Financial Planning Association
of Australia Limited
ABN 62 054 174 453

Level 4, 75 Castlereagh St
Sydney NSW 2001

PO Box 4285
Sydney NSW 2001

Tel: 02 9220 4500
Fax: 02 9220 4580

Member Freecall: 1800 337 301
Consumer Freecall: 1800 626 393
Fax: 03 9627 5280

fpa@fpa.asn.au
www.fpa.asn.au

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Mr David Sullivan
Committee Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Sullivan

INQUIRY INTO THE STRUCTURE AND OPERATION OF THE SUPERANNUATION INDUSTRY: SUPPLEMENTARY SUBMISSION IN RESPONSE TO QUESTIONS ON NOTICE

The Financial Planning Association of Australia (FPA) welcomes the invitation from the Parliamentary Joint Committee on Corporations and Financial Services to provide a supplementary submission to the above Inquiry on issues raised by Committee members during the FPA's appearance before the Committee on 24 October. The Questions on Notice concerned are:

- the consumer benefits of naming different financial planning models; and
- whether implicit in the fiduciary duty of the trustee of a self-managed super fund (SMSF) is a requirement to obtain professional financial advice.

FINANCIAL PLANNING DELIVERY MODELS

The concern behind this request is the perceived lack of clarity for consumers as to what type of advice they receive and the underlying remuneration. Would a consumer be better informed of the type of advice they can expect to receive by the category of "advisor" providing the advice?

Since the FPA appeared before the Committee, the Government has released its sales recommendation proposal as part of the FSR refinements process. The proposal stemmed from concerns that the two categories in the Corporations Act of general advice and personal advice were too broad and captured a wide range of activities and situations. It was considered that representatives were being required to hold themselves out as financial advisers when they really only intended to sell a product, or representatives were restricted from providing basic advice to clients about the suitability of financial products.

The FPA is currently consulting with members to determine its position on the Government's proposal. The FPA understands that a sales recommendation category may result in easier cheaper service for those who do not want advice before acquiring a financial product. However, the distinction between a sales recommendation and advice is not always easy to discern. This is particularly the case if wraps and platforms are taken to be a financial product. There are numerous products and services which can be accessed through a platform and decisions are needed as to which ones are appropriate to the client's personal circumstances.

Given the complexity of the issues and the ramifications for the financial planning sector, the FPA prefers to complete its consultation with members on the sale recommendation proposal before putting a view to the Committee. We anticipate being able to respond to the Committee in January.

Regardless of whether the Government proceeds with the sales recommendation proposal, the FPA still believes that the legal and practical distinction between general advice and personal advice needs to be clarified. There are situations where personal advice obligations are triggered unnecessarily and the client would not suffer from the issue being treated as general advice. One example is the provision of advice on superannuation investment options to a member of a corporate superannuation fund. The advice is of a generic nature but must take into account the fund member's personal circumstances. The FPA will continue to work on this issue as it is an area where the cost of advice can be reduced through elimination of unnecessary disclosure.

In posing the question about nomenclature, Senator Murray suggested that the terms used for an advisor could also be differentiated along the lines of the method of remuneration they received. Often such a suggestion stems from a concern that commission remuneration creates a conflict of interest which prejudices the advice given a client.

The FPA believes that such a conflict of interest can be satisfactorily managed by full disclosure to the client at the beginning of the relationship. The FPA's Principles to Manage Conflicts of Interest require use of the term "financial planning advice fee" where the cost of the advice is agreed between the financial planner and client and the client can vary or terminate the fee in line with the service agreement. It does not matter whether the fee is collected in a lump sum, paid in instalments or paid via an investment product. Increasingly financial planners are offering their clients a variety of payment methods, giving them the choice of paying how best suits their own financial circumstances. It would restrict this flexibility to pigeonhole financial planners according to one possible methodology.

FIDUCIARY DUTY OF TRUSTEE TO OBTAIN ADVICE:

We welcome the Inquiry's interest in the issues created by the significant increase in the number of SMSFs over recent years. This growth in SMSFs reflects the wish of many people to exercise a greater degree of control over their superannuation. As explained in the FPA's initial submission, SMSFs can be more cost effective than institutional funds. They offer:

- greater investment choice, particularly in direct shares and business real property
- greater control over members' tax position thus maximising use of funds during financial year
- more choice of estate planning and insurance options
- control over the timing of asset sales and selection.

Given that many of the advantages of a SMSF come from the flexibility inherent in the trustee structure, the FPA would be reluctant to support moves to mandate particular behaviour unless strictly necessary. While understanding the good intentions behind the suggestion that professional financial advice be sought by a SMSF trustee, the FPA would not recommend that it be made a fiduciary responsibility. Many SMSF trustees would have extensive financial experience that equips them ably to fulfill their obligations.

However, the FPA would see it as appropriate that the trustee of a SMSF be asked to consider whether they have the expertise themselves to design and implement an appropriate investment strategy. The trustee would need to be able to justify a decision not to seek professional advice. This would be consistent with the obligations of the trustee to ensure an appropriate investment strategy is in place and to act in the best interests of the beneficiaries.

In order for trustees to make a well informed decision on their ability to manage a SMSF, the FPA endorses the need for an awareness campaign so that those interested in setting up a SMSF realise their pitfalls and disadvantages as well as the benefits. FPA is aware of the ATO's work in this field and the FPA's own "value of advice" campaign is relevant to encourage potential and current trustees to consider the need for professional advice both when deciding whether to establish a SMSF and to run it satisfactorily.

The FPA takes the opportunity to reiterate its belief that the Corporations Act exemption which enables accountants to advise on superannuation structures should be withdrawn. As evidenced by the finding in ASIC shadow shopping report of the high percentage of accountants giving unlicensed advice, it is difficult for accountants to observe the limits of the exemption in practice. It also works to deprive clients of advice they need to evaluate properly the appropriateness for them of a SMSF.

If the Committee is interested to discuss these issues in more detail, please contact the FPA's Manager Policy and Government Relations, John Anning, tel: 02 9220 4513.

Yours sincerely

Jo-Anne Bloch
Chief Executive Officer