



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

12 October 2017

Tax Practitioners Board  
GPO Box 1620  
SYDNEY NSW 2001

Email: [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au)

Dear Sir / Madam

### TPB(PN)D38/2017: Outsourcing, offshoring and the Code of Professional Conduct

The Financial Planning Association of Australia welcomes the opportunity to provide feedback on the Exposure Draft TPB practice note TPB(PN)D38/2017: Outsourcing, offshoring and the Code of Professional Conduct.

The FPA acknowledges efforts to clarify how the proposed requirements may apply to tax (financial) advisers who are also licenced under the Corporations Act. The following recommendations may serve to enhance the guidance, provide greater certainty for registered practitioners who provide tax (financial) advice services, and ensure greater consistency with the Corporations Act requirements for licensees.

#### Which registered tax (financial) adviser?

The Australian Financial Services Licensing regime in the Corporations Act has resulted in a diverse range of business models operating in the financial planning profession, for example:

- Large licensees will have a large number of financial planning practices (small businesses) located across Australia operating under one license; some large licensees have both employed planners and authorised representatives operating under their license.
- Corporate authorised representatives (CAR) are authorised under another entity's licence and employ planners to provide advice under their corporate authorised representative status. A CAR may be a subsidiary of the licensee or an entity that is separate and independent from the licensee.
- Small or boutique licensees are often one or two financial planners operating a small business under their own license
- Authorised representatives are commonly sole traders operating a small financial planning business under the license of a large or medium licensee.
- Employed planners

While the financial advice relationship is between the client and the individual financial planner professional who must meet legal obligations for the provision of the advice, the corporate authorised representative (CAR) and/or the licensee is legally responsible for the advice and the legal 'owner' of the client engagement. The licensee and/or CAR must also ensure the entity and its representatives are competent to provide financial advice under its licence authorisations, control and supervision requirements are adhered to, and the advice provided to retail clients meets the minimum requirements set in the law.



One of the benefits of being an authorised representative are the support services the CAR and/or licensee provides which could include compliance, record keeping, paraplanning and SOA preparation, fintech tools, research (including product research services and Approved Product Lists), training, and regulatory registrations and reporting, for example. Licensees may also provide some services to their CARs.

The Tax Agent Services regime requires, in most circumstances, the licensee, CAR and authorised representative to be registered with the TPB as a tax (financial) adviser or tax agent. However the services provided by CARs and licensees to their authorised representatives fall under the proposed definitions of outsourcing and offshoring in the Exposure Draft. Under these definitions, the financial planner who has the relationship with the client would be viewed as outsourcing such services to their licensee or CAR. Similarly, the licensee and CAR would be outsourcing the provision of the tax (financial) advice service to their authorised representatives.

#### Recommendation

To provide greater clarity and certainty for industry the FPA recommends the Practice Note include specific examples of how the TPB's outsourcing and offshoring policy definitions and requirements would apply to the contractual arrangements between licensees, corporate authorised representatives (CAR) and authorised representatives who provide tax (financial) advice services.

#### **What is a third party?**

Third party is broadly defined in footnote 2 as “... a *third party* means any entity other than the client legal entity and the registered tax practitioner legal entity”.

Paragraph 17 provides specific examples of third parties in relation to tax (financial) advisers: “*Examples of third parties can include...subject to relevant contractual arrangements, other AFS licensees, authorised representatives, para-planners, product providers and advisers, insurance brokers, and technical teams and advisers*”. However under the current structure of the Exposure Draft, this definition relates to TASA Code item 6 only.

#### Recommendations

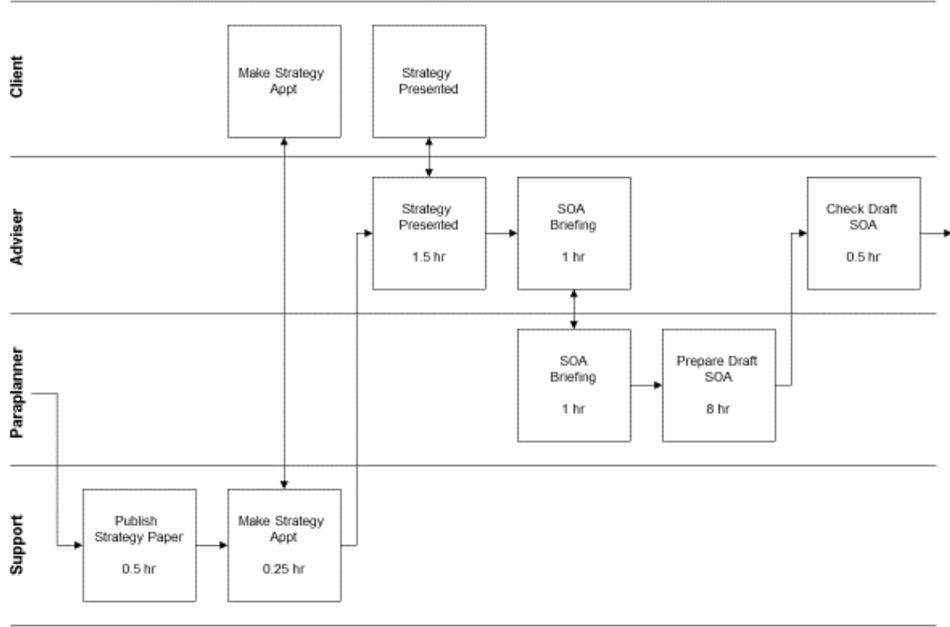
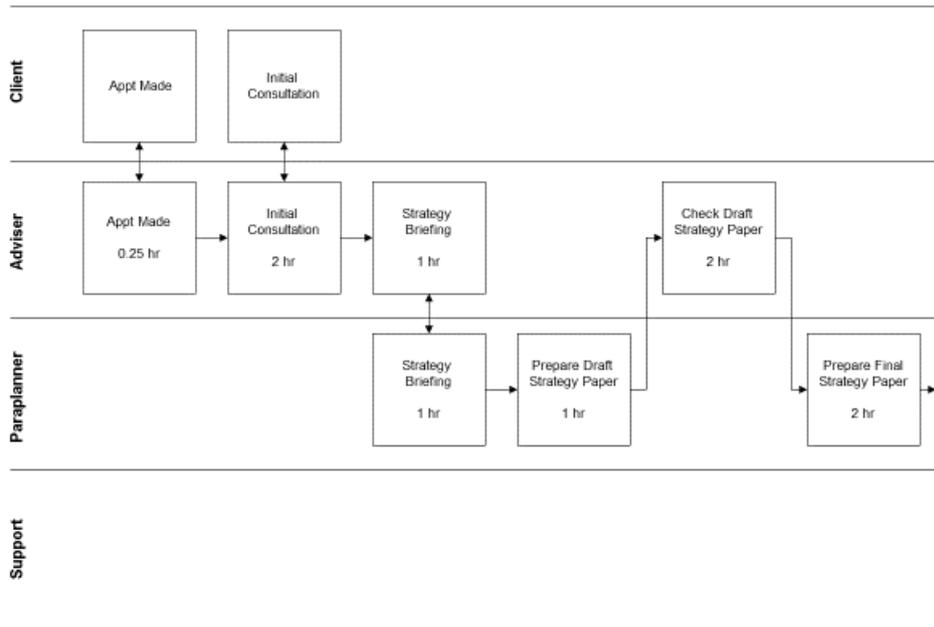
- We suggest greater clarity is required as to who the client legal entity and registered tax practitioner legal entity are in relation to the provision of tax (financial) advice services and the licensing regime under the Corporations Act.
- Insert a new section “What is a third party?” detailing a clear definition of third party with examples relating to each tax agent service, particularly in relation to licensees, CARs and authorised representatives who provide a tax (financial) advice service. To help practitioners to identify third parties, this section should immediately follow the definition of outsourcing and offshoring (para 3 – 10), prior to outlining the Code obligations for outsourcing and offshoring.

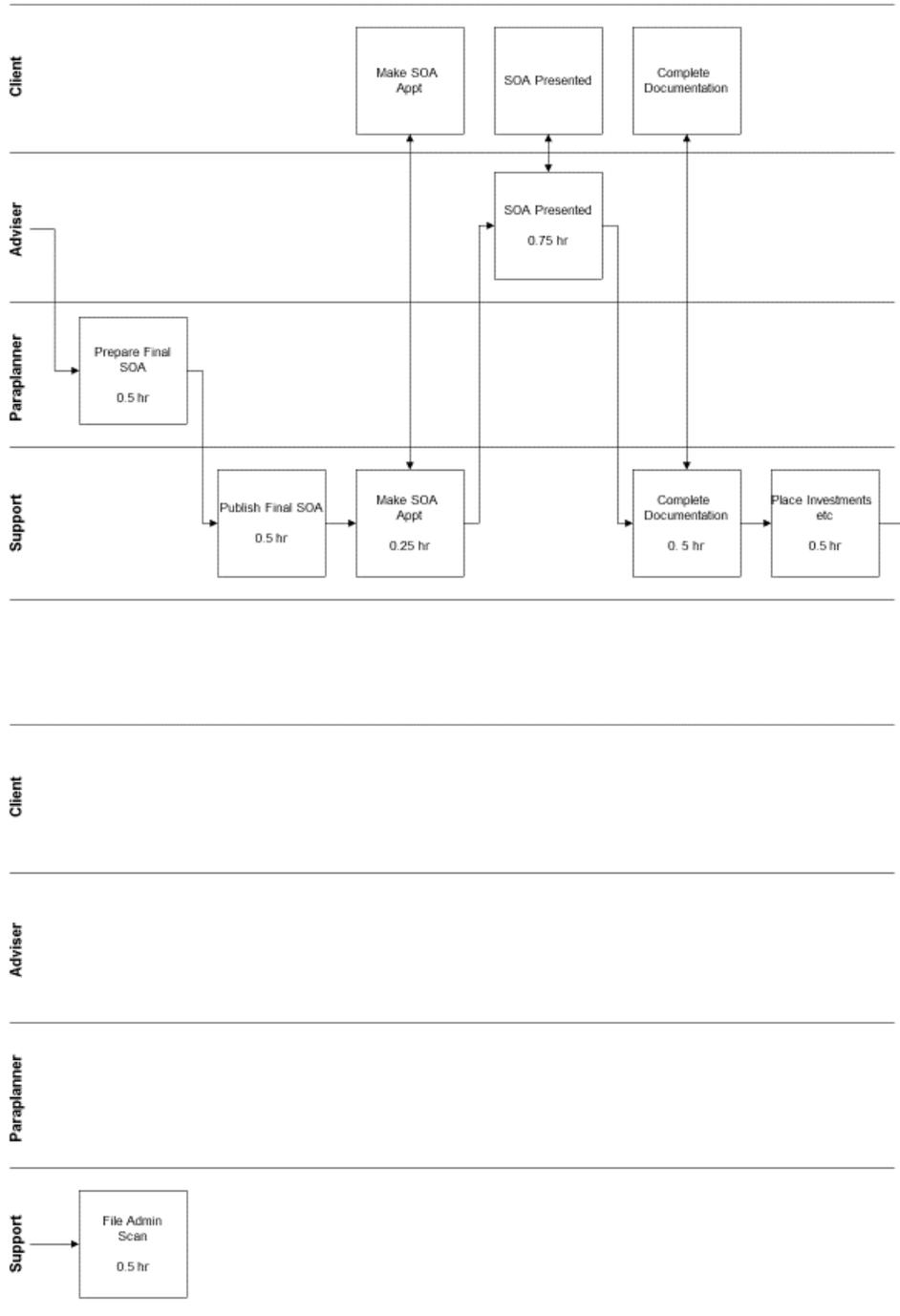


### What is outsourcing and offshoring?

As demonstrated by the following diagram, the provision of tax (financial) advice services usually involves various parties working together to provide quality and affordable advice.

#### Comprehensive Plan Advice Process





When considering this process it is important to understand the different roles each party plays in the provision of financial advice as well as other auxiliary third parties.

- Financial planner / adviser – Financial planners work with clients to identify and consider each client’s circumstances including their needs, goals and priorities; the values, attitudes, expectations and financial experiences of their client, particularly in relation to risk tolerance; their client’s ability, both financial and in relation to their level of comfort, to tolerate loss of capital; their client’s financial planning needs across the short term, medium term and long term; and non-monetary matters that



may affect their client's financial needs and goals. Based on this information, a financial planner will develop a financial plan with appropriate strategies that their client is comfortable with, to help them work towards their life goals. A financial planner's responsibilities include making clear recommendations, outlining the risks involved and communicating any possible strengths or weaknesses in the plan. For those receiving long term financial planning, the financial planner keeps clients updated with changes that could influence their investments, such as market slumps, provides regular reviews of the financial plan and works with clients to regularly evaluate client's needs, financial goals and strategies.

- Paraplanner – provides an administrative support service. Specifically a paraplanner works with a financial planner and completes a number of the non-client facing tasks such as preparing client disclosure documents including the Statement of Advice and other financial planning documents, conduct and analyse research, and financial modelling. Financial planners are technically able to complete Statement of Advice documents and utilise financial modelling software however utilising the skills of paraplanning support delivers business and service delivery efficiencies for both planners and clients.
- Support – relates to administrative office support functions generally provided by an office assistant
- IT support – Financial planners utilise IT systems, software and support services to improve business efficiencies and services for clients.
- Compliance consultants - Many financial planning licensees use compliance consultancy services to assist their business with their legal licensing and reporting obligations in relation to the provision of financial advice under the Corporations Act, Anti Money Laundering and Counter Terrorism Financing Act, Privacy Act, as well as the Tax Agent Services Act. ASIC accepts this approach as the Regulator expects that "...the area responsible for compliance: (a) is independent enough to do its job properly; (b) has adequate staff, resources and systems; and (c) has access to relevant records. It may be appropriate for [licensees] to have a separate compliance function (which might be outsourced to a third party)."<sup>1</sup>

Under the Corporations Act, licensees that outsource functions that relate to their AFS licence remain responsible for complying with their obligations as a licensee<sup>2</sup>. ASIC "...recognise that many licensees outsource functions that relate to their AFS licence, including administrative or operational functions. Outsourcing might be to external parties or other entities within a corporate group. Functions that are commonly outsourced include:

- a) information technology (IT) systems for storing records in relation to the provision of financial services;
- b) recruitment and training of representatives;
- c) research on financial products in relation to which financial services are provided;
- d) the operation of call centres;
- e) periodic compliance reviews of representatives; and
- f) unit pricing."<sup>3</sup>

<sup>1</sup> Regulatory Guide 104: Licensing: Meeting the general obligations, RG 104.47 - RG104.48

<sup>2</sup> Corporations Act s769B

<sup>3</sup> Regulatory Guide 104: Licensing: Meeting the general obligations, RG 104.30



Importantly, if a licensee outsources functions that relate to their AFS licence, ASIC expects that the licensee:

- a) will have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
- b) can and will monitor the ongoing performance of service providers; and
- c) will appropriately deal with any actions by service providers that breach service level agreements or the licensee's obligations as a licensee.<sup>4</sup>

We note that ASIC's monitoring and supervision requirements apply to any person who acts on behalf of the licensee including "... any third-party service providers use[d] to provide functions relating to [a] licence".<sup>5</sup>

However, "the level of monitoring and supervision representatives need will depend on the nature, scale and complexity of [the] business (e.g. the function representatives perform and whether [the] business operates from one or a number of locations)". ASIC does not think that a licensee needs to scrutinise every activity of its representatives. However the Regulator expects licensees will have measures that allow them to determine whether representatives are complying with the financial services laws (including licence conditions); and include a robust mechanism for remedying any breaches.<sup>6</sup>

Due to the all-encompassing definitions and examples of outsourcing and offshoring proposed in the Exposure Draft, the TPB requirements go significantly further than those required by ASIC under the Corporations law. Of particular concern are the supervision and control arrangements and their application to unregistered third parties, especially in relation to the provision of tax (financial) advice services.

We suggest the TPB policy should be consistent with other laws governing the provision of financial services.

The FPA supports the outsourcing and offshoring definition applying to third parties who provide a tax agent or tax (financial) advice service on behalf of the registered entity. For example, if a tax (financial) adviser engages the services of a specialist in life risk advice (a TFA service) to assist with their client's insurances; or in relation to the arrangements between licensees, CARs and authorised and employed representatives who deliver the tax (financial) advice service to consumers.

We are concerns about the requirements proposed in the Exposure Draft applying to the outsourcing and offshoring of auxiliary services to third parties, particularly the practicality of the detailed supervision and control obligations under Code item 7.

#### Recommendation

- The definitions of outsourcing and offshoring should be restricted to entities that provide a tax agent, BAS agent or tax (financial) advice service only. The TPB adopt a consistent approach to ASIC for auxiliary functions that are outsourced to third parties by tax (financial) advisers, to better align the outsourcing requirements to the functions that auxiliary service providers perform.
- Joint regulatory guidance developed by ASIC and the TPB in relation to the provision of tax (financial) advice services, should be also be considered.

<sup>4</sup> Regulatory Guide 104: Licensing: Meeting the general obligations, RG 104.33

<sup>5</sup> Regulatory Guide 104: Licensing: Meeting the general obligations, RG 104.68

<sup>6</sup> Regulatory Guide 104: Licensing: Meeting the general obligations, RG 104.69 - RG 104.70



## Privacy Act

The FPA supports the inclusion of references to Privacy Act obligations and the Australian Privacy Principles. We would suggest specific reference to the following relevant APPs would strengthen the TPB Practice Note:

- Australian Privacy Principle 6 — use or disclosure of personal information
- Australian Privacy Principle 8 — cross-border disclosure of personal information

Joint regulatory guidance should also be considered. The recent publication of AUSTRAC's Privacy Guidance, developed by AUSTRAC with the Information Officer, is a good example of the benefits of joint guidance.

We would welcome the opportunity to discuss the matters raised in our submission with you further. If you have any queries, please do not hesitate to contact me on 02 9220 4500 or [heather.mcevoy@fpa.com.au](mailto:heather.mcevoy@fpa.com.au).

Yours sincerely

**Heather McEvoy**

*Policy Manager*

Financial Planning Association of Australia<sup>7</sup>

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<sup>77</sup> The Financial Planning Association (FPA) has more than 13,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by Graham McDonald (lawyer), deals with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules required of professional financial planning practices. This is being exported to 26 member countries and 170,000 CFP practitioners of the FPSB.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional designations, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board