



13 November 2018

Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

ProductRegulation@treasury.gov.au

Dear Sir/Madam,

Re. Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018.

The FPA supports the proposed Regulations as drafted including the proposal to extend the regime to include certain products, and exclude certain products.

However, we reemphasize our position in relation to financial advice. The FPA notes the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 was subject to an Inquiry by the Senate Economics Legislation Committee, with its Report released on Friday 9 November. During the Committee Inquiry, a few stakeholders called for this regime to cover the provision of personal advice. As stated in our submissions to Treasury on the Exposure Draft and revised draft of the Bill, the FPA oppose this proposal.

The FPA supports the exclusion of personal advice under Schedule 1, item 5 of the Bill and as clearly stated in 1.82 of the Explanatory Memorandum to the Bill. We welcome the Committee's position on the financial advice exclusion as stated in its Report and its recommendation to pass the Bill unamended. We support ASIC's view regarding the inclusion of personal financial advice in the product design and distribution regime, as clearly stated at the Senate Economics Committee hearing into the Bill:

Mr Kirk: "I think our position there is that this regime is designed to address situations, particularly the design and distribution obligation, where there is not personal advice. On the basis that whatever you did about design and distribution, if your customers are getting professional, good-quality advice, that is an intervening event, such that they should be entitled to rely on that advice and that those advisers should not be subject to direction from the product manufacturer about what advice they should be giving or who should be included. We would accept that there have been problems with the quality and professional standards in the advice area. We think the solution to that is to fix the quality of personal advice rather than substitute this obligation for it. If you had both obligations, the personal advice obligations and the design and distribution obligations, applying to the same transaction I think there would be some tension between them."

The provision of personal financial advice should not be included in this regime, either through the Bill or the Regulations.

If you have any questions, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Ben Marshan CFP® LRS®
Head of Policy and Government Relations
Financial Planning Association of Australia ¹

¹ The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 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 superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing 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 that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- 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 bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.