

BACKGROUND:

1. What is the Future of Financial Advice (FoFA) reforms and why has this legislation been introduced?

A: FoFA was born out of the Ripoll Report which the government at the time conducted to examine the financial collapses which included Storm, Trio, Opes Prime etc. Many ordinary 'mum and dad' investors lost a lot of money even though they were just following the advice of their financial planners, advisers and even accountants. The main policy objective of FoFA, therefore, is consumer protection with the intention that it will enable ordinary consumers to obtain access to more affordable and competent financial advice.

As part of the reforms the government decided that all financial advice should be afforded the same level of regulatory rigour, irrespective of who delivers that advice. That is, whether a financial planner or an accountant provides advice to a client, the client should still expect the same level of competence and protection from the law. Consequently, this meant that the accountants' exemption relating to SMSFs had to be removed. After much debate and argument, it was decided that SMSFs are a financial product and therefore had to be included in the FoFA reforms.

However, the experience of accountants was acknowledged and the government agreed to deem that accountants had relevant experience (normally this has to be proved to ASIC). This applies only to members of the Joint Accounting Bodies (JAB) (IPA, CPAA and CAANZ) with a PPC and during the transition period. This was a major concession.

Other concessions were also won, including the introduction of a limited license with an advice scope broader than under the exemption; and providing an annual compliance certificate instead of a full audit (which financial planners have to do). Plus, financial planners are now included under the Tax Agent Services Act and have to be registered with the Tax Practitioners Board and do education in tax and commercial law.

A three year transition period was also granted, ending on 30 June 2016.

Most of the FoFA reforms have not directly impacted accountants. The impact has been mostly on financial planners – including the changes around conflicted remuneration, opt-in and so on.

It should also be remembered that the accountants' exemption was introduced as a temporary measure during the last round of financial reforms, until a more permanent solution could be developed. However, 'temporary' lasted for about ten years during which time establishing SMSFs became embedded for many accountants. The government had formed the view that many accountants were operating in breach of the exemption and it was time to review it.

2. What did IPA do about FoFA during the consultation period?

During the extensive consultation period when the proposed FoFA changes were being debated, the IPA was heavily involved as part of the JAB. We argued strongly for over two years that accountants

should be treated differently due to the higher educational and professional standards to which accountants are subject. Also, that SMSFs are not a financial product and that the exemption should remain. However, given the policy objectives of FoFA, these arguments were not going to succeed. Of course, we all supported the objectives of consumer protection and access to affordable and competent advice. There were numerous stakeholders involved in the consultations, including those who did not support the SMSF sector.

WHAT IS THE FIRST THING I SHOULD DO?

3. What do I need to think about when deciding how to respond to FoFA?

A: Your response to FoFA should be based on a business decision about your practice, its future direction and what sort of clients you have and want in the future. If you decide to stay in the SMSF space and perhaps go more into financial and advisory services then you need to decide which is the best option for you (see below).

There are many considerations; arguably the most critical being the impact of technology, digital disruption and automation on your practice and on your clients. For instance, the ATO has warned about automation disrupting the business of tax returns; cloud computing has commoditised many accounting and tax functions; and many more examples. You should also consider the impact of globalisation and outsourcing with cheaper and well educated workers being available; succession planning and the value of your practice if your practice is your superannuation (practices with financial advice clients are worth more than compliance based practices). There is a myriad of research on all of these considerations. Technology also provides many opportunities and accountants are well placed to take advantage of them for their own benefit and for their clients' benefit.

If you decide not to stay in (or go into) the SMSF/financial advice space, then you may not need to do anything – apart from refer affected clients to an appropriately qualified adviser. Essentially, FoFA means that it won't be worthwhile to 'dabble' in SMSFs. However, you can still administer SMSFs, do the tax work (without advice) or audit them (if registered under ASIC). But please note – you will not be able to provide advice on: whether or not a client should set up an SMSF, contribution levels/strategies and neither can the tax work involve what may be considered advice.

There are different views about how many SMSFs make it worthwhile; it can be anything from 10 to 50. It depends on the level and value of work and whether you can make it profitable. Also, you may decide to develop this part of your practice in the future. You may also decide to complement your SMSF advice work with other financial advice services or develop this work in addition to SMSFs.

4. Do you have any tips to help me decide?

A: The main thing is to decide what type of advice you want to give your clients. If you want to talk to them about, for example, any of the following: LRBA's, instalment warrants, gearing, contributions strategies, investment strategies, transition to retirement strategies, rollovers – then you will need to become an authorised representative (AR) of a licensee. Obtaining a full license is also an option but the cost may be prohibitive unless you are already making most of your revenue from financial advice/planning. The limited license is designed to be 'entry level' – that is, advising on whether an

SMSF is a viable option, establishing it, advising on, for example, a cash management account, the need for general and life insurance, and simple managed investment schemes.

If you don't want to lose your clients but also don't want to do the education or give the advice yourself then your main option is to enter into a referral arrangement. We recommend a formal arrangement and you may want to consider revenue sharing with the financial adviser.

5. Is there anything I should be cautious about?

Yes, FoFA distinguishes between different types of advice and general factual information. You can give factual information to clients, however, you must beware that the client does not think that you are giving them advice or recommendations. The legal test is what the client thinks or perceives, not what your intention is. Also, ASIC has warned that it will be looking for 'FoFA window dressing', so you will not be able to overcome the legislation by dealing only in 'factual information'. ASIC has also warned against people doing too many 'execution only' transactions. These can be picked up through the SMSF audit process, which is becoming more extensive and rigorous through the ATO.

WHAT ARE MY OPTIONS?

6. Your main options are:

- Consider whether to stay in the SMSF space or not. If not, then clients will have to be referred to other accountants/advisers.
- Become an AR of a license holder who authorises you to provide SMSF (and potentially other financial services) advice.
- Apply to ASIC for your own license, either full or limited. This is likely to be a limited license unless you intend to make most of your revenue from financial planning/services.
- Stay in the space and set up a referral arrangement for your clients.
- A combination, which is to obtain your own limited license but also have a referral system in place to enable a more complete advice service to clients who need it.

MANDATORY EDUCATION:

7. Do I need more training and education as a result of the FoFA reforms and the removal of the exemption?

A: Yes, if you want to continue to set up SMSFs, then it is a mandatory requirement that you complete RG 146 modules in the areas in which you wish to provide advice. You must complete the education before applying for licensing or authorisation.

8. What education or training does the IPA recommend?

The IPA recommends that you complete all four modules comprising the Diploma of Financial Planning (modules are based on: financial planning; insurance; investments; and superannuation). We also recommend that you complete an additional module on SMSFs. The superannuation modules usually do not have sufficient content on SMSFs. Even though you can do a minimum of three modules to set up SMSFs, we consider that doing an additional two modules will be highly

beneficial for advising clients. ASIC also recommends that both superannuation and SMSF modules are completed.

IPA has partnered with Mentor Education to provide both online and fast track training. In some cases, you can complete these in one day workshops. The training is designed for accountants and our experience is that most accountants can comfortably complete the training.

Please refer to:

<https://www.publicaccountants.org.au/students/dfp>

<https://www.publicaccountants.org.au/actnow>

LIMITED LICENSE:

- 9. In respect of the 'limited' licence option: I have never offered financial advice before, apart from setting up SMSFs; do you believe it is wise for me to start this journey by applying for a 'limited licence'?**

A: You will need to make that decision based on your clients and business needs – it is a business decision. Having your own license will require a considerable effort to apply for and maintain the license, including compliance with all the requirements under the Corporations Act and the ASIC regulatory guides (see below). For example, this will include providing clients with all required documentation and completing certain processes, including statements of advice, general warnings, complete fact finds, financial services guide, records of advice etc, where appropriate. This is likely to be time consuming and will require systems and processes to be implemented accordingly. Some accountants and advisers choose to outsource this or have a dedicated compliance person in their practice. Another option is to become an AR first and then consider applying for your own license later once you have gained experience in providing financial advice.

In order to apply for the limited license you will need to comply with the relevant requirements which include having PI insurance (minimum cover is \$2 million); have an internal dispute resolution scheme; be a member of an external dispute resolution scheme; have a training system in place; have appropriate management systems; and so on.

ASIC provides an extensive 3 part kit and guidance on the limited license, Info Sheet 179.

Refer to:

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Applying-for-a-limited-AFS-licence?openDocument>

- 10. I have been told the licence application paperwork is extensive. Will you provide us with templates and examples of all the documents we require?**

A: The ASIC guidance on applying for a limited license is the main source of this information (see link above). There is extensive guidance on who should apply, what's involved, examples of applications, and so on. The take up of the limited license is a lot less than predicted by government with only a very small portion having obtained a limited license. However, the IPA can assist on a one-on-one

basis with the license application, including preparation of documents; and liaising with ASIC. There is no charge for this assistance.

The IPA has partnered with Accountable, which is a financial services licensee, which can assist once a license has been obtained (they also offer licensing as an AR). Their support package includes all documents, templates, checklists, technical support, research, compliance support etc. Fees (about \$450 pmth) are charged for this service.

11. What is the cost of the limited license? How do you believe I can recover this cost each year?

A: The cost depends on many variables and assumptions and no two practices are the same. It also depends on the size and complexity of your practice and what types of services you want to offer existing and potential clients. The value of your time and the opportunity cost of compliance should also be factored into the cost estimate. The IPA has provided indicative costings for some of the various elements of the license, however, it is unlikely to be (much) less than about \$3,000-\$5,000 for a 1-2 person firm. It will also depend on the cost of PI insurance which is sometimes covered by AFSL holders for ARs. The minimum cover required by ASIC is \$2 million.

In terms of recovery of costs, it may require a reconsideration of your business plan and how you intend to service your clients. For instance, you may wish to enter into a relationship with a mortgage or insurance broker or cultivate a number of clients who you know would like investment or strategic advice beyond what you have been providing. Research by Vanguard and Investment Trends indicates that 45% of SMSF clients who currently obtain only tax advice from their accountants, would also seek investment advice if their accountant offered it. Research by CoreData indicates an 'advice gap' with many SMSF and other clients prepared to pay upwards of \$2,000-\$3,000 for appropriate advice. Plus, most AFSL holders support their ARs to ensure they are profitable, on the basis that you apply the advice and client/fee model. There are numerous examples of how you can structure your practice and client base to ensure that you are profitable. However, this requires a commitment to offering SMSF and possibly other financial services to your clients. This might include offering, for example, finance, insurance, investment, succession planning etc, rather than just administration and basic tax services.

We can refer you to our financial service partners if you wish to discuss profitability in detail.

12. How much do you estimate the annual cost will be for Professional Indemnity insurance for a limited licence? Who can I talk to about PI insurance?

A: This will depend on your practice, clients, history, level of cover, authorisations, systems and processes in place etc.

We suggest that you talk to David Martin and his team at IPA Insure, who can assist with your insurance needs including providing a quote. The contact details are: enquiries@ipainsure.com.au and phone number is 03 8665 3139. Please feel free to call the team at IPA Insure to discuss obtaining appropriate PI cover.

13. If I apply for a limited licence, can you provide an estimate of how much of my time will be required to complete the licence application process?



A: It is likely to take a considerable time to complete the application form and to collate all the proofs and other documentation and then more time for ASIC to assess the application and whether more information is needed. Even a police check, which is needed to prove being a fit and proper person, can take up to six weeks. It may take at least three months to assemble the documents and then ASIC takes no less than a further 28 days. If you don't have RG 146 qualifications then you can't even start the licensing process. If you complete the fast track RG 146 modules, and depending on how many you wish to complete, then you can add another 1-6 months to the above time frames. The whole process can take longer than most people think and in our experience, most accountants under estimate the time and effort involved in applying for a limited license.

14. I have read that the application process for a limited licence is a 'lot easier' than the standard licence application process. However, I have been told that I need to read and understand a long list of ASIC Regulatory Guides and the Corporations Act. This is potentially thousands of pages of laws and regulations - is this correct?

A: The process for a limited license is easier than for a full license but is still onerous and should not be taken lightly. However, it is correct that about 90% of the Corporations Act still applies to limited licensees. As a license holder there is a lot you will need to be aware of and ASIC has a number of guides to assist people, in particular:

- Info 179 Applying for a limited AFSL
- RG 1 AFS Licensing Kit Part 1: Applying for and varying an AFSL
- RG 2 AFS Licensing Kit Part 2: Preparing your AFS license application
- RG 3 AFS Licensing Kit Part 3: Preparing your additional proofs
- RG 36 Licensing: Financial product advice and dealing
- RG 55 Statements in disclosure documents and PDSs: Consent to quote
- RG 90 Example statement of advice
- RG 98 Licensing: Administrative action against financial services providers
- RG 104 Licensing: Meeting the general obligations
- RG 105 Licensing: Organisational competence
- RG 146 Training of financial product advisers
- RG 165 Licensing: Internal and external dispute resolution
- RG 166 Licensing: Financial requirements
- RG 167 Licensing: Discretionary powers
- RG 168 Disclosure: Product Disclosure Statements (and other disclosure obligations)
- RG 175 Licensing: Financial product advisers — conduct and disclosure
- RG 181 Licensing: Managing conflicts of interest
- RG 244 Giving Information, general advice and scaled advice
- RG 246 Conflicted remuneration

Please refer to <http://www.asic.gov.au/asic/asic.nsf/byheadline/Applying-for-a-limited-AFS-licence?openDocument>

These guides will assist you in applying for a license and also once you have obtained the license, in order to be aware of your obligations and to comply with them.

IPA has partnered with Shadforth's to assist members who wish to obtain B2B assistance in meeting their legal obligations. Fees vary depending on your particular situation. Please contact the IPA if you require further information.

15. Can you provide me with an opportunity/cost analysis of owning a limited licence versus the other options available to me?

A: Given the number of different options and businesses it would not be possible to provide anything other than an estimate based on certain variables. We estimate that for a small practice the cost of a limited license is approximately \$3,000-\$5,000 to obtain and then something similar annually. However, please note, this figure may vary significantly depending on numerous factors. Membership of an external dispute resolution scheme (we recommend the Financial Ombudsman Service) is \$500-\$1,000. The time cost and opportunity cost must also be added, raising the total cost even more. Please also refer to various presentations by the IPA which set out some of the factors in an opportunity/cost analysis. If you wish to discuss this further then we can put you in contact with our partners.

Refer to:

<https://www.publicaccountants.org.au/resources/financial-services>

<https://www.publicaccountants.org.au/resources/fofa>

AUTHORISED REPRESENTATIVE:

16. All I want is to keep doing what I have been doing, essentially, setting up SMSFs. Is it easier, quicker and cheaper for me to be authorised under an existing licence or to apply and maintain my own licence?

A: This is a major decision and will depend on many factors. You need to consider your particular needs, your practice and your clients. These include: resources, cost, risk, structures, referrals, convenience, ease of implementation, autonomy, support, monitoring and supervision, education and training, practice support and so on.

Risk is a major consideration. With the limited license you bear the risk of compliance with the Corporations Act, which has severe penalties for breaches of the Act. With becoming an AR, the licensee bears the risk. They become responsible for ensuring that you comply under their license and they should support your practice to ensure compliance.

Further, if you want ease of implementation and convenience with technical and practice support then you might prefer to become an AR of an established AFSL holder. Otherwise, you have to do all of this yourself or outsource it or employ someone to do all the compliance work. It is not worth your professional time to do this.

If you value autonomy and don't mind dealing with the compliance requirements then you may prefer to apply for a limited license. You are not compelled to stay with one or the other and there are some members who are considering starting with one and perhaps switching. The IPA is available to assist members in considering their options and making an assessment of their

particular needs and then making an informed decision. This also applies to choosing an AFSL holder as there are vastly different offerings. For example, with fees, some charge low upfront fees but take a percentage of your revenue and/or charge for every item such as reviewing documents, providing research, providing para-planning services and so on. The IPA's partners charge a flat fee which can be deferred with flexible payment options and is paid monthly in arrears.

You should also bear in mind that your choice will also depend on what type of advice and services you wish to offer your clients (both existing and future clients). For instance, if you want to advise on limited recourse borrowing arrangements (LRBAs), contributions strategies or transition to retirement strategies, then the limited license will be insufficient and is too restrictive. It was designed to include fairly basic or essential services, including whether an SMSF is appropriate, setting it up, advising on general and life insurance, basic deposit products and simple managed investment schemes.

17. If I don't have the time and resources to worry about getting my own licence and instead wish to become authorised through an existing licensee, how do I choose a licensee, preferably one which understands accountants.

A: There are many factors to consider when choosing a licensee (refer to the IPA website for a list of considerations). We suggest that you do as much research as possible and speak to as many licensees as possible. Some are aligned to or owned by institutions and offer scale, a larger range of resources and in some cases may be a household name. Others are non-aligned or 'independent' but may not necessarily have the scale to cross-subsidise fees. Often there is a trade-off and you have to decide which features you value the most. You should also consider cultural fit with your firm and clients. We also consider reputational risk to be an important consideration.

You may wish to consider a range of licensees including small boutique ones right through to the licensees of large institutions and everything in between. It is important to note that some of the larger institutions have multiple licensees to suit different types of clients and practices. For example, with the IPA's partner, SMSF Advice, this is a licensee which has been specifically established for accountants only and is quite small in number of ARs but has the support and resources of AMP (since buying AXA).

Also, accountants who become ARs under the first two levels of licensing with the IPA's partners are not authorised and not permitted to recommend or sell products nor do they have sales goals. They develop strategies or advice and then pass onto a financial planner if product recommendations are required.

18. Does the IPA have preferred partners for members wishing to become ARs?

A: Yes, the IPA has preferred partners. The IPA has gone to tender twice to select the most suitable partners across a wide range of criteria. Cost was only one criterion. Value for money was more important and we suggest that members look beyond just price and carefully assess and compare what they get for their money. The IPA's preferred partners are:

SMSF Advice (owned by AMP) www.smsfadvise.com.au
Capstone Financial Planning www.capstonefp.com.au | Portal for IPA members: <http://ipa-capstonefp.com.au>

www.publicaccountants.org.au/resources/financial-services

19. I have no intention or desire to become a financial planner and I have not had a great experience referring my clients to financial planners. What solution do you propose for my clients who need more than just limited superannuation strategy advice?

A: Your main option is to become an AR. You have to obtain the authorisations which are relevant to the type of advice which you wish to provide. The IPA offers two partners with licensing solutions (refer above). These cover the basic advice which accountants could provide under the exemption plus a bit more. The middle level license allows members to provide strategic advice and the comprehensive license is for full scale advice. Most accountants in our experience seem to prefer the middle level. Only the comprehensive licence enables advisers to recommend products. Otherwise a referral has to be made if products are to be considered.

20. What is the cost of becoming an AR?

A: Different levels of licensing (or authorisation) come at different prices. Entry level is generally \$3,000-\$5,000; middle or strategic level is generally \$10,000-\$12,000; and comprehensive level is generally \$18,000-\$25,000.

Please note that you would only be paying this if you were making a profit from the advice. This is advice which you are currently not able to provide under the accountants' exemption and you should view licensing fees as an investment in your business, not as a cost of doing business.

We estimate that the cost of a limited license is similar to the entry level of being an AR.

21. Can you provide me with case studies and guidance on how I can generate sufficient revenue to more than cover the costs of either starting my own licence or being authorised under an existing licence?

A: Our financial services partners are happy to assist members to develop business plans to recover their costs and improve their business. There are numerous case studies and examples which they can provide. Further material will be provided on the IPA website and the IPA will be conducting workshops and seminars to work through these proposals with members. The IPA has been offering 'transitioning your practice' workshops and offering other practice management services for interested members.

Please let us know if you wish to discuss this further with our partners, as part of your research and information gathering.

REFERRAL ARRANGEMENT:

22. What should I do about setting up a referral arrangement? I don't know any financial planners I can trust.



A: The IPA has entered into a formal arrangement with Shadforth Financial Group (SFG) to provide a referral arrangement to members. SFG planners are salaried and cannot 'take' your clients. IPA members are asked to enter into an agreement with the IPA to ensure the appropriate level of disclosure. The IPA has negotiated a revenue sharing arrangement with SFG, and half of this is passed on to the member. This is not additional revenue, this is taken from the fees which are generated by SFG. This is a standard type of arrangement in the market.

If you enter into a referral arrangement then you cannot give any advice to your client. If a client asks you whether they should set up an SMSF, you will not be able to tell them what you think. The IPA is preparing guidance material and disclaimers for members who enter into referral arrangements.

For more information refer to the IPA website:

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TIMING: ACT NOW

23. What is the timing on all this and how long will it take?

A: We advise members that while the accountants' exemption will stay in place until 30 June 2016 they should consider their position and make a decision as soon as possible. Whether you choose to become an AR or apply for a limited license you will need to prepare, starting with attaining RG 146 qualifications. You will need to put other resources and management processes into place. And depending on the option you choose, you will have to wait for either ASIC or your preferred licensee to process your application and formalise the outcome. Given all of this, we strongly recommend that members should act immediately. It can take 3-6 months to complete the limited license process and becoming an AR can also take weeks. There will undoubtedly be a last minute rush which it is best to avoid.

ASIC has already warned that any applications lodged after 1 March 2016 risk not being processed in time for the 30 June 2016 deadline.

24. If I wait, does this put me at risk of prosecution by ASIC?

A: Yes, giving unlicensed financial advice is a criminal offence.

25. I'm still confused, I need more information. Is there someone I can talk to?

A: Please contact either Vicki Stylianou at vicki.stylianou@publicaccountants.org.au or on mob. 0419 942 733 or Andrew Best at Andrew.best@publicaccountants.org.au or on 03 8665 3148. You can also contact any of our financial service partners, who can provide information on a no-obligation basis. Their details are listed on the IPA website or contact Vicki Stylianou for details.

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