

## Consumer redress

The existing complaints handling procedures for financial planners under the Corporations Act should remain as the primary consumer redress for financial advice complaints, including complaints relating to tax advice given in the context of financial advice provided by financial planners.

## Important points

### Numbers of authorised representatives licensed to provide financial advice

- Approximately 5, 027 licensed entities and 51,147 authorised representatives providing financial advice in Australia.<sup>1</sup> (not 8,000 as stated by Treasury in the PJC hearing on the Bill)
- All must be a member of an ASIC approved EDR scheme and have in place appropriate and adequate complaints handling process, including internal dispute resolution and PII, as a license condition under the Corporations Act.

### EDR jurisdiction under the Corporations Act

- Financial Ombudsman Service (FOS) and Credit Ombudsman Service (COSL) are approved by ASIC to deal with all financial advice complaints.
- ASIC approved EDR schemes must be free to consumers with EDR decisions binding on scheme members.
- These EDR schemes deal with all financial advice complaints in a holistic manner and they have the expertise to deal with tax advice matters within the context of financial advice. the tax advice component will not be clearly distinguishable or separable from the non-tax advice component but rather contain information about the tax implications relevant to the total advice.
- ASIC regulates the person, the business and the actual advice. Financial advice EDR schemes consider these elements in their determinations. The TPB is limited to the conduct of the person.
- Under its Terms of Reference FOS and RG139 may not consider a complaint where that complaint has been or is being dealt with by a court or dispute resolution tribunal established by legislation, or by another external dispute resolution scheme approved by ASIC<sup>2</sup>.

## **5. Disputes outside the scope of FOS**

### **5.1 Exclusions from FOS's jurisdiction**

The Service may not consider a Dispute:

- l) that has already been dealt with by a court or dispute resolution tribunal established by legislation, or by another external dispute resolution scheme approved by ASIC;
- n) that has already been lodged with, and is being dealt with by, another external dispute resolution scheme approved by ASIC;

- Consumer compensation for EDR claims under the Corporations Act is capped at \$280,000
- If a financial advice complaint is being dealt with by the TPB, FOS may decline to deal with these matters to the disadvantage of the complainant.
- Consumers should not have to determine which regulator they go to with their complaint.

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<sup>1</sup> Australian Securities and Investments Commission, answers to Questions on Notice to the Parliamentary Joint Committee for Corporations and Financial Services Inquiry into Schedule 2 of the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013, 22 April (received 13 May 2013). It is unclear if employed planners are included in these figures.

<sup>2</sup> Financial Ombudsman Service Terms of Reference 2012, section **5.1 Exclusions from FOS's jurisdiction, items l) and n)**, page 10

## Issues with TASA

- The TPB does not have the expertise to scrutinise financial advice services or complaints as a whole.
- Financial planning disputes should remain within the currently proven complaints handling requirements and system established under the Corps Act and ASIC. The tax advice component of the advice shouldn't be carved out and sent to TPB.
- The TPB does not have the capacity or jurisdiction to deal with the whole of an advice complaint. There is a risk some advice complaints may fall through the cracks.
- TPB would have to exclude any advice that is not tax advice. This would significantly dis
- If there are multiple jurisdictions it will confuse consumers and place them in the unnecessary and unfair position of having to choose which jurisdiction to go to, which is unacceptable, confusing and not something a consumer going through the stress of making a claim should have to consider. The system must remain clear to ensure consumer accessibility is not hindered.
- Consumers who choose to go to TPB would have any part of the complaint that is not tax advice excluded and may not then have the ability to have their total advice claim considered by FOS or COSL.

## **For further information**

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