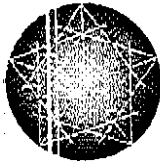


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FPA

FINANCIAL PLANNING
ASSOCIATION
of Australia Limited

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19 March 2004

Senator Grant Chapman
Chairman
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
CANBERRA ACT 2600

Facsimile: 02 6277 5719

Dear Senator Chapman

Committee Inquiry into new Regulation 7.1.29A (in Corporations Amendment Regulations 2004 (No 2) No 25 (Batch 7)) that provides an exemption from the FSRA for recognised accountants making a recommendation that a person acquire or dispose of a self managed superannuation product

The Financial Planning Association of Australia Limited (FPA) is the peak professional organisation for the financial planning industry in Australia. With approximately 14,500 members organised through a network of 33 Chapters across Australia and a state office located in each capital city, save Darwin, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with an collective investment value of more than \$560 billion

FPA members support the view that certain activities such as 'administration', 'establishment' and 'structuring,' as well as providing advice on compliance on SMSFs, may be exempted from the FSRA licensing regime.

However, we submit that any relaxation to exclude advice that accountants may provide from the provisions of the Act should be *strictly limited to the type of superannuation structure recommended.*

- This includes a "facility through which" a person "makes a financial investment" (see S763A (1)) such as a SMSF.
- It should not however allow "a recommendation that a person acquire or dispose of a superannuation product" in relation to the SMSF where this "superannuation product" is the actual financial product that is issued or acquired.

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FPA members are deeply concerned that no opportunity was provided to make input into the new Regulation 7.1.29A *prior to its release for Gazettal* particularly when the Regulation potentially affects more than just one group in the financial service sector. In particular, in the very short time that the new Regulation has been available, specific comments made by FPA members include:

- The Advice provided by accountants should be strictly limited to the structural establishment of an SMSF. All other advice, including the acquisition and/or disposal of such funds (which by their very nature would own underlying assets, so such advice would automatically consist of strategic investment advice) must be provided in conjunction with a licensee or their representative. This however, would not apply where the fund is made up of real property assets, private company shares or other assets that are not financial products.
- To ensure that appropriate consumer protection be retained across the board, accountants who are given relief from licensing requirements should still be required to belong to an independent, regulated complaint handling mechanism such as Financial Industry Complaints Scheme (FICS).

We note that in the most recent submission from the Accounting Bodies to the Committee they argue that from a consumer protection perspective '*consumer protection is further enhanced by the strict professional, educational and ethical requirements the Accounting Bodies impose upon members*'. The Accounting Bodies fail to acknowledge that the FSR requires an external dispute resolution. There is no such independent arbitration requirement imposed by Accounting Bodies on their members.

In this regard, we note that foreign product issuers who are exempt from licensing because of parity in regulation in the jurisdiction they operate in still must belong to an authorised External Dispute Resolution to comply.

- Accountants who provide advice on SMSFs under the proposed Regulation should be required to provide a disclaimer/statement about the exemption and the limitations to providing financial product advice under FSRA. Hence, the current Draft Regulation 7.1.29(5) should be broadened to include a disclaimer about the exemption that 'recognised' accountants are operating under.
- Accountants who provide advice under the SMSFs proposed exemption should still be required to meet a suitability test for the advice and have appropriate evidence (ie a short form Statement of Advice) to support the advice.
- Providing advice on SMSFs requires specialist knowledge. This has been recognised by the National Finance Industry Training Advisory Body which has recently developed **prerequisite competency units in relation to Self Managed Superannuation**. The Accounting Bodies were part of the development and fully support the NFITAB SMSF competencies. Hence, we believe that 'suitable' educational qualifications for providing SMSFs advice under the proposed Regulation should encompass the specialist knowledge / education required to provide advice on SMSF.

Alternatively, the exemption must apply uniformly across all advisers. Hence, reference to 'recognised' accountants should be removed and the exemption should apply

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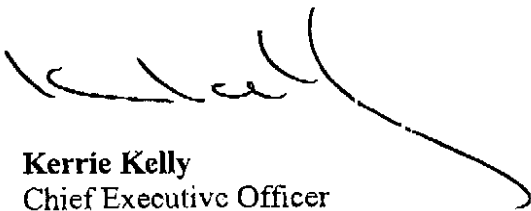
homogencously across all advisers who have the appropriate educational qualifications and professional experience and wish to provide advice on the acquisition or disposal of a SMSF as outlined in the proposed announcement.

- To prevent this Regulation facilitating a tax avoidance product marketed by promoters we submit that consideration should be given to limiting the scope of the Regulation to those client relationships already entered into by accountants, and not to be used where established relationships do not exist. This will prevent it becoming a tax-driven vehicle without consideration of an investor's circumstances.

Further, by way of more general comments, FPA members believe that a general consultation process should have been used in the preparation of the new Regulation to ensure that no unintentional consequences resulted which would erode the cornerstones of the FSRA – being that:

- *all* market participants who provide financial product advice (including all forms of superannuation) need to be licensed
- appropriate consumer protection is provided from unlicensed activities outside the scope of the FSRA licensing regime.

Yours sincerely



Kerrie Kelly
Chief Executive Officer