



26 July 2017

ASIC Enforcement Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ASICenforcementreview@treasury.gov.au

Dear Sir / Madam

Re. ASIC's access to telecommunications intercept material

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the ASIC Enforcement Review on the Position and Consultation Paper 5 – ASIC's access to telecommunications intercept material.

Our submission presents our observations based on the considered impact on consumers and our members' businesses, and our broader goal of improving professional conduct in financial planning.

The FPA supports the Taskforce's position that ASIC be made a 'recipient agency' under s68 of the Telecommunications (Interception and Access) Act 1979 (TIA), to be able to receive lawfully intercepted telecommunications material for the purposes of investigating and prosecuting offences within its jurisdiction, that are defined under the TIA Act as 'serious offences', including serious Corporations Act offences. This includes requiring ASIC to be subject to the strict limitations, restrictions, reporting and record-keeping requirements that currently apply when in receipt of telecommunications intercepted material.

The FPA opposes the suggestion of including ASIC within the definition of 'interception agency' in the TIA Act. We support the existing regime that restricts the exercise of telecommunications intercept powers to agencies whose exclusive area of operation is law enforcement, as suggested by the Taskforce.

However, it is unclear whether, as a 'recipient agency', ASIC would have the power to request an 'interception agency' seek a telecommunications interception warrant from an eligible Judge or AAT Member for the purpose of an ASIC investigation of serious Corporations Act offences. If this is permitted, we suggest strict parameters must be imposed such as:

- An objective test detailing the limited circumstances under which ASIC may 'make a request' to have an interception agency seek a warrant in relation to an ASIC investigation and on behalf of ASIC
- Strict record keeping and reporting requirements (such as those referred to above and in the Consultation Paper) be extended to include ASIC requests of interception agencies to seek a warrant on ASIC's behalf, including the outcomes of such requests – request denied, request succeeds etc, and



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

- Independent Review of ASIC's use of 'recipient agency' powers, including requests for warrants to be sought by interception agencies, every 3 years to ensure the powers do not unfairly impact on civil liberties.

The FPA would welcome the opportunity to discuss with you the issues raised in our submission. If you have any questions, please contact me directly on heather.mcevoy@fpa.com.au or 02 9220 4500.

Yours sincerely

Heather McEvoy

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by Graham McDonald, deals with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules required of professional financial planning practices. This is being exported to 24 member countries and 150,000 CFP practitioners of the FPSB.
- We established the Financial Planning Education Council in 2011 as an independent body chartered with raising the standard of financial planning education. The FPEC has built a curriculum with 17 Australian Universities for Bachelor and Master degrees in financial planning. We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, as a minimum, an approved undergraduate degree.
- We are the only professional body in Australia licensed to provide the CFP® certification program. CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional designations, such as the Chartered Accountant designation of the Chartered Accountants Australia and New Zealand (CA).
- We are recognised as a professional body by the Tax Practitioners Board