



FPA Opening Remarks

3.15pm Wednesday 12th June 2013

Public Hearing – Four Points by Sheraton, 161 Sussex Street, Sydney
Parliamentary Joint Committee (PJC)

Inquiry into the creation of a regulatory framework for tax (financial) advice services based on Schedules 3 and 4 to the first reading of Tax Laws Amendment (2013 Measures No. 2) Bill 2013

The Financial Planning Association of Australia would firstly like to thank the Committee for the opportunity today to present our views on the creation of a regulatory framework for tax (financial) advice services as per the Tax Laws Amendment (2012 measures no. 2) Bill.

The Financial Planning Association represents the interests of the public and Australia's professional community of financial planners.

Of 10,000 members and affiliates, more than 8,500 are practicing financial planners – accomplished professionals who adhere to high professional standards and put their clients' interests first.

The FPA's submission relates to Schedule 3 of the Bill only, which relates to Creating a regulatory framework for tax (financial) advice services. Effectively this legislation is designed to bring financial planners into the Tax Agent Services Regime.

We will talk about:

1. Why this 'consultation' process is important;
2. Our concerns with schedule 3 of the Bill; and
3. The FPA's recommendations.



1. Why this 'consultation' process is important?

The FPA has called for this consultation to afford the industry the opportunity to raise awareness of the issues and concerns of the proposed regulatory framework and to allow the legislation to be amended so that it is workable and delivers on the stated policy objective.

The FPA is very concerned that the priority to pass legislation is being placed ahead of appropriate legislation that is workable. The FPA submits that legislation that is unworkable is not in anybody's best interest.

It is true that the discussion about bringing financial planners into the tax agent services regime has been ongoing for a number of years, however time alone does not constitute adequate or extensive consultation. This is evidenced by the need for government to have provided two separate extensions to the original deferral arrangements for financial planners from the tax agent services regime, there were no public consultations during 2011 and 2012 and we have had 5 different assistant treasurers during this process. It was only at the eleventh hour that Treasury was permitted to commence consultation on the draft Bill. This has resulted in the inappropriate and unworkable legislation you are now considering today.

The FPA would also like to highlight that financial planners do not have a choice as to whether they want to be subject to the Tax Agent Services Regime. This is a fundamental difference between an accountant and a financial planner. Accountants are able to choose if they wish to provide financial advice, in addition to being Accountants and therefore it is only then that they will need to become licensed and regulated as a financial advice provider to offer this service. However a financial planner is not choosing to be a tax agent or to provide tax agent services or additional services such as



preparing and completing tax returns. The Government through legislation has deemed that financial planners are, by definition, providing a tax agent service.

The FPA raises this issue because we cannot stress enough the seriousness of this regime and the impact this will have on the financial advice sector. The FPA is requesting that the implementation and transition of this measure be handled with complete consideration of all issues and practicalities as not doing this can literally result in an individual financial planner or financial planning business being forced to cease operating in any capacity. This will be devastating to both the industry and the clients they serve.

The FPA understands and supports the consumer protection objectives of the Tax Agent Services regime, which include that:

- Providers of tax advice are appropriately and adequately trained
- Proper complaints handling and redress is available to consumers
- Enforceable ethical and professional conduct requirements are imposed on providers
- Strong regulatory oversight in relation to Australian taxation law

The FPA supports the fundamental principle of ensuring that consumers are protected when receiving any form of personal financial advice, including tax related advice of the kind provided by financial planners, and that there is regulatory certainty and integrity in this regard.

Tax advice in the context of financial advice cannot be separated out of the financial advice provided by financial planners. It is integrated throughout and integral to the advice process and the provision of quality advice to consumers.



The FPA notes the consumer protection concerns raised by the accounting industry. However, there is no substantive evidence to suggest that consumers are not currently sufficiently protected in respect to tax advice in the context of financial advice. The primary External Dispute Resolution (EDR) scheme used by the advice profession is the Financial Ombudsman Service (FOS) and there is no evidence in any of their reports that there are any complaints or systemic risks on 'tax advice' failings by financial planners.

It is also our understanding from the reports publicly available from ASIC, including shadow shopper reports, that there are no systemic problems or consumer risk issues with financial planners providing inappropriate or incorrect tax advice within the context of financial planning. The FPA can also confirm that our own surveillance and complaints reports do not highlight any concerns with the tax advice provided by our members.

Further, the introduction of the Future of Financial Advice reforms from 1 July 2013 will further enhance existing consumer protections, especially with the introduction of the Best Interests Duty, the removal of conflicted remuneration and enhanced ASIC powers.

The FPA, however does support the need for appropriate qualifications, training and experience and has been leading the way in raising professional standards and education requirements for years. From 1 July 2013, to join as a practitioner member of the FPA you will need an approved degree and minimum 1 years experience. This will compliment our existing degree entry and 3 years experience requirement for the Certified Financial Planner program, which is the highest financial planning designation recognised all around the world.



The Tax Practitioners Board have commenced consultation on proposed 'tax' training standards for financial planners. The FPA has long argued that Rg146 under ASIC must be reviewed and competency for financial planners must contain core elements of learning, and you cannot just consider one aspect in isolation. Financial planners already do some level of tax training, however tax training without consideration of superannuation, investments, life insurance, social security, estate planning and others is incomplete and insignificant for a financial planner. Our concern is that the TPB's tax training requirements are being developed in isolation of the overall competency requirements for a financial planner.

It is therefore our strong recommendation that the issue of taxation qualifications, training and competencies should be streamlined and included in ASIC's review of RG 146 and proposed national competency exam (CP153). These standards should not be set separately under the TASA regulatory regime but incorporated into the existing competency regime for financial planners.

2. Our concerns with Schedule 3 of the Bill?

The FPA has real concerns with the scope and definition of financial planning being defined in the Bill, especially when it is not even defined in the Corporations Act.

The FPA believes the scope of this definition captures anyone being paid to operate and provide advice under a license. It does not consider who should be captured versus who is captured; and similarly the type of advice that should be captured versus the advice that is captured.

For example it is our understanding that the definition captures:

- Superannuation funds, such as intra-fund advice;



- Financial advice provided to 'wholesale' and/or 'sophisticated' investors;
- General advice, including that provided by bank staff;
- Stockbrokers;
- General insurance brokers; and
- Mortgage brokers.

Further the FPA has concerns with the following issues relating to this Bill:

- The 'sufficient number' requirements. This does not consider or recognise the difference in approach for Australian Financial Services (AFS) licensees who may appoint financial planners to provide specified financial services on their behalf.
(for example does every adviser have to be registered? For those who are not registered do they need to have their advice signed-off by a registered adviser?)
- The interaction between the Tax Agent Services regime and the Future of Financial Advice reforms, specifically in relation to the best interests duty.
- How new financial planners entering the industry after 1 July 2013 can comply under both regimes.
(this relates to how you gain experience while complying with two separate regimes under ASIC RG146 and the registration requirements under the Tax Agent Services Regime)
- The Professional Indemnity Insurance requirements and how this interacts with the existing requirements under the corporations act.
- The operation of dual regulators and a co-regulation regime; who will be responsible for what and when?



- How does the legislation avoid or minimise dual regulation and red tape?
- And the increasing flow on costs to consumers.

3. Summary

In summary, the FPA does not shy-away from our responsibilities as a profession but rather we are facing them head on and we continue to play our part in raising standards of professionalism and education. The FPA supports the need for increased standards, qualifications and training, however this must be achieved through legislation and regulations that are appropriate, effective and workable.

The FPA requests that the Committee recommends that Treasury be provided with the appropriate time to consult and work through the issues and concerns with the Bill and the regime in general with all stakeholders, so that a workable solution can be implemented.

Thank you for your time. We are happy to take any questions.