



FPA Level 4, 75 Castlereagh Street Sydney NSW 2000 | [www.fpa.asn.au](http://www.fpa.asn.au) | Date: 21.12.2012

Ms Irene Sim  
General Manager  
Retail Investor Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By Email: [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)

21 December 2012

Dear Irene

**RE: Exposure Draft – Legislative amendments relating to the use of the expressions ‘Financial Planner’ and ‘Financial Adviser’**

The Financial Planning Association of Australia (FPA)<sup>1</sup> welcomes the opportunity to provide feedback to Treasury in relation to the exposure draft legislation to restrict the terms financial planner and financial adviser.

The FPA has led the profession on this measure, as we believe it will provide greater consumer certainty and protection and further enable the transition of financial planning into a universally respected profession.

Our submission concentrates on some of the possible limitations and unintended consequences of the legislation and recommendations to resolve some of these issues.

In developing the following positions and recommendations, the FPA consulted with its practitioner members, which includes practitioners who have their own License, as well as those working for large, medium and small licensees, which includes employed practitioners.

The FPA would welcome the opportunity to discuss this further. If you have any questions, please contact me on 02 9220 4505 or [dante.degori@fpa.asn.au](mailto:dante.degori@fpa.asn.au).

Yours sincerely

**Dante De Gori**  
*General Manager Policy and Standards*

---

<sup>1</sup> The Financial Planning Association of Australia (FPA) is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## Exposure Draft - Legislative amendments relating to the use of the expressions: 'Financial Planner' and 'Financial Adviser'

**FPA submission to:**  
The Treasury

21 December 2012



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## A. Introduction

It is the FPA's strong belief that to strengthen consumer protection and to continue the journey towards creating a true profession, the law must restrict the term financial planner to only those that have the highest level of education, competency, ethics and standards and are a member of a 'recognised professional body'.

A lack of restrictions on the use of the term financial planner is, among other things, a significant gap in consumer protection. It leaves trusting consumers open to influence by unlicensed and unqualified individuals calling themselves financial planners.

During the Parliamentary Joint Committee (PJC) Inquiry into the collapse of Storm Financial, the recommendation of restricting the term financial planner was raised. The Boutique Financial Planning Principals Group (BFPPG) stated:

*The public can readily identify other professions: doctors, lawyers etc by their title. There are, however, thousands of individuals holding themselves out to be financial planners who meet the barest minimum training or ethical requirements. In most cases these people are associated with single product areas of advice or advice that is focused strongly into one type of asset class or investment type. There are real estate agents who call themselves financial planners so that they can offer advice on the investment of excess funds after the purchase or sale of a property. There are property developers who call themselves financial planners so that they can package the sale of their property development into superannuation funds.*

The PJC committee acknowledged in their report [5.87]<sup>2</sup>:

*...legitimate concerns about the varying competence of a broad range of people able to operate under the same 'financial adviser' or 'financial planner' banner. The licensing system does not currently provide a distinction between advisers on the basis of their qualifications, which is unhelpful for consumers when choosing a financial adviser.*

The current mis-use of the term financial planner and financial adviser impacts on consumer trust and confidence in the profession and commonly results in all financial planners suffering reputational damage when tainted by the actions of incompetent providers who should not have the legal capacity to call themselves financial planners.

There is a high level of confusion in the market, within industry, media, Government and consumers, about the definitions and roles of financial planners, financial advisers, those that just sell financial products and those operating unlicensed. Some incorrectly represent themselves to consumers as financial planners without the appropriate, training, licensing, and professional standing and competency required. This significantly erodes consumer protection. The lack of constraint on

---

<sup>2</sup> Parliamentary Joint Committee, *Inquiry into financial products and services*, November 2009, pp 90



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

individuals calling themselves financial planners puts consumers at risk of receiving poor advice from incompetent providers and creates consumer confusion.

The term financial planner is also increasingly being used in marketing and promotional material by persons who provide non-traditional ancillary services, such as realtors, stockbrokers, life insurance agents or brokers, mortgage brokers, property brokers, sales agents of various investment vehicles, accountants, and unlicensed individuals.

**FPA recommendation:** there should be further criteria limiting the use of the term financial planner and financial adviser, to those adhering to professional obligations arising from their membership of a professional body and following a Code of professional practice. This position is supported by an article in the Canberra Law Review (2011)<sup>3</sup>:

*Trust and confidence in a professional industry is built upon the belief that the professionals working in that industry have special training and knowledge, high standards of accountability and a belief that advice given is in the best interest of the client seeking expert knowledge. Without adequate training and specialist knowledge, it is difficult to see how any of the previously mentioned factors can be fulfilled, as good advice cannot be given by an adviser whom has not been properly trained and lacks specialist knowledge. In order to restore trust and confidence in the financial advice industry, these issues must be addressed.*

*Furthermore, a closely related matter to this issue that is yet to be implemented is the restriction of the use of the term 'financial adviser' and 'financial planner' to people that have membership to the appropriate professional standards board. Until these issues have been addressed, there will remain significant deficiencies in the implementation of the Ripoll Inquiry recommendations, which will hinder progress in restoring consumer trust and confidence in the financial advice industry.*

Australians deserve the best possible advice from the most qualified practitioners – and these practitioners should be bound by a professional framework that goes beyond the law and requires adherence to standards of conduct, ethics and education, which are specifically tailored to the provision of quality financial planning advice.

In restricting the use of the term financial planner, the FPA recommends that the criteria for using the term financial planner and financial adviser should be linked to membership of a recognised professional body. This is akin to individuals who attain their status as a registered tax agent through membership of a recognised professional tax agent association (see Attachment 1 for details).

---

<sup>3</sup> *Canberra Law Review (2011) Vol. 10, Issue 3. THE FUTURE OF FINANCIAL ADVICE REFORMS: RESTORING PUBLIC TRUST AND CONFIDENCE IN FINANCIAL ADVISERS – AN UNFINISHED PUZZLE. University of Canberra*



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## B. The CFP® Designation

Only those who fulfill initial and ongoing certification requirements can use the CFP Certification Marks.

At a global level outside of the U.S., Financial Planning Standards Board (FPSB) owns and manages CFP Certification, which was established in 1990. FPSB is a non-profit association that manages, develops and operates certification, education and related programs for financial planning organisations. Australia actively participates in the FPSB community at a Board and Council level, and through its various committees.

FPSB's mission is to benefit and protect the global community by establishing, upholding and promoting worldwide professional standards in personal financial planning. Its commitment to excellence is represented by the CFP Marks.

Consumers can consult a CFP professional knowing that they are competent, ethical and experienced financial planners who follow a well defined process that puts the clients' interests and needs first when providing financial planning advice.

To gain CFP certification, a financial planner must complete an under-graduate degree, Masters degree or PhD and have successfully completed all of the units of study in the CFP Certification Program. To achieve the CFP certification, at least three years of financial planning experience is also required. The CFP program is a postgraduate education program that covers the knowledge a financial planning professional must be able to draw on to deliver financial planning to clients, or when interacting with colleagues or others in a professional capacity. A detailed capstone assessment is part of the program.

CFP professionals must also adhere to the FPA Code of Professional Practice which includes the Code of Ethics, Rules of Professional Conduct and Practice Standards; and undertake at least 120 hours of quality on ongoing Continuing Professional Development (CPD) every three years. This requirement is for all CFP professionals whether they are actively providing personal financial advice to clients or not.

The FPA is concerned with the possible impact that section 923C(4) will have on Academics who are non-practising financial planners but who have obtained the CERTIFIED FINANCIAL PLANNER® designation allowing them to use the CFP® mark and the logo mark. In particular the following registered Marks:

-  CFP
- CFP®
- CERTIFIED FINANCIAL PLANNER®



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

And reference to s923C4(a)(ii):

*any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs.*

The CFP® designation is primarily used by financial planning professionals who are practising and are either licensed themselves or are authorised under an AFSL to provide personal financial product advice to retail clients. There are also a number of CFP® professionals who have moved into senior roles within the industry and within licensee businesses that allow them to use the CFP® experience and qualifications to monitor and supervise other financial planners.

Academics, who are non-practising CFP professionals, are not allowed to hold themselves out to consumers as being authorised. However they play a vital role in the development, learning and encouragement of students to enter the profession and follow the professional pathway of becoming a CFP professional.

It is the FPA's understanding that the new prohibition (exposure draft) prevents a person that carries on a financial services business or provides a financial service, from using a restricted word or expression (financial planner and financial adviser) in relation to that business or service. The FPA requests confirmation on how this impacts on Academics who are non-practicing CFP professionals.

## **Recommendation**

The FPA recommends that the contravention does not apply to academics or persons in a training and development role who have obtained and maintain their CERTIFIED FINANCIAL PLANNER® (CFP) designation.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## C. General Comments

### WHOLESALE INVESTORS

Section 923C(2) confirms that it is not a contravention if the person is able to provide personal advice to 'retail clients'. This prohibits those persons who are only authorised to provide personal advice to wholesale and/or sophisticated clients from using the term financial planner and financial adviser.

It is unclear as to the extent to which there are FPA members who operate under AFSL holders that do not provide personal financial advice to retail clients, however to the extent that there are FPA submits that from a policy perspective there is a need to consider the implications of such an exclusion.

FPA members, whether they provide personal financial advice to retail or wholesale investors are bound to the full obligations of our constitution, Code of professional practice, Code of ethics, rules and standards. The obligations are no different and there are no exemptions or exclusions for FPA members whether they are providing advice to wholesale or retail clients.

### ONUS OF PROOF

The FPA would like clarification on who and how the onus of proof will work in respect to section 923C(4)(a)(iii) and 923C(4)(b).

This is particularly important in reference to any other word or expression that is of like import. Clarity around how and who decides that the other word or expression is of like import will assist both industry and consumers as to the process for which this will be monitored and supervised.

### UNLICENSED OPERATORS

The FPA understands the limitations of the Corporations Act and how this section has been drafted in accordance with already existing terms that have been restricted. However one of the main policy objectives of this piece of legislation is the protection of consumers and the general public from individuals and businesses that will use what means necessary to obtain trust and confidence of consumers, including representing themselves as a financial planner or financial adviser when they are not.

Such examples include real estate agents, property developers, accountants (operating under the current exemption) and other individuals that are operating outside of this legislation.

The FPA requests clarification of whether these operators are captured under the legislation and how consumers are protected. Further the FPA recommends that a campaign including both education of consumers and specific targeting of unlicensed operators are carried out to strengthen the benefit of this legislation and promote the benefit that this measure provides.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## RESTRICTION OF TERM MUST APPLY AT BOTH INDIVIDUAL & ENTITY LEVEL

There is a growing trend for financial services businesses to provide personal advice directly to consumers, especially with the use of technology and online computer programs.

The FPA notes that individuals do not generally hold licences, financial services businesses do. An AFSL also does not give individuals the right to provide personal advice, rather it gives the financial service business the ability to provide advice through Representatives.

Therefore it is important that the legislation captures that the contravention is applicable at both an individual and licensee level and is able to cater for future mediums for which financial advice is provided.

For example, if an AFSL sets up an online portal to provide financial product advice direct to consumers (removing Financial Planners from the equation) does the legislation clearly include this "black box" medium as being subject to the prohibition, and cannot include the restricted terms in its marketing?

Further the FPA recommends that section 923C(2)(b)(i) to be amended to say "the first person **can provide** personal advice" rather than "the first person **provides** personal advice". This amendment would be consistent with 923C(2)(a)(ii). The contravention should be focused on whether the individual is licensed and has the ability to provide advice, rather than the more prescription wording that requires them to have provided such advice. This amendment will allow licensed financial planners who do not "practice at that point in time" to continue to use the restricted term - as long as they maintain a license to provide such advice.

## LIKE TERMS

The FPA submits that in order to protect against possible future expressions or like terms being abused there needs to be clarification of 'terms of like import' also applying to those expressions restricted through regulation.

Further the FPA would be willing to work with Government and Treasury on a list of terms to be restricted under any regulations to this measure.

## **Recommendation**

The FPA recommends that section 923C(4)(a)(iii) to be amended to include any *terms of like import* as also listed in the regulations.

## DESIGNATED FINANCIAL PRODUCTS

The list of products in section 923C(5) is a list of **exclusions** from the meaning of designated financial products. In the Explanatory Memorandum, the same products are described as **the** designated financial products.





# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## **Recommendation**

The FPA recommends that the wording at the beginning of [1.13] of the Explanatory Memorandum be amended to read: "A 'designated financial product' is a financial product ***other than*** a general insurance product ...".

## STRENGTHENING CONSUMER PROTECTION

The drafting in section 923C(2) does not consider the future development of introducing exempt licensees that will be eligible to operate a conditional license from 1 July 2013.

There is a concern that this conditional/exempt license is very narrow, which will likely cause confusion for consumers as to what this person can and cannot do, in particular can this person provide financial planning or financial adviser services.

## **Recommendation**

The FPA recommends that sub-section 923C(2)(a)(i) and 923C(2)(b)(i) be amended to include the words '*other than exempt licence*'

This amendment would prevent those persons in using the restricted terms under the exempt licensee regime. This new measure is to protect consumers from unlicensed individuals posing as Financial Planners.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## D. Start Date

We note that the legislation comes into effect the day it receives Royal Assent and without provision of transition for the industry.

As there is no defined start date a significant portion of the industry will be in contravention of the new legislation, committing an offence the day after the Act(s) are enacted.

As such the industry requires time to amend all disclosure documentation (eg FSGs), marketing material, websites, amend job titles, published job descriptions, business cards etc in order to comply with the legislation.

### **Recommendation**

The FPA recommends that the start date of the legislation be 1 July 2013 to coincide with the Future of Financial Advice measures. This will provide some certainty for industry to include preparation for this change with the other FoFA requirements.

Further the FPA recommends that this legislation be included as part of ASIC's 12-month facilitative approach to the FoFA regime. This will allow ASIC to adopt a measured approach where inadvertent breaches arise, provided industry participants are making reasonable efforts to comply.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## Attachment 1

### Recognised professional financial planning association requirements

The inclusion of the following provisions in the Corporations Regulations is recommended. (The following wording reflects the provisions in the Tax Agent Services Regulations Schedule 1 Part 2 Recognised tax agent association.)

### **PROPOSED CRITERIA - RECOGNISED PROFESSIONAL FINANCIAL PLANNING ASSOCIATION**

#### **(1) [Definition]**

A **recognised professional financial planning association** is an organisation that meets the requirements in subsections (2) to (10).

#### **(2) [The organisation]**

The organisation must:

- (a) be administered by a committee of management elected by and accountable to its members; and
- (b) not be carried on for profit or gain (excluding a reasonable salary or honorarium) to:
  - (i) an office holder of the organisation; or
  - (ii) its members; or
  - (iii) members of bodies (**member bodies**) that are its members; and
  - (iv) any person who is a member of that committee of management.

#### **(3) [Good fame, integrity and character]**

The individuals who are members of that committee must be of good fame, integrity and character.

#### **(4) [1,000 members]**

The organisation must have at least 1,000 financial members who have the right to vote at meetings of the organisation.

#### **(5) [Requirements, academic, etc]**

An individual or member body must not be eligible for membership of the organisation unless the individual, or each individual who is a member of the member body (except a student member), has completed the requirements for:

- (a) a diploma in financial service or higher qualification issued by a registered training organisation, registered training assessor, or a higher education authority; **or**
- (b) some other similar qualification, or exemption from qualification, acceptable to the organisation; **and**
- (c) be compliant with Regulatory Guide 146; **and**
- (d) has a minimum of one year plus approve financial planning practitioner experience including authorised representative status for the full period; **and**
- (e) holds authorised representative status.



# Exposure Draft: Financial Planner

FPA SUBMISSION TO THE TREASURY | DATE: 21.12.2012

## **(6) [Rules of organisation]**

Under the rules of the organisation, individuals who are its members or members of its member bodies and who carry on a profession must:

- (a) be subject to rules controlling their conduct in the practice of that profession; and
- (b) be subject to discipline for breaches of those rules; and
- (c) be required to undertake at least 25 hours of continuing professional education in each year (unless exempted in special circumstances); and
- (d) if they are permitted by that organisation to be in public practice - have professional indemnity insurance.

## **(7) [Operational procedures]**

The organisation must have in place adequate operational procedures to ensure it is properly managed and its rules are enforced.

## **(8) [Complaints procedures]**

The organisation must have satisfactory arrangements in place for:

- (a) notifying clients of its members or of members of its member bodies as to how to make complaints; and
- (b) hearing and deciding those complaints; and
- (c) taking disciplinary action if complaints are justified.

## **(9) [Annual statistics]**

The organisation must have satisfactory arrangements in place for publishing annual statistics about:

- (a) the kinds and frequency of complaints; and
- (b) findings made as a result of the complaints; and
- (c) action taken as a result of those findings.

## **(10) [Payment of debts]**

The organisation must be able to pay its debts as they fall due.