



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

4 July 2018

Statutory Declarations Review Team
Courts Section
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

Email: statdec.review@ag.gov.au

Dear Sir/Madam

The Financial Planning Association (FPA) welcomes the opportunity to provide additional feedback to the Statutory Declarations Review on its proposed inclusion of financial planners/advisers under the definition of 'Tax Practitioners' as a new category of authorised witness under Schedule 2, Part 1 of the Regulations.

The FPA greatly appreciates the Attorney-General's Department's willingness to consider the inclusion of financial planners/advisers under Schedule 2 of the Regulations. However the FPA has some concerns about the Department's proposal.

As stated in your email, the Department proposes to include financial planners/advisers under the definition of 'Tax Practitioners' as financial advisers, tax agents and BAS agents, are all required to be registered with the Tax Practitioners Board (TPB). The Department stated that:

- Tax Practitioners are required to be licensed or registered to practise under a Commonwealth Law;
- Tax Practitioners must hold a tertiary qualification; and
- Tax Practitioners are subject to a Code of Conduct or Ethics.

While we support the role of the TPB, including financial planners/advisers in the Regulations under a definition of 'Tax Practitioner' and registration with the TPB is problematic as there are categories of financial advisers/planners that are not required to be registered with the TPB.

For example, sections 20-5(2)(c)(iii) and 20-5(3)(d)(iii) of the Tax Agent Services Act allow registration requirements to be met under the TPB's sufficient number requirements. This means that an Australian Financial Services Licensee (AFSL) under the Corporations Act does not have to register all its financial advice representatives with the TPB, just a sufficient number for the company to provide tax (financial) advice services to a competent standard, and to carry out supervisory arrangements of its representatives. The sufficient number requirements mean some financial planners/advisers operate under their Licensee's TPB registration and are not required by their Licensee to be individually registered with the TPB.

Under the Department's proposal, these financial planners/advisers would therefore not qualify to witness statutory declarations. This would provide an unfair advantage to some financial planners/advisers over others.



We are also very concerned that including financial planners/advisers as a sub-category of Tax Practitioner would confuse consumers. It also appears contrary to Government's efforts to clarify in the law the role of financial planners/advisers in order to protect consumers.

The Government specifically changed the law to enshrine the terms "financial planner" and "financial adviser" in the Corporations Act to ensure individuals who use, or purport to use, these titles have met and continue to meet the stringent legal requirements for providing financial advice. The main policy objective of this change was to protect consumers and ensure consumers understood the meaning of these terms and the services they could expect to receive from a professional using these terms; and for consumers to be reassured that individuals using such terms meet the education and legal requirements to provide financial advice.

The general public have no understanding that financial planners/advisers are a sub-category of 'Tax Practitioner' as they are known as financial planners or financial advisers, not accountants or income tax professionals (who are commonly known as 'Tax Practitioners'). It may therefore not be apparent that financial planners/advisers are permitted to witness such documents. This may result in Statutory Declarations that have been authorised by financial planners/advisers being rejected by the general public who do understand that financial planners/advisers are permitted to witness such documents as a sub-category of 'Tax Practitioner'. This would cause detriment, inconvenience and additional expense for consumers to resolve.

However we believe these issues are avoidable.

Financial advisers/planners are regulated under ASIC and to be legally permitted to provide any type of financial advice to retail clients the Corporations Act requires:

1. Financial planners/advisers to be licensed
2. Financial planners/advisers to be listed on ASIC's Financial Adviser Register.
3. Financial planners/advisers to hold a minimum of a Bachelor degree - higher than that of a Tax Practitioner under the Tax Agent Service Act (which allows an individual to register with the TPB based on work experience)
4. Financial planners/advisers to pass an exam to be licensed to provide financial advice to retail clients
5. New financial planners/advisers to complete the requirements of a professional year
6. Financial planners/advisers to maintain a minimum standard of CPD, and
7. Financial planners/advisers to comply with a Code of Ethics.

These requirements are set in the law, are specific to financial advisers/planners, and go further than the requirements for 'Tax Practitioners' under the Tax Agent Services Act.

Financial planners/advisers are subject to the oversight of eight different Government regulators and agencies; have a statutory obligation to act in the best interest of their clients; and must meet onerous licensing requirements, disclosure obligations, conflict of interest obligations, and strict adherence to the provisions of personal financial advice, under the Corporations Act.

The FPA ask the Department to reconsider its proposal to cover financial planners/advisers as a sub-category of 'Tax Practitioner'. We encourage the Department to consider including the legally defined terms in the Corporations Act of "financial planner" and "financial adviser" as a new category of authorised witness under Schedule 2, Part 1 of the Regulations.



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

While we encourage the Department to endorse our proposal above, should it be decided to include 'Tax Practitioner' only in the Schedule, the FPA recommends:

- consideration of the term *Registered* Tax Practitioner, and
- the inclusion of tax (financial) advisers.

The FPA would welcome the opportunity to discuss with the Department the issues raised in our submission.

If you have any questions, please contact me on heather.mcevoy@fpa.com.au 02 9220 4500.

Yours sincerely

Heather McEvoy
Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 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 superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing 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 that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- 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 bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.