when giving financial advice' should be amended to 'Record-keeping obligations when *a trustee provides financial advice and intra-fund advice*' to:

- a) reflect that the trustee is the provider or facilitator of the advice, and
- b) distinguish between intra-fund advice and other financial advice.

B3 a (ii and iii), are in our submission, ambiguous and may be interpreted as pertaining to situations that would be likely to breach the conflicted remuneration provisions (s1528–1531) and (s963B or 963C, or Div 4 of Pt 7.7A). ISA and AIST are not aware of any situations where costs related to intra-fund advice could be charged to a licensee or person, who is not the trustee or an associate of the trustee, and not fall foul of the new conflicted remuneration provisions.

It is our recommendation that these sections be deleted or clarified as required. (*paragraph B3*)

We would propose a more effective and high level obligation to ensure appropriate charging for collective and individually charged advice. (Paragraph B3 b (i))

As an alternative to the proposals in B3 b (i,ii), we propose that trustees have an overarching policy which documents:

- Compliance with s99F in terms of ensuring that only intra-fund advice is collectively charged (intra-fund advice)
- The basis for charging for advice which a member pays for individually (outside s 99F)
- If the trustee allows members to deduct the cost of advice from their super account, the controls the trustee has in place to ensure charging is consistent with the sole purpose test (See Para 39, 41,42 Superannuation Circular No III A 4).

ISA and AIST support ASIC's proposal to update record keeping obligations through the **Consultation Paper 214: *Updated record-keeping obligations for AFS licensees*** (CP214). In light of the above recommendations, we believe that the proposal is necessary to promote enforcement and regulation of record keeping obligations in the financial services industry.