



Law Council
OF AUSTRALIA

Business Law Section

Dr Richard Grant
Acting Committee Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Parliament House
CANBERRA ACT 2600

By email:

14 June 2013

Dear Sir

Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the regulatory framework for tax (financial) advice services (previously Tax Laws Amendment (2013 Measures No.2) Bill 2013, Schedules 3 and 4) (Proposed Legislation), amending the Tax Agent Services Act 2009 (TASA)

1. The Taxation Committee of the Business Law Section of the Law Council of Australia (the Committee) welcomes the opportunity to make these urgent submissions and regrets its inability in the time available to attend and provide oral submission at the public hearing on 12 June 2013. However, a representative of the Committee, David Castle, attended and has reported on the submissions made at the public hearing by other representative bodies.

Background

2. As the Committee understands it, the central issue is whether or not the provisions formerly contained in schedules 3 and 4 of the Proposed Legislation should be now enacted or delayed.
3. The Committee submits that it is in the public interest that the Proposed Legislation should now be enacted and not further delayed.
4. The main reasons for this submission, which are dealt with separately below, are as follows:
 - (a) the measures are justified and necessary;

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- (b) the Tax Practitioners Board (TPB) is the appropriate body to regulate the giving of tax (financial) advice services;
- (c) there has been adequate consultation;
- (d) there will be ample time and opportunity for necessary changes during the transition period; and
- (e) there is no compelling reason for further delay.

Justification

5. The Treasury discussion paper of November 2010 canvassed in detail the option of whether financial planners should be regulated either under TASA or by ASIC. Since then it has long been concluded by all regulators and stakeholders that regulation under TASA was the best option. The Committee agrees with that conclusion.
6. The Committee agrees with and adopts the following passage from the submission by the Tax Institute (TIA):

"As consumer protection is central to the design of the TASA, the Tax Institute has consistently maintained that the protection of consumers who are provided tax advice in the context of receiving financial service advice is of paramount concern. People receiving this type of advice must be afforded the same level of protection offered in respect of tax advice received from a tax agent."

and notes that taxation effects of investment strategies and plans promulgated by professional advisers are regularly at the heart of the efficacy of the strategies and plans recommended.

Adequate Consultation

7. The Committee considers, for the reasons given by the TIA at the public hearing, that there has been adequate consultation on the issue of regulation of financial planners, beginning with the Treasury discussion paper in November 2010. In addition, all stakeholders have known for over 3 years that, but for three successive annual carve-outs, financial planners who give tax advice are subject to the TASA.

Appropriate regulation

8. Government regulation of persons who give advice on the operation of laws under which the revenue of Government is collected, involves issues which require careful consideration. Those issues were addressed in the consultation processes preceding the enactment of

TASA and are reflected in the regulatory function now performed by the TPB.

Changes

9. With a three-year transition period there will be ample time, if necessary, for appropriate corrections to be made and for practice and discussion papers to be issued by the TPB in relation to its regulation of financial planners.
10. This is what happened when TASA was first enacted and it is an ongoing and continuing process, which has been generally successful and approved by most stakeholders, including the Committee.
11. During that three-year transition period, no financial planner should be disadvantaged by the fact that, following the date of enactment, legislative changes may be required or that the TPB has not developed or issued practice and discussion papers dealing with the registration regime applicable to financial planners. Registered tax and BAS agents have dealt successfully with similar issues since the introduction of the TASA.

No necessity for further delay

12. The Committee does not consider there to be any compelling reasons for further delay. It is the Committee's view that the public interest requires and justifies the regulation and registration of financial planners by early enactment of the Proposed Legislation.

Should you wish to discuss the matter further, please do not hesitate to contact the Committee Chair, Mark Friezer on .

Yours sincerely

Frank O'Loughlin