

TREASURY EXECUTIVE MINUTE

Minute No. 20111192

14 April 2011

Assistant Treasurer and Minister for Financial Services and Superannuation cc: Deputy Prime Minister and Treasurer

FPA PROPOSAL TO RESTRICT THE TERM 'FINANCIAL PLANNER'

Timing: As requested by your Office.

Recommendation:

- That you note the contents of this brief.

Noted

Signature:/...../2011

KEY POINTS

- The Financial Planning Association (FPA) of Australia has long argued that the term „financial planner“ should be included in the list of restricted words and expressions in the *Corporations Act 2001* mostly for consumer protection reasons.
- s47C

- See Additional Information for further analysis and Attachment A for background on restricted terms in the Corporations Act.

Contact Officer:

Ext:

Senior Adviser
Corporations and Financial Services Division

ADDITIONAL INFORMATION

The FPA's case

- The FPA of Australia has long argued that the term „financial planner“ should be included in the list of restricted words and expressions under section 923B in the *Corporations Act 2001* mostly for consumer protection reasons.
 - On 8 March 2002, [MoneyManagement.com.au](http://www.moneymanagement.com.au) reported that: “The Financial Planning Association(FPA) has failed in its attempt to include the term „financial planner“ in the list of restricted words and expressions in the Financial Services Reform Act (FSRA)”. (<http://www.moneymanagement.com.au/news/fpa-fails-to-restrict-financial-planner-term>).
- In the FPA's submission (July 2009) to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into financial products and services in Australia (the PJC) the FPA again raised the issue.
 - It argued that there is “a high level of confusion in the market, within industry, media, Government and consumers about the definitions and roles of financial planners, advisers, and those that sell financial products”.
- This confusion, the FPA said, is principally between “planning” and providing “advice on a transactional basis”.
 - In the FPA's view, a financial planner “plans and is focused on providing strategic planning advice” whereas “personal advice as defined in the Act speaks to product based advice” and “while the term adviser is not defined ... advisers advise on a transactional basis”.
- The FPA noted that, under the Corporations Act, there is “no constraint on individuals calling themselves financial planners irrespective of their training, competence, and even licensing”.
 - “[T]his puts consumers” at risk of receiving poor advice from incompetent providers and creates consumer confusion as to the difference between financial planners, professional advisers, and others. It also 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”.
 - “The term financial planner or financial adviser is also increasingly being used in marketing and promotional material by persons who provide non-traditional ancillary services, such as realtors, stockbrokers, financial counsellors, life insurance agents or brokers, mortgage brokers, property brokers, sales agents of various investment vehicles, and unlicensed advisers”.
- The FPA therefore made the argument, on consumer protection grounds, that consumers are vulnerable “to influence by unprofessional and inappropriately qualified individuals calling themselves financial planners”.
- To address this issue, the FPA proposed regulatory restriction of the use of the term “financial planner” in section 923B of the Corporations Act:
 - “This is achieved through s923B for the protected terms stockbroker and insurance broker. Including financial planner in this section of the Act would also create a level

playing field for with other professions who are permitted to operate in the advice space”.

- See Attachment A for some background on the existing use of restricted terms in the Corporations Act.
- In its submission to the PJC, the FPA recommended that the Government undertake “a detailed and substantial consultation process with industry and other stakeholders to determine the most effective mechanism to restrict individuals from using the term financial planner (or financial adviser)”.
- It should be noted that the FPA is not the only representative body to have raised this issue with the PJC at that time.
 - The Boutique Financial Planners Principal’s Group (BFPPG), in its recommendations, similarly argued that the use of the term “financial planner” should be restricted to those who are registered to a “Professional Standards Board”.
 - It further argued that regulations / legislation should be introduced or changed to ensure that consumers can distinguish between financial planners providing independent, strategy-driven advice and those providing product sales-driven advice.

The PJC recommendation

- In its final report, the PJC acknowledged “very legitimate concerns about the varying competence of a broad range of people able to operate under the same 'financial adviser' or 'financial planner' banner”.
- It noted that 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”.
 - It suggested that the issue was addressed by the committee's recommendation at paragraph 6.160, which was:
 - : “[T]hat ASIC immediately begin consultation with the financial services industry on the establishment of an independent, industry-based professional standards board to *oversee nomenclature*, and competency and conduct standards for financial advisers” [emphasis added].

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ATTACHMENT A

Restricted Terms in the Corporations Act 2001

- The Corporations Act 2001 already limits the use of some terms such as “stockbroker”, and “insurance broker” to market participants or authorised representatives of market participants that are authorised by ASIC to use such terms under a condition on their AFS licence.
- Under the range of pre FSR Corporations Law and insurance regimes, the use of certain terms was implicitly or explicitly restricted to clearly identify to consumers which persons had the requisite competency to perform certain tasks.
 - These terms were stockbroker, futures broker, insurance broker, general insurance broker and life insurance broker.
- The FSR introduced uniform licensing provisions that include a requisite level of competency and clarifies the standards for consumers. Under FSR, the former legislative framework has been dismantled and in many cases the concepts on which restricted terms were based now no longer exist in Law. For example, the definition of a „general insurance broker“ is replaced with a „financial service provider“.
- However, pre existing restricted terms were retained in the FSR after consultation. Industry associations had relied on these terms for a significant period to distinguish the range of activities they offer to consumers.
 - Given the significant industry change resulting from the FSR, it was decided to retain the pre existing restricted terms to ease the overall acceptance and transition into the new regime.
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How restricted terms function

- Market participants must operate under an AFS License authorisation that specifies which financial services they can provide (e.g. provide financial product advice, deal in a financial product) and which financial products those financial services will cover (e.g. superannuation, general insurance, derivatives, etc).
- Section 923B of the *Corporations Act 2001* also specifies whether the AFS licensee can use certain restricted terms to describe their financial services business. These restrictions apply to the following (or similar) terms:
 - “Stockbroker” or “share broker”;
 - “Futures broker”;
 - “Insurance broker” or “insurance broking”;
 - “General insurance broker”;
 - “Life insurance broker”.

- A prospective licensee can only be authorised to use these terms if they select the dealing service authorisation and then the appropriate dealing activities and products: “insurance broker”, “insurance broking”, “general insurance broker” and “life insurance broker”. To be eligible to use these terms they must have applied to deal in:
 - General and/or life insurance products (for “insurance broker” and “insurance broking”);
 - General insurance products (for “general insurance broker”); or
 - Life insurance products (for “life insurance broker”).
- They must also act on behalf of the intending insured (i.e. the client), as opposed to acting on behalf of the insurance company.