



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

2019-20 Budget submission

Financial Planning Association of Australia

February 2019

Contents

Introduction	1
Executive Summary	2
Recommendations	5
Accessibility of Financial Advice.....	5
Tax deductible financial advice.....	7
Pensions advice allowance.....	8
Protecting Consumers.....	10
Renaming “general advice”.....	10
General advice warning.....	10
Retail, sophisticated and wholesale investors/clients.....	12
Professional privilege for financial advisers	13
Increasing financial capability	14
Promoting competition in the financial services industry	15
Supporting the professionalisation of financial planning	17
Streamlining interactions with Centrelink and the ATO	17
Supporting further education for financial planners.....	17
Improving Australia’s retirement system.....	19
Superannuation	19
Payments for Paid Parental Leave and carer’s leave	19
Low Income Superannuation Contribution Scheme.....	20
Insurance	21
Portability of insurance.....	21
Death and total permanent disability benefits.....	21
Consistency in income testing	22
Reporting on the gendered nature of the retirement income gap	23

Introduction

Financial planners provide valuable advice that is important for the long-term economic welfare of Australians. Around 2.3 million Australians¹ access financial advice from 30,000 qualified financial planners. The Financial Planning Association of Australia represents its membership of 14,000 financial planners.

The financial planning profession is uniquely positioned to help Australians build their wealth and plan for a financially independent retirement. Quality financial advice can have a transformative effect on a person's life. It can reduce financial and social exclusion, help a person navigate the financial system and learn how to better manage their finances.

Financial planners can help people change their financial habits by setting proper budgets, plan to pay off debt, organise their finances and build long-term wealth. Financial planners improve the financial capability of their clients, enabling them to make informed judgments about the use and management of money throughout their lives.

The demand for financial advice is increasing. Financial markets and products are getting more complex and diverse. Tax and superannuation laws continue to evolve. It is increasingly difficult for the average person to effectively weigh up their options and make astute, strategic decisions.

Australians are also demanding more from their retirement. We are living longer and spending more time in the retirement phase of life, and we have higher expectations about the standard of living we will enjoy. Long-term demographic and economic changes are placing a strain on traditional retirement supports such as the aged pension, aged care and health care, giving governments a challenge in managing their budgets.

The advice provided by financial planners will take on more significance as Australians attempt to navigate these challenges and the government looks to support the long term integrity of the Federal Budget.

The financial planning profession is also changing. Australians rightly expect their financial planner to have the right qualifications and skills and to put their interests first. Financial planners are being held to higher standards, needing a minimum degree-level education, to have passed a professional exam and to comply with a Code of Ethics.

Like many professions, financial planners are adapting to new technology which is changing the way they operate. A focus on upfront and transparent service fees is changing the way many financial planners do business. The financial planning profession we see in five years times will be very different to the profession we see today.

¹ Royal Commission into Misconduct

Executive Summary

The Federal Government should promote initiatives that enhance the ability of today's working population to save and prepare for retirement and maintain the integrity of the superannuation system to ensure older Australians are able to retire with dignity.

A key part of this goal is to improve access for Australians to professional financial advice to help them navigate their financial challenges. This is particularly important for those who have not traditionally been able to access or afford advice, including women and people on lower incomes. To achieve this goal, the Financial Planning Association of Australia is recommending the federal Government adopt 16 recommendations across the following themes.

Enhancing the ability of all Australians to access financial advice to assist them to plan and save for their future.

Having a financial plan is important for all Australians, regardless of age, gender or income level. The cost of financial advice is a barrier to many people, particularly those on lower incomes. Yet these are often the people who would most benefit from the counsel of a qualified financial planner.

At the same time, the cost of operating as a financial planner is increasing due to more comprehensive regulation, higher standards for education and training, and the move towards user pays regulator fee models. These costs are ultimately passed on to consumers in the form of higher fees.

Providing a tax deduction for costs associated with the creation of an initial financial plan would ensure that financial advice did not become unaffordable for many Australians. It would assist all working-age Australians to access financial advice, particularly where they had not done so before, and would bring it into line with fees for advice on existing investments which are already tax deductible (recommendation 1).

Giving individuals a limited capacity to access their superannuation to pay for financial advice, similar the Pensions Advice Allowance scheme that was recently introduced in the UK, would ensure lower-income Australians are not excluded from the benefits of getting qualified financial advice (recommendation 2).

Continuing to protect consumers of financial advice by providing appropriate safeguards and increasing financial capability.

The recent focus for the financial planning profession has been on increasing standards and regulatory oversight to ensure consumers can continue to have confidence in the advice they are receiving. While these reforms are still being implemented, there are some additional steps that would provide additional protection for consumers.

There is some evidence that consumers are confused by the distinction between "general advice" and "personal advice". This confusion can lead to a consumer mistakenly believing they are receiving advice that reflects their individual objectives, financial situation and needs, when they are receiving general information about financial products that may or may not be appropriate to them. To prevent this potential confusion, the FPA supports renaming

“general advice” in the *Corporations Act 2001* to “general or product information” as recommended by the Productivity Commission (recommendation 3). To ensure consumers are properly aware of the different types of advice they could seek, ASIC should also amend the General Advice Warning in Regulatory Guide 244 to require individuals providing general product information to inform the consumer that they should consider whether they would benefit from personal advice (recommendation 4).

The Government should review the definitions of retail, sophisticated and wholesale investors in the *Corporations Act 2001* to ensure investors are treated in a manner appropriate to their knowledge of the financial system and ability to engage with and manage risks (recommendation 5).

Legal professional privilege should be available to individuals seeking tax advice from qualified financial planners, as it is for those seeking the same advice from lawyers and accountants (recommendation 6).

The Government should review its efforts to promote financial literacy and coordinate a specific strategy to address financial literacy among women (recommendation 7).

Finally, the Government should address the impact of regulator decisions on competition in the financial services industry by adding the Australian Competition and Consumer Commission to the Council of Financial Regulators (recommendation 8).

Supporting the ongoing professionalisation of the financial planning sector and building on the recent reforms to education and ethical standards.

Since 1 January 2019, financial planners are subject to new requirements that set a minimum education and training standard. From 1 January 2020, they will also have a new Code of Ethics and the oversight of a Code Monitoring Body. The FPA has been a long-term supporter of increased standards for financial planners and wholeheartedly embraces these changes.

To assist financial planners to serve their clients effectively, the Government should make changes to allow financial planners to act on behalf of their clients when dealing with Commonwealth agencies such as Centrelink and the ATO (recommendation 9).

Between now and 2024, all financial planners will be required to undertake some form of formal education to meet the new education and training standards. To ensure financial planners can meet the cost of this new requirement, the Government should review the support available for planners and extend Commonwealth Supported Places to postgraduate courses that are part of the education and training standard (recommendation 10).

Improving Australia’s retirement system by addressing gaps in retirement savings and ensuring consistent and fair tax treatments.

As informed observers of Australia’s retirement system, financial planners also have a responsibility to suggest improvements that will give all Australians the tools to save and prepare for their retirement.

The superannuation system should be equitable. It should not disadvantage Australians that take time off work to raise children, care for family members or recover from a workplace injury by denying them superannuation guarantee payments during this period. The

Government should investigate how and when to extend these payments to paid parental leave, carers leave and the workplace health and safety framework at the earliest opportunity (recommendation 11).

Australians on lower incomes continue to find it difficult to save for their retirement. A Low Income Superannuation Contribution Scheme would provide a boost to the retirement savings of many Australians and, in turn, reduce future pressure on the age pension (recommendation 12).

To reduce the number of Australians holding multiple superannuation accounts, the Government should investigate measures to provide for the portability of insurance between superannuation funds (recommendation 13).

The Government should adjust insurance and tax laws to ensure there is consistency between insurance access from within and outside of superannuation funds (recommendation 14). Consistent income testing assessment across all retirement income streams would encourage Australians to grow their superannuation and plan to be self-funded in retirement (recommendation 15).

Finally, the Government should also consider collecting data on the gendered nature of the retirement income gap to allow it to better address this issue in future policy work (recommendation 16).

Recommendations

Recommendation 1:

The FPA recommends the Government provides a tax deduction for fees associated with the preparation of an initial financial plan, and for the ongoing management fees and annual retainer fees of financial advisers.

Recommendation 2:

The FPA recommends the Government consider whether a Pensions Advice Allowance, like that which has been adopted by the UK Government, would assist Australians in accessing qualified financial advice.

Recommendation 3:

The FPA recommends the Government implements the Productivity Commission's recommendation 10.2 to rename the term "general advice" in the *Corporations Act 2001* and only use the term "advice" in association with personal advice.

Recommendation 4:

The FPA recommends the Government amends ASIC Regulatory Guidance 244 to improve the general advice warning and ensure consumers are properly informed that they are not receiving personal advice and that their interests have not been considered.

Recommendation 5:

The FPA recommends the Government reviews the effectiveness and value of the retail, sophisticated and wholesale investor/client definitions in the *Corporations Act 2001*.

Recommendation 6:

The FPA recommends the Government extends legal professional privilege in define circumstances to all practitioners relevant to the areas of law they provide advice in (i.e. taxation, superannuation, social security).

Recommendation 7:

The FPA recommends the Government commits to providing an ongoing budget appropriation for its new financial capability body.

Recommendation 8:

The FPA recommends the Government agrees to add the Australian Competition and Consumer Commission to the Council of Financial Regulators.

Recommendation 9:

The FPA recommends the Government pursue measures to ensure financial planners can efficiently interact with government agencies on behalf of their clients, including:

- a) for Centrelink and Department of Veterans' Affairs to allow a financial planner to request and update client details and access full income and asset statements online; and
- b) for the Tax Practitioners Board and ATO to allow a financial planner to:
 - i. apply for an ABN and TFN on behalf of clients who wish to establish a self-managed super fund; and
 - ii. contact the ATO on behalf of clients in relation to superannuation balances, contributions, and additional superannuation tax determinations.

Recommendation 10:

The FPA recommends that the Government review the support that is available to financial planners who are completing formal education mandated by FASEA and consider providing support through Commonwealth Supported Places.

Recommendation 11:

The FPA recommends the Government legislate to require the payment of superannuation on Paid Parental Leave and carer's leave.

Recommendation 12:

The FPA recommends the Government provides an enhanced superannuation co-contribution scheme to support Australians on low incomes to save for their retirement.

Recommendation 13:

The FPA recommends the Government investigate options to provide for portability of insurance between superannuation accounts.

Recommendation 14:

The FPA recommends the Government remove all tax on all death benefits paid from superannuation regardless of the beneficiary, to mirror arrangements for personally held insurances. As a minimum, the Government should remove the untaxed element calculations for all death benefits and remove all tax on death benefits paid to adult children. The FPA further recommends the Government standardise the definition of beneficiary across the superannuation and taxation regimes to remove inconsistent treatment.

Recommendation 15:

The FPA recommends the Government:

- adopt a consistent income testing assessment across all retirement income streams;
- ensure consistent outcomes for income and asset means testing in retirement;
- commit to reversing the amendments contained in Schedule 11 of the *Social Services and Other Legislation Amendment Act 2013*; and
- allow portability of pre-1 January 2015 income testing treatment.

Recommendation 16:

The FPA recommends the Government request that the Federal Sex Discrimination Commissioner monitor and report on the gendered nature of the retirement income gap, including sufficiency of the age pension, with a view to providing advice to the Government on how to address the gap.

Accessibility of Financial Advice

Tax deductible financial advice

Tax treatments are applied to financial advice in a variety of ways depending on the nature of the advice and when it is provided. The Australian Taxation Office (ATO) has declared that a fee for service arrangement for the preparation of an initial financial plan is not tax deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

Tax Determination TD 95/60 differentiates between a fee for drawing up an initial financial plan and a management fee or annual retainer fee. The determination states that the expense incurred in drawing up an initial financial plan is not deductible for income tax purposes because the expenditure is not incurred in the course of gaining or producing assessable income, but rather is an expense that is associated with putting the income earning investments in place.

Taxation Ruling IT39 states that where expenditure is incurred in 'servicing an investment portfolio' it should properly be regarded as being incurred in relation to the management of income producing investments and thus is deductible for income tax purposes. Treating the creation of an initial financial plan differently from ongoing advice provided to service an investment portfolio has a range of negative impacts on the community. The inability to claim a tax deduction for the fees associated with an initial financial plan is a disincentive for people to get professional assistance to help them actively plan, save and secure their financial future.

It acts as a barrier to entry for people who have not previously received financial advice. Research commissioned by the FPA has found that 30 per cent of people who have not used financial advice and do not intend to seek advice in the future have stated that the high cost of advice is a key factor in their decision². These are often the people who would most benefit in getting assistance planning for their future.

The benefits of tax deductions available for ongoing advice predominantly fall to people who can already afford financial advice and have established investment portfolios. These are predominantly people on higher incomes and with higher net wealth.

Increasing access to financial advice for all Australians, including those on lower incomes, will result in a more financially capable community, with individuals more financially literate and better able to support themselves including in retirement³. Access to financial advice also assists Government to fulfil its obligation to address the substantial issues of financial and social exclusion by helping consumers gain access to expertise to help them navigate the financial marketplace and learn how to better manage their finances⁴.

The precedent of tax deductibility of professional fees is already set and allows people to deduct fees paid to registered tax agents, BAS agents and lawyers. Financial planners must

² Investment Trends, 'FPA Member Satisfaction Report' (December 2014)

³ Sunsuper, 2017 Value of Advice Report (October 2017), 24-26

⁴ Ibid., 26

also register with the Tax Practitioners Board and are subject to the provisions of the *Tax Agent Services Act 2009* in line with their accountant peers.

While providing a tax deduction for fees associated with the preparation of an initial financial plan would involve some additional costs to Government, the FPA expects these costs would be significantly outweighed by the long-term benefits. To control the budget impact, the Government could include caps on either the size of the tax deduction or an income cap on those able to receive a deduction.

Recommendation 1:

The FPA recommends the Government provides a tax deduction for fees associated with the preparation of an initial financial plan, and for the ongoing management fees and annual retainer fees of financial advisers.

Pensions advice allowance

All Australians can benefit from receiving professional financial advice to help them actively plan and save for their retirement. However, it can be difficult for individuals on lower incomes to provide upfront payment of fees for financial advice, despite it providing a long-term improvement in their financial position.

This challenge can be addressed in part through the introduction of a Pensions Advice Allowance scheme. The scheme would allow an individual to instruct their superannuation provider, in limited circumstances, to withdraw an amount from the individual's superannuation fund to pay for financial advice on their behalf.

A similar scheme was introduced in the United Kingdom in April 2017 after a recommendation by the UK Government's Financial Advice Market Review. The UK scheme allows consumers to access £500 from their pension account on three separate occasions to get retirement financial advice.

An Australian Pensions Advice Allowance scheme could achieve a similar success in making financial advice available and improving the retirement position of Australians. An Australian scheme should be as simple as possible, minimising the need for major systems changes and making use of existing oversight arrangements. A simple scheme would also encourage superannuation providers and trustees to make the allowance available to their members.

An Australian Pensions Advice Allowance could be limited to up to \$1000 up to three times in an individual's lifetime, allowing access to licensed financial advice in different stages of life (e.g. during the accumulation phase, during the years leading up to retirement, and during retirement). It would be appropriate to include safeguards for people with extremely low superannuation balances for whom withdrawing funds would be unreasonable and represent poor value-for-money.

An Australian Pensions Advice Allowance would also make licensed financial advice access in relation to superannuation and retirement universally available for all Australians, compared to the current limited access, and limited scope intra-fund advice services which are not offered by all superannuation trustees.

Recommendation 2:

The FPA recommends the Government consider whether a Pensions Advice Allowance, like that which has been adopted by the UK Government, would assist Australians in accessing qualified financial advice.

Protecting Consumers

Renaming “general advice”

There is some evidence that consumers can be confused with the phrases “general advice” and “personal advice” as currently defined by the *Corporations Act 2001*. Consumers can mistakenly think that any advice they receive has been tailored to their circumstances and has specifically considered their objectives, financial situation and needs. However, only “personal advice” satisfies this description. “General advice” is more properly described as general information that may or may not be relevant to a consumer’s circumstances.

To remove this potential confusion, the FPA considers that the phrase “advice” should only be used for information that has been tailored to a consumer’s personal circumstances as is currently the case with “personal advice”. “General advice” should be renamed to better reflect its content of general information and ensure that consumers can reliably judge between the two.

The FPA supports the Productivity Commission’s recommendation 10.2:

General advice, as defined in the Corporations Act 2001 (Cth), is a misleading term and should be renamed. Any replacement must ensure that the term ‘advice’ can only be used in association with ‘personal advice’ — that is, advice that takes into consideration personal circumstances.

Consumer testing of alternative terminology is required to ensure that misinterpretation and excessive reliance on this type of information is minimised. Including time for consumer testing and a transition period to enable industry training and adjustment, a new term should be in effect by mid-2020.⁵

This should be a renaming of the term ‘general advice’ only. Licensing and all the other forms of regulation which currently apply to ‘general advice’ should remain in place and apply under the alternative terminology.

Recommendation 3:

The FPA recommends the Government implements the Productivity Commission’s recommendation 10.2 to rename the term “general advice” in the *Corporations Act 2001* and only use the term “advice” in association with personal advice.

General advice warning

It is important that consumers seeking advice about their finances are properly informed about the nature of the advice they are receiving.

Regulatory Guidance (RG) 244 sets out ASIC’s expectations for advisers when giving their clients factual information, general advice, personal advice and scaled advice. While RG 244 is principally aimed at Australian Financial Services (AFS) licensees and their authorised

⁵ June 2018, Competition in the Australian financial system.

representatives, it notes that the Corporations Regulations provide an exemption that allows a financial product issuer to give general advice to a client.

ASIC recommends that, where an adviser is giving general advice, they should take reasonable steps to ensure the client understands that the advice being provided is general advice only and does not take into consideration the client's specific objectives or financial situation.

While this is an important warning, the FPA considers that when clients are receiving general advice they should also be informed that they should consider whether they would benefit from receiving personal advice that reflects their objectives, financial situation and needs.

This additional information would ensure that clients are not mistaken about the nature of the advice they are receiving, and they are given the option of seeking personal advice from a licensed financial planner if they wish.

However, the Productivity Commission's Recommendation 10.2 is not sufficient to address the problems that can arise where financial products are sold under a general advice model. Additional changes are also necessary, including:

- Consumer warning – the current 'general advice' warning under s949A of the *Corporations Act 2001* should be amended to require the warning to clearly state that:
 - o the information does not include any advice in any form;
 - o it does not take account of the consumer's objectives, financial situation or needs;
 - o it is information only and the best interests of the consumer have not been considered in providing the information; and
 - o if the sales representative will be remunerated via a commission or incentive payment for the sale of that product.
- Product obligations - an obligation on product providers to ensure products sold through 'general advice' must be fit for purpose and simple for consumers to understand and assess. This obligation must relate to product design, not just disclosure.
- Product provider 'target market determinations' should include a risk rating for financial products. Target market determinations of products with high risk ratings should be required to include a stronger warning and a recommendation to seek personal financial advice about the product. This could be achieved through regulatory guidance.
- Licensing exemption - the removal of the current licensing exemption for financial product issuers under regulation 7.1.33H.

Recommendation 4:

The FPA recommends the Government amends ASIC Regulatory Guidance 244 to improve the general advice warning and ensure consumers are properly informed that they are not receiving personal advice and that their interests have not been considered.

Retail, sophisticated and wholesale investors/clients

Investors are also treated differently, and subject to different protections, whether they are deemed to be retail clients, sophisticated investors or wholesale clients under the *Corporations Act 2001*. The overarching goal of these definitions is to provide a level of protection to investors that is based on their ability to understand and manage the risks inherent in different financial products.

For example, in various circumstances a retail client has the right to receive a financial services guide, a statement of advice, a product disclosure statement and access to compensation and complaint handling arrangements. These protections are not required for a wholesale client.

However, the FPA questions whether the current definitions of retail, sophisticated and wholesale investor/client remain relevant in the contemporary context and strongly supports a review of the definitions.

There are several difficulties with the retail/sophisticated investor distinction:

- the distinction is based on the wealth of the investor, rather than a qualitative and/or quantitative measure of their financial capability;
- the distinction does not incorporate behavioural elements into the categorisation or basic understanding of how these participants will operate;
- the distinction functions to remove judgement and discretion from financial intermediaries regarding their conduct towards clients with differing degrees of financial capability, and;
- the distinction, when paired with a disclosure-based system of regulation, encourages documentary compliance with little consumer protection benefit or improvement in financial capability or opportunity.

The FPA suggests that the Government adopt an updated concept of the “financial citizen”, as a standard that incorporates the behaviour, capacity, and opportunity of consumers, to guide the engagement between advisers and their clients. When compared with the existing retail/sophisticated investor definitions, this approach would provide a more appropriate level of protection for consumers and offer greater flexibility to the financial services sector as to how institutions manage their relationships with clients.

The FPA has previously proposed a series of reforms to the foundational legal and regulatory concepts which underpin the definition:

- Investor/consumer: consumers could be categorised with respect to the purpose they have engaged with the financial system. In particular, consumers who rely on carrying risk for profit as the basis of their use of the financial system should have different regulatory rights and obligations to users who purchase financial products as consumers.
- Suitability regulation: Suitability regulation may also be appropriate outside of recommending complex products. If financial intermediaries are required to form a judgement about the financial capability of the clients they serve, it will help them to tailor their disclosure obligations to the needs of the client and to reasonably adjust the scope of their professional obligations to those needs as well.

- Institutional/individual: This distinction relies on the institutional checks and balances available to the client in order to mitigate behavioural, capability, and exclusion-based inefficiencies. Where suitability regulation is intended to respond to the unique financial capability of the client, regulation which focuses on the ability of the consumer to access financial intermediaries to help that consumer make better financial decisions.

A first step towards addressing these issues would be for the Government to agree to review the current definitions of retail, sophisticated and wholesale investor/client definitions to consider whether they remain appropriate and what alternatives may be better.

Recommendation 5:

The FPA recommends the Government reviews the effectiveness and value of the retail, sophisticated and wholesale investor/client definitions in the *Corporations Act 2001*.

Professional privilege for financial advisers

Legal professional privilege is a right attaching to qualifying communications between lawyers and their clients. This privilege is considered a right of the client rather than the legal professional, and it has its roots in the notion that fairness and public interest require a client being able to make full and frank disclosures to their professional adviser without the risk of prejudice and damage by subsequent compulsory admission.

It is widely viewed that legal professional privilege is necessary to ensure proper administration of justice. However, under common law it only extends to the client-lawyer relationship.

In 2007, the Australian Law Reform Commission (ALRC) delivered a report, "Privilege in Perspective: Client Legal Privilege in Federal Investigations", which reviewed legal professional privilege in the context of federal investigatory bodies, including the ACCC, ASIC, ATO, APRA, AFP and Royal Commissions of inquiry.

One of the major recommendations of the ALRC report was that privilege be extended, in defined circumstances, to include tax advice provided by accountants. This extension would formalise the accountant's exemption and would bring Australia in line with the position in the US, UK and NZ.

Under Sections 263 and 264 of the *Income Tax Assessment Act 1936*, the Commissioner has broad powers enabling the ATO to access buildings and documents in pursuit of its legal aims. This provision captures the two primary Tax Acts, plus parts of the *Taxation Administration Act 1953*, which together contains the powers dealing with objections, reviews and appeals and the collection and recovery of income tax.

Since the decision of *Baker v Campbell* (1983) 153 CLR 52, communications and documents under legal professional privilege have not been available for inspection by the Commissioner under sections 263 and 264.

In the 1980s, the accounting profession successfully argued that the ability of lawyers to claim legal professional privilege gave them a competitive advantage over accountants when providing taxation advice. In response, the ATO issued the 'Access and Information Gathering Manual' guidelines recognising that "taxpayers should be able to consult with their professional

accounting advisers on a confidential basis” and created self-imposed limits on ATO access to accountant’s papers.

This exemption, known as the “accountant’s exemption”, provides different concessions for differing types of documents, such as source documents (i.e. records of transactions), restricted source documents (i.e. advice documents) and non-source documents (i.e. other advice documents).

Since 1 July 2014, financial planners have been required to fall under the registration and governance of the Tax Practitioners Board, with progressive registration since 1 July 2014. This change recognises that financial planners provide taxation advice that clients rely on to make informed financial decisions.

While there is scope for the ATO to lift the accountant’s exemption, there remains a competitive advantage with accountants having access to this exemption while financial planners do not.

It was noted in the 2007 ALRC report that the fact that the same advice can be given by accountants and lawyers on taxation matters as the crucial factor in their push for the extension of privilege to taxation advice. On the same basis this should also extend to financial planners providing the same advice as other tax agents.

In 2011, the ALRC provided a submission in response to the Discussion Paper on “Privilege in relation to Tax Advice”. This submission covered several areas, including the extension of the proposed privilege to BAS agents. The ALRC response was that BAS agents may be included under any extension within their limit to provide advice with respects to taxation law under section 90-10 of the *Tax Agent Services Act 2008*.

Further, the ALRC made a general observation that it is the lawful provision of advice with respect to particular laws that provides the foundation for applying the rationale to other professionals.

The FPA shares the same interpretation that would see the new category of Registered Tax (Financial) Adviser captured within any law created to extend the provision of legal professional privilege (in defined circumstances).

Finally, the existence of client privilege will promote improved community wide compliance with the law, particularly in the areas of superannuation, taxation and social security, as consumers will have a broader range of professions to seek cost effective advice from. This capacity to seek advice and information will promote the asking of questions by consumers and limit the capacity for abuse of the law.

Recommendation 6:

The FPA recommends the Government extends legal professional privilege in define circumstances to all practitioners relevant to the areas of law they provide advice in (i.e. taxation, superannuation, social security).

Increasing financial capability

Educating Australians on financial issues remains a key factor in promoting their financial wellbeing and ensuring they are adequately prepared for retirement. There have been

significant contributions in the area of financial literacy in recent years. ASIC's MoneySmart website has become a focal point for the dissemination of information on a wide variety of financial topics.

ASIC's coordination and strategic oversight of the financial literacy programs and resources provided by numerous organisations throughout Australia has significantly transformed their delivery and effectiveness. ASIC's role in this area is well supported by the community and should be leveraged and enhanced.

However, more needs to be done to proactively engage with parts of the community that have not accessed this information, aren't displaying good financial capability and continue to struggle with financial pressures.

The FPA welcomes the Government's commitment to establish a new body that will build financial capability for all Australians and the commitment in the 2018-19 federal budget to provide \$10 million in funding to specifically address financial capability among Australian women.

As well as directly engaging with members of the community, the FPA considers that this new financial capability body could usefully mobilise and co-ordinate different public and private sector stakeholders that can also contribute to improving financial capability. Many of the points at which individuals already interact with the Federal Government (for example, through Centrelink, the MyGov website) and State Government (for example, maternity hospitals and baby health nurses, aged care workers) could be used to provide financial education.

To do this job effectively, the new body will need the certainty of ongoing operational funding. While the initial budget appropriation, charitable donations and possible future community benefit funds are welcome boosts, the Government should commit to providing a standing budget appropriation for the new body to ensure it is on a sound footing into the future.

Recommendation 7:

The FPA recommends the Government commits to providing an ongoing budget appropriation for its new financial capability body.

Promoting competition in the financial services industry

There is often a lack of consideration of competitive outcomes by regulators in the financial services industry. The FPA supports recommendation 19.1 of the Productivity Commission's report Competition in the Australian Financial System, in which the Commission recommends adding the Australian Competition and Consumer Commission (ACCC) to the Council of Financial Regulators (CFR) and requiring consideration of competition impacts by regulators.

The FPA does not believe it is enough for the Government to include in its Statement of Expectations for all members of the CFR the practice of reviewing, before they are implemented, regulator actions that may have material effects on competition. The FPA supports legislated changes to regulator responsibilities to ensure the effects on competition

are given due consideration and review, and the appropriate priority by the Regulator (or Treasury) prior to the implementation of Regulator actions.

Regulators should also be considering the impact a regulatory action has on competition at the time of creating the proposal and throughout its consultation process. This requirement should include Treasury, as a member of the CFR and in its role of identifying and implementing Government policy.

Recommendation 8:

The FPA recommends the Government agrees to add the Australian Competition and Consumer Commission to the Council of Financial Regulators.

Supporting the professionalisation of financial planning

Streamlining interactions with Centrelink and the ATO

Many people turn to their financial planners for assistance engaging with government agencies on financial matters. This is particularly true in relation to social security and superannuation due to the complex relationship between social security benefits and superannuation rules.

There is also benefit to government in streamlining access to financial planners acting on behalf of their clients, with planners being able to keep client details accurate and up-to-date and assist clients in navigating complicated government processes. Interacting with a qualified financial planner who is an expert in the relevant social security and superannuation regulations and other laws, rather than the consumer who may not understand these systems, can greatly reduce the time Centrelink, Department of Veterans' Affairs and ATO staff spend in assisting consumer applications, enquiries and claims.

Recommendation 9:

The FPA recommends the Government pursue measures to ensure financial planners can efficiently interact with government agencies on behalf of their clients, including:

- c) for Centrelink and Department of Veterans' Affairs to allow a financial planner to request and update client details and access full income and asset statements online; and
- d) for the Tax Practitioners Board and ATO to allow a financial planner to:
 - iii. apply for an ABN and TFN on behalf of clients who wish to establish a self-managed super fund; and
 - iv. contact the ATO on behalf of clients in relation to superannuation balances, contributions, and additional superannuation tax determinations.

Supporting further education for financial planners

Between 2019 and 2024, all financial planners will be required to complete additional formal education to comply with the Financial Adviser Standards and Ethics Authority's new education and training standard.

The FPA supports the new education and training standard and has a long history of advocating in favour of higher standards for financial planners through the Certified Financial Planner designation. However, the FPA also recognises that mandating higher standards is a substantial cost to business in the form of tuition fees and the substantial time taken for planners to complete any additional study that may be required to meet the new education requirements.

The FPA calls on the Government to ensure that, as it is implementing the new education and training standard, it also makes available support for planners to ensure these costs are manageable for small practices.

The Government may wish to consider whether Commonwealth Supported Places (CSPs) would be an appropriate mechanism to manage the costs being imposed on financial

planners. CSPs are already available for undergraduate courses, including the approved FASEA courses which will be the most common entry pathway for new financial planners in the future.

Many existing advisers often did not have available to them financial planning specific undergraduate courses when they entered the profession. They are now required to complete postgraduate courses as an equivalent. It would be equitable for the same support that is available to undergraduate financial planning students to also be available to postgraduate students.

Recommendation 10:

The FPA recommends that the Government review the support that is available to financial planners who are completing formal education mandated by FASEA and consider providing support through Commonwealth Supported Places.

Improving Australia's retirement system

Superannuation

Payments for Paid Parental Leave and carer's leave

Under the Paid Parental Leave (PPL) scheme, eligible working parents can receive funding from the Government to care for a newborn child. They may receive up to 18 weeks income. This payment may come either directly from Centrelink or through an employer. Some employers have elected to pay superannuation guarantee payments for parents during both paid and unpaid parental leave, however this is not compulsory.

Under the original framework for the PPL scheme the Productivity Commission recommended that employers be required to provide superannuation contributions for employees during PPL. At that time, the Productivity Commission estimated that this component would have a net cost of \$70 million to the economy as 79 per cent of parents eligible for PPL would be eligible for the super contribution component. However, the Productivity Commission recommended that this component of the PPL be delayed three years after PPL commences and a review can be conducted on how it is operating.

The PPL has been introduced and implementation has been 'bedded down'. We believe that it is now time to introduce the superannuation component of the PPL.

Having regard to the current economic forecasts and the Government's budgetary constraints, we support the measures recommended by the Productivity Commission to limit the financial impacts on business by:

- applying the contribution rate to the lower of the employee's actual pre-wages or the minimum weekly wage;
- limiting the mandated superannuation contributions rate to the statutory rate; and
- restricting superannuation contributions to employees who:
 - o passed the eligibility requirements for PPL, including the work test;
 - o received superannuation entitlements before going on paid leave; and
 - o were eligible for unpaid parental leave.

In particular, this proposal would have widespread benefits for women throughout their working lives and for the economy more broadly. Research by Mercer suggests that in the US and other overseas jurisdictions retirement programs that address different work arrangements (such as part-time or work breaks) 'are associated with higher female representation at the professional through executive level'. According to Mercer, there is a clear link between 'women's participation in the workforce and economic growth'.

The principle enshrined in the Productivity Commission's work, being that superannuation should be paid on income substitutes, should also be extended to Carer Payment, Carer Allowance, Carer Supplement and Parenting Payments. This is consistent with the fact that employees are paid superannuation guarantee on other types of leave such as sick leave, annual leave and long service leave. It would build a direct link in the system between payment for caring work and superannuation contributions.

This reform could, in recognition of the Government's budgetary constraints, be introduced in increments. Even if implemented, this recommendation would only provide an increase to

the primary carer's superannuation balance of \$977.62 (net of contributions tax over those 18 weeks). We therefore consider this recommendation to be a step towards wider policy reform and in this respect, we agree with the recommendation of the Human Rights Commission that a carer credit scheme and a national carer card be introduced.

Carer credits, which exist overseas, could take the form of direct credits to the superannuation accounts of individuals with parental care responsibilities and carer responsibilities (either out of the workforce or working part-time) that would be paid annually at the end of the tax year by the government into the individual's superannuation account through adult life.

Recommendation 11:

The FPA recommends the Government legislate to require the payment of superannuation on Paid Parental Leave and carer's leave.

Low Income Superannuation Contribution Scheme

Supporting Australians on low incomes to save and plan for their retirement remains an ongoing challenge. The Government has used a range of measures in the past to boost the superannuation of Australians on low incomes.

The current approach is for a Low Income Super Tax Offset Contribution (LISTO) which ensures an equitable tax outcome on superannuation contributions. While this is a valuable policy measure, it is less support than has previously been available under various co-contribution schemes. The FPAs view is that more support for low income earners is necessary and the Government should revisit a Low Income Superannuation Contribution Scheme.

A strengthened Low Income Superannuation Contribution Scheme would be effective at encouraging people to make voluntary contributions to their superannuation where possible, boosting superannuation balances at retirement and reducing demand on the age pension.

To incentivise Australians to save for retirement, the FPA recommends the Government restore a superannuation co-contribution scheme with: co-contributions similar to those available between 2004 and 2009; a maximum Government contribution of \$1,500 with a timetable to increase this amount; and an increased income threshold to allow for greater access to the scheme.

This scheme would provide a further incentive for people to actively engage with their superannuation and make after-tax contributions where they could afford to do so.

While the co-contribution scheme is intended to assist lower income earners, anecdotally it would appear that such taxpayers are often unlikely to be able to avail themselves of the benefits as their disposable income is likely to be totally consumed by household expenditure. This is an area where the Government could work to provide a further concessional adjustment that genuinely assists low-income earners increase their superannuation contributions.

The FPA would like to highlight that previous co-contribution schemes only supported those who were working. The FPA recommends the removal of the work-test requirement to

extend the scheme to people who are temporarily not working such as stay-at-home parents, carers and those on income protection or workers' compensation insurance benefits.

The FPA suggests the fiscal impact of the restoration and broadening of the co-contribution scheme could be offset by the resulting future savings on age pension expenditure and should not be funded by an increase in other superannuation taxes. Funding options could include better targeting of the measure with the introduction of a family income threshold for members of a couple rather than eligibility based on just the individual's income. Not only would this assist with the expansion of the measure to a non-working spouse, but it would also promote greater equity and affordability.

Recommendation 12:

The FPA recommends the Government provides an enhanced superannuation co-contribution scheme to support Australians on low incomes to save for their retirement.

Insurance

Portability of insurance

The Productivity Commission has reported on the large number of Australians who hold multiple superannuation accounts, thereby exposing them to duplicated fees and reducing their ability to save for retirement.

The biggest barrier to consolidation of superannuation is the lack of portability of insurance. The older a person gets, the more difficult it is for them to get life, TPD, or income protection insurance cover. Such individuals may hold cover inside their superannuation account however this insurance cover is not portable. If the individual closes that account when consolidating their superannuation, or under auto-consolidation requirements, the insurance cover also closes. The cover cannot be transferred to the new or consolidated superannuation account, even though the insured is the same person.

Fixing the portability of insurance will significantly help reduce the number of multiple superannuation accounts. There may also be scenarios where an individual holds a superannuation account for the purposes of maintaining insurance, and that account meets the definition of 'a lost member or inactive account'. Without portability of insurance, auto-consolidation by the ATO risks removing insurance that the member wants to maintain.

Recommendation 13:

The FPA recommends the Government investigate options to provide for portability of insurance between superannuation accounts.

Death and total permanent disability benefits

Benefits paid under insurance for death or total permanent disability (TPD) are taxed differently depending on whether the policy is held inside or outside of the superannuation system. This distinction has several negative impacts for consumers.

Firstly, the differing tax treatments add complexity which makes it difficult for consumers to compare and select from different insurance policies. Consumers generally need

professional assistance to calculate potential tax payable on benefits under a particular insurance policy, how benefits are drawn down in the event of death or TPD, and to whom those benefits may be payable.

Secondly, taxing death and TPD benefits paid under insurance held inside the superannuation system encourages unnecessary and complex strategies to reduce tax liabilities. For example, terminally ill consumers may be encouraged to withdraw their death benefits early and gift them to adult children tax-free.

The FPA's view is that taxation should be applied to death and TPD sums insured payments consistently, regardless of whether those insurance policies are held inside or outside of the superannuation system. Death or TPD benefits paid on a policy held outside of the superannuation system are generally tax-free and it would be appropriate for the same tax-free status to be extended to policies held inside of the superannuation system.

This approach would make it much easier for consumers to compare different insurance policies and it would remove the demand for strategies to reduce tax liabilities for insurance held inside the superannuation system.

Recommendation 14:

The FPA recommends the Government remove all tax on all death benefits paid from superannuation regardless of the beneficiary, to mirror arrangements for personally held insurances.

As a minimum, the Government should remove the untaxed element calculations for all death benefits and remove all tax on death benefits paid to adult children.

The FPA further recommends the Government standardise the definition of beneficiary across the superannuation and taxation regimes to remove inconsistent treatment.

Consistency in income testing

Changes to the means testing of account-based pensions made by the *Social Services and Other Legislation Amendment Act 2013* achieved poor outcomes for income supported retirees and acted as a disincentive for individuals to grow their superannuation and self-fund their retirement. These changes have been in place since 1 January 2015.

The FPA has previously raised this issue in its submission to the Senate Standing Committee on Community Affairs in 2013. In this submission, the FPA noted that account-based pensions are highly effective financial products. They are structured in a way that encourages and rewards retirees for withdrawing the minimum allowable from their balance, while still retaining flexibility and control to the beneficiary. With the help of a financial planner, these products can help pensioners minimise reliance on the age pension.

Deeming these pensions to be financial investments under the Social Security Act and financial assets under the Veterans' Entitlements Act is a disincentive for those approaching retirement from structuring their retirement savings into a prudent, managed stipend. This approach encourages irresponsible spending, or a deleteriously risk-averse attitude to retirement savings, which in either case results in retirees continuing to rely on the age pension – perhaps to an even greater extent than they would on an account-based pension.

There are alternative policy options which could assist the Government make the means testing of social security fairer. These include:

- addressing the significant difference between the income and asset tests for pensions from annuities, defined benefit pension products, and account-based pensions which could be brought more into line; or
- addressing the significant difference between the income and asset tests generally.

Whether an asset is affected by the incomes test (due to deeming) or assets test, the test should give consumers the same age pension assessment outcome. This is not currently the case.

Further, the 1 January 2015 changes have caused some age pension recipients to be locked into underperforming or expensive products due to the lack of portability of pre-1 January 2015 income test treatment which the new rules created.

Recommendation 15:

The FPA recommends the Government:

- adopt a consistent income testing assessment across all retirement income streams;
- ensure consistent outcomes for income and asset means testing in retirement;
- commit to reversing the amendments contained in Schedule 11 of the *Social Services and Other Legislation Amendment Act 2013*; and
- allow portability of pre-1 January 2015 income testing treatment.

Reporting on the gendered nature of the retirement income gap

The retirement framework (including the age pension) ought to be conducive to all Australians having a level of income in retirement that is consistent with a dignified retirement.

Australian women have a substantially different experience of retirement than Australian men. Women live longer and spend longer in the retirement phase of life. Women also have, on average, lower superannuation balances, and make up most Australians living solely on the age pension. It follows that Australian women have a lower income in retirement than Australian men and are disproportionately affected by poverty in retirement.

It is important that the Government's decisions about the retirement framework are informed by quality data and insights into the gendered nature of the retirement income gap and seek to address this gap. As a first step, the Government should collect data and report on this issue with a view to developing policy options in the future.

Recommendation 16:

The FPA recommends the Government request that the Federal Sex Discrimination Commissioner monitor and report on the gendered nature of the retirement income gap, including sufficiency of the age pension, with a view to providing advice to the Government on how to address the gap.