

14 September 2012

Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: strongersuper@treasury.gov.au

Dear Sir/Madam,

Re: Administrative consequences and penalties for trustees of SMSFs

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

This exposure draft ("the ED") provides for administrative consequences for contraventions of the *Superannuation Industry (Supervision) Act 1993 (Cth)* ("the SIS Act") and the *Superannuation Industry (Supervision) Regulations 1994* ("Regulations") by either individual trustees of SMSFs, or directors of corporate trustees of SMSFs (collectively known as "SMSF trustees" throughout this submission). It provides the Regulator with powers to impose rectification and education directions, as well as administrative penalties for certain contraventions of the SIS Act. These new powers, in conjunction with existing powers are designed to give more flexibility for Regulators when dealing with non-compliance of the law.

AIST broadly supports the rectification and education directions in this ED. AIST agrees that there should be education provisions in place to educate SMSF trustees when they have contravened the SIS Act and Regulations; however it has long been AIST's position that education requirements for trustees should go further. We believe that education should extend to SMSF trustees on establishment and should not be limited to contraventions of the SIS Act and Regulations. Educating prospective SMSF trustees should significantly reduce the risk of contraventions occurring. Although we are aware that this is outside the scope of this measure, as a registered training organisation, AIST also objects to the very notion that education should be considered to be a punishment.

Notwithstanding, AIST approves of the administrative provisions contained in the ED.

Cost of education

AIST has concerns over the wording in the proposed sections 161 and 162. Section 161(2)(b) states that no fees will be paid by persons who undertake courses in compliance with educational directions. However, section 162 suggests that none of the costs incurred by undertaking a course be paid or reimbursed from the assets of the fund.

Similarly, the Explanatory Memorandum (“the EM”) indicates that there will be no costs associated with undertaking a course (1.17). However, it also states that all incidental costs (e.g. airfare, internet bills for an online course) should be paid for by the contravener and not out of SMSF assets. AIST supports the principle that any additional costs associated with training be paid for by contraveners and not out of SMSF assets.

We recommend that the proposed sections 161 and 162 be re-worded to increase certainty regarding the costs associated with respect to educational directions.

AIST recommends that the proposed sections be re-worded as follows (our changes are in **bold type**):

161 Approval of courses of education

(1) The Regulator may, in writing, approve one or more courses of education for the purposes of giving education directions.

(2) A course approved under subsection (1):

(a) may be provided by the Regulator or by another entity; and

*(b) must be a **course for which no fees are provided at no charge charged** in respect of persons who undertake the course in compliance with education directions.*

(3) An approval under subsection (1) is not a legislative instrument.

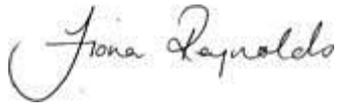
162 Costs of participating in a course of education

Notwithstanding that any course provided under subsection 161(2) will be provided at no charge, if a person undertakes a course of education in compliance with an education direction, the person must ensure that **any other none-of-the costs associated with of** undertaking the course are **neither paid nor** reimbursed from the assets of the fund in relation to which the education direction was given.

AIST supports all other provisions in this ED.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3800 or rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink that reads 'Fiona Reynolds'.

Fiona Reynolds
Chief Executive Officer