

Financial Services Reform

The two year transitional period that accompanied the Financial Services Reform Act expires on 10 March this year. From 11 March 2004, the Financial Services Reform provisions will be in full operation. Lawyers who want to operate under the new system will have to know how to comply with the new provisions.

However, there has been a degree of uncertainty over how the new provisions will affect Australian legal practitioners. As the deadline for compliance draws nearer, members of the profession have asked: What is a financial service? Will I be affected by the new requirements? Do I need an Australian financial services licence? Do I qualify for an exemption?

The Law Council of Australia has produced a comprehensive web-based guide to assist the legal profession prepare for the new Financial Services Reform (FSR) provisions, which come into effect in March 2004.

Law Council President Bob Gotterson QC said all lawyers should be aware of the new provisions.

"The *Financial Services Reform Act* has changed the 'lawyer exemptions' under the licensing requirements. Individual lawyers must ensure that they don't need a financial services licence under the new provisions," Mr Gotterson said.

"The new FSR provisions will be in full operation from 11 March 2004. Lawyers who want to be in full operation too, will have to know how to comply with the new provisions. This guide will be an essential tool for legal practitioners," he said.

To help lawyers prepare for the March 11 deadline, the Law Council has developed a *Guide to FSR and Legal Practice* which has been designed to outline the impact that the licensing regime will have on the legal profession and assist practitioners to comply with the new legislation.

A copy of the guide and more information about FSR is available from the Law Society Northern Territory website www.lawsocnt.asn.au. Copies can also be obtained from the Law Society.

The Law Council guide

As a result, the Law Council has produced the *Guide to FSR and Legal*

Practice, which is designed to help legal practitioners gain a clearer picture of what Financial Services Reform entails and assist them to comply with the new provisions. Produced by members of the Law Council's Financial Services Reform and Lawyers Working Group, the web-based guide is an essential tool for legal practitioners with FSR-related queries.

Below are some issues which are featured in the guide. However, for a more comprehensive look at the impact of Financial Services Reform provisions on legal practice, visit the *guide* at www.lawcouncil.asn.au

What are the key elements of the new FSR regime?

- * There is an entirely new set of concepts and definitions which provide a conceptual framework for the new regulatory regime.
- * A single licensing regime now exists, which is applicable to a wider range of financial services providers, some of whom were not previously subject to a registration or licensing regime.
- * The licensing requirements apply generally to all financial services providers – not just those who provide financial services to retail clients.
- * Those who provide financial services to retail clients are required to provide financial product or financial services disclosure documents, maintain internal dispute resolution systems and be members of external dispute resolution systems and have compensation arrangements to compensate those retail clients for loss they suffer as a result of breaches of the relevant obligations under Chapter 7 of the Corporations Act by the licensee and its representatives.
- * A person who provides a financial service to a retail client is generally required to give the client a

financial services guide or FSG.

- * The scope of the concept of securities advice, used in former legislation, has been replaced with the much broader concept of financial product advice.
- * Providers of personal financial product advice to retail clients in relation to a broad range of financial products are required to give a statement of advice or SoA.
- * A product disclosure statement must be given when a financial product is being recommended to a retail client or when a person offers to issue (or sell by way of direct sale) a financial product to a retail client.

Are lawyers affected by the new licensing regime?

The Law Council is of the opinion that most Australian lawyers will not be providing financial services and therefore are usually not caught by the licensing provisions of Chapter 7 of the Corporations Act.

During the consultation and transition periods of the new legislation, the Law Council has been instrumental in ensuring that an Australian lawyer who carries on activities in the ordinary course of his or her legal business will not be required to hold an Australian financial services licence.

There are three principal exclusions from the definition of financial services applicable to lawyers which will serve to ensure that this is the case:

- * The lawyer's advice exemption
- * The lawyer's dealing exemption
- * The lawyer's custody exemption

These exemptions are explained in detail in the guide.

How do you determine whether you require a financial services licence?

An Australian financial services licence

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ATO legal profession project

Australia's revenue collection system generally relies on taxpayers assessing their liability under the law and paying the correct amount of tax. The Tax Office *Compliance program for 2003/04* refers to an ongoing strategy of identifying people operating outside the tax system. This includes specific projects covering a range of professional groups, including the legal, medical, accounting and architectural professions.

The *Legal profession project* commenced with barristers in New South Wales. This preliminary work uncovered several aspects of non compliant behaviour including the abuse of laws governing bankruptcy. On the basis of these findings the project has been expanded to the legal profession nationally.

The Tax Office is obtaining registration details of solicitors and barristers from the regulatory bodies governing the legal profession in each of the states and territories. The law allows the Commissioner of Taxation to obtain such information (Section 264 of the *Income Tax Assessment Act 1936*, Section 128 of the *Fringe Benefits Tax Assessment Act 1986*, Section 77 of the *Superannuation Guarantee (administration) Act 1992*, Section 65 and Section 353-10 in schedule 1 of the *Taxation administration Act 1953* applies). This information will be compared against Tax Office records to identify solicitors and barristers who are operating outside the tax system or are not meeting their taxation obligations. The exercise will include scrutiny of lodgment and payment obligations and information provided in returns and activity statements.

The Tax Office is subject to strict laws regarding the privacy of your personal details and your information will be strictly guarded and controlled. The registration details will only be accessed by staff involved in the associated business processes. The tax laws contain secrecy provisions about the use and disclosure of your information. These laws prohibit tax officers from looking at, recording, discussing or disclosing information about you, except in the performance of their duties. The law provides for

severe penalties for breaches of these secrecy provisions.

The tax system is based on taxpayers acting honestly and voluntarily complying with their taxation obligations. Voluntary disclosures can lead to reductions in penalties that may apply. If you are having difficulties meeting your obligations, or wish to discuss a matter relating to your tax affairs please phone the *Legal profession project*. A project officer can be contacted on (03) 9275 2355, or through our administration number 13 28 69, then request extension 52355, during business hours (8.30am to 5pm EST).

Tax evasion has an impact on the tax system because it results in a loss of revenue to the Australian community. Just as importantly it allows some businesses to gain an unfair advantage in a competitive market.

You can report information about tax evasion to us confidentially in the following ways:

- * call us on 1800 060 062 between 8am and 6pm Monday to Friday (except national public holidays); or
- * fax to 1800 804 544; or
- * write to us, marking all written information 'in confidence', and send it to:
Australian Taxation Office
Tax Evasion
Locked Bag 6050
Dandenong, Victoria 3175.①

Financial Services Reform cont...

is a single licence issued by ASIC intended to regulate the conduct and disclosure of issuers of financial products and providers of financial services. An Australian financial services licence is generally required if you carry on a business of:

- * providing a financial service
- * in relation to a financial product

However, the general requirement to hold an Australian financial services licence to carry on a financial services business is subject to a number of exemptions. The exemptions which are most relevant to lawyers are set out in the section on licence exemptions in the guide.①

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