FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

15 April 2014

Mr Ian Taylor
Chair
Tax Practitioners Board
PO Box 126
Hurstville BC NSW 1481

Email: tpbsubmissions@tpb.gov.au

Dear Mr Taylor

Re. Exposure Draft tax (financial) adviser policy documents

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Tax Practitioners Board (TPB) in relation to the following Exposure Draft policies for tax (financial) advisers:

- TPB(EP) D5/2014 – Proposed continuing professional education policy requirements
- TPB(EP) D6/2014 – Proposed professional indemnity insurance requirements
- TPB(1) D20/2014 – What is a tax (financial) advice service?

The FPA acknowledges and welcomes the TPB's consideration and, where appropriate, incorporation of the FPA's previous feedback on the TPB's draft policies, and provides the attached feedback in response to the three Exposure Drafts.

The FPA would welcome the opportunity to discuss the TPB's proposed guidance further. If you have any questions, please contact me on 02 9220 4500 or dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
General Manager Policy and Conduct
Financial Planning Association of Australia[1]

[1] The Financial Planning Association (FPA) represents more than 10,000 members and affiliates of whom 7,500 are practising financial planners and 5,500 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.
- We banned commissions and conflicted remuneration on investments and superannuation for our members in 2009 – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Professor Dimity Kingsford Smith, 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 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, 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 a Recognised Tax Agent Association of the Tax Practitioners Board

1. TPB(EP) D6/2014 – Proposed professional indemnity insurance requirements

a) Interaction with ASIC's requirements under RG126

The FPA understands and supports the principle that all providers of tax (financial) advice services be covered by PII. The FPA acknowledges the following statement in the Exposure Draft *Summary of the TPB's PI insurance requirements* section which indicates that a policy that meets ASIC's requirements will generally meet the TPB requirements as long as the policy covers the provision of tax advice:

> *While the TPB understands that generally Australian Financial Services (AFS) licensees are required to have adequate compensation arrangements (which is generally PI insurance cover) under section 912B of the* Corporations Act 2001*, the TPB considers that an extension of the existing PI insurance held by AFS licensees who are tax (financial) advisers, so that the PI insurance held covers the provision of tax advice, will generally meet the TPB's minimum requirements. Accordingly, provided that such PI insurance cover also covers the provision of tax advice, the tax (financial) adviser does not need to have a separate policy or multiple policies to meet the TPB's requirements.*

However, the FPA suggests this sentiment be repeated throughout the document to reinforce the TPB's recognition of the importance of clear alignment with the existing PII requirements under ASIC's RG126.

For example, the FPA notes that the TAS Act only applies to the tax (financial) advice service – that is, the tax advice component of the financial advice business. However, the Exposure Draft reads as if the TPB requires the same level of PII cover for the tax (financial) advice service as ASIC requires for the entire financial advice business of the licensee.

As you are aware, tax advice provided in the context of financial advice cannot be separated out of the financial advice provided by financial planners. It is integrated throughout and integral to the advice process and the provision of quality advice to consumers. As such, financial planners charge on a bundled basis for this advice. They do not separate fees under the type of advice, such as superannuation advice or tax advice. Hence, there is no simple way to determine how much of the fee is directly attributable to the tax (financial) advice services, and it is not possible to determine the total revenue from the tax (financial) advice services.

For example, the FPA notes under ASIC's requirements in RG 126 the minimum level of cover of $2 million is for the financial advice services provided by the licensee; the TPB Exposure Draft reads as if this same minimum level cover of $2 million applies only to the tax (financial) advice service (that is the tax advice component of the financial advice), and equally applied at the licensee, Corporate Authorised Representative, Authorised Representative and practitioner level.

The FPA understands this interpretation of the application of the TPB's PII requirements is not intentional, never the less we recommend the TPB consider amending its Exposure Draft to clearly and more accurately present its requirements, particularly in relation to how they integrate with ASIC's requirements under RG126. The FPA suggests the following approach to drafting the TPB's PII policy:

- Incorporate the Corporations Act, language of licensee, Corporate Authorised Representative, Authorised Representative and individual practitioner, which is widely

used and understood by the profession, to clearly articulate the responsibilities for each entity in relation to the TPB's PII requirements.

- Clearly states (and restates at relevant points throughout the policy) that PII cover which complies with the requirements of ASIC's RG126 and is held by an AFS licensee, will generally meet the requirements of the TPB provided that the policy covers the provision of tax advice – that is tax (financial) advice services as defined in the TAS Act.

- Clearly states and restates in the following sections that the TPB's minimum requirements reflect the PII requirements placed on the licensee under ASIC's RG126, and that provided the policy meets the TPB's requirements, the tax (financial) adviser does not need to have a separate policy or multiple policies.

    - Adequate PI insurance cover

    - Initial assessment

    - What the policy should cover and include

- It should be made clear that the 'amount of cover' required is for the financial advice services provided under the ASFL, including the provision of tax advice (or the tax (financial) advice service). That is, the amount of cover required by the TPB does not apply only to the tax (financial) advice service provided.

- Clearly state the TPB requirements which are in addition to the requirements of ASIC's RG126.

b) Clarify who assesses and holds the PII policy

Section 912B(1) of the Corporations Act states:

> *If a financial services licensee provides a financial service to persons as retail clients, the licensee must have arrangements for compensating those persons for loss or damage suffered because of breaches of the relevant obligations under this Chapter by the licensee or its representatives. The arrangements must meet the requirements of subsection (2).*

The FPA acknowledges the TPB's consideration and recognition of the Corporations Act and ASIC's RG126 PII requirements for licensees.

However, a fundamental difference between the ASIC and TPB policies is that under the Corporations Act it is the licensee who is obliged to hold the PII policy, which must cover all advice activities provided by any representatives under that license; whereas the TPB permits the PII policy to also be held by any registered tax (financial) adviser. This means that the TPB Exposure Draft applies the same PII requirements to all tax (financial) advisers – which under the Corporations Act language applies the same requirements to licensees, Corporate Authorised Representatives, Authorised Representatives and individual practitioners.

For example, the section What 'maintain' means currently states that the TPB's PII requirements will be met if:

- *the tax (financial) adviser holds a PI insurance policy that meets the minimum requirements set out in this TPB(EP);*
- *the tax (financial) adviser is covered by a PI insurance policy that meets the minimum requirements set out in this TPB(EP), that is held by another tax (financial) adviser; or*
- *the tax (financial) adviser has an alternative arrangement that has been approved by the TPB, as described in this TPB(EP).*

Further, Example 3.16 (page 6) directly applies the TPB's PII requirements to an individual (Liza) registering as a tax agent.

To clarify the alignment of the TPB policy with the Corporations Act, the FPA recommends the TPB PII policy also require the PII cover to be held by the tax (financial) adviser who is also the holder of the Australian Financial Services License, by amending this section as follows:

The TPB acknowledges that an individual who is registered to provide a tax (financial) advice services will not hold the PII cover, rather the AFS licensee will hold the PII policy which will cover all tax (financial) advice services provided under its license. The TPB will consider a registered tax (financial) adviser who is required to have PI insurance as maintaining PI insurance that meets the TPB's requirements if:

- *the tax (financial) adviser who is a AFS licensee, holds a PI insurance policy that meets the minimum requirements set out in this TPB(EP);*
- *the tax (financial) adviser is covered by a PI insurance policy that meets the minimum requirements set out in this TPB(EP), that is held by a AFS licensee; or*
- *the tax (financial) adviser who is a AFS licensee has an alternative arrangement that has been approved by the TPB, as described in this TPB(EP).*

The FPA also recommends Example 3.16 be replaced with two financial planning examples – one where the licensee is applying for registration; the other where an individual is applying for registration and meets the TPB's PII requirements because the AFS licensee holds PII cover that meets the TPB"s requirements.

Page 8 currently states:

> *In order to meet the PI insurance eligibility requirement when applying for registration, an AFS licensee or representative will need to satisfy the TPB that the AFS licensee or representative maintains PI insurance, or that the AFS licensee or representative will be able to maintain PI insurance cover that meets the TPB's requirements once registered.*

Again this, and other similar statements in the Exposure Draft, should be amended to make it clear that the TPB mirrors and acknowledges the Corporations Act requirement that the licensee is the entity responsible for holding the PII policy.

Similarly, the FPA suggests the requirement to provide evidence of the PII cover, such as the Certificate of Currency, should be the responsibility of the holder of the policy – that is the licensee.

c) The application of TPB PII requirements to IDR / EDR

The TPB's objective states that the PII requirement will improve the standard of compensation arrangements in place in the profession…. Further, under the section '*What this means for consumer of tax (financial) advice services*' it states that a result of the TPB's PII requirement should be that consumers will have greater protection against losses.

These statements imply that the TPB requires PII for the purpose of ensuring funds are available to compensate consumers. However, the TPB does not award consumer compensation. Its powers are restricted to sanctions and civil penalties.

Under RG126 consumer compensation may be awarded via the complaints handling system which licensees are required to adhere to under the Corporations Act, that is, Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR). RG126 clearly states that PII is required to provide cover, and therefore funds, for licensees should they be required to pay compensation to consumers for any substantiated wrongdoing.

Further, the current complaints handling system already includes consideration of the tax advice provided in the context of financial advice, so the FPA suggests the above statements in the Exposure Draft are misleading.

The FPA recommends the Exposure Draft be clarified to clearly differentiate the role of the TPB in relation to consumer compensation, the purpose of the TPB's PII requirements, and the interaction of the TAS Act and TASA Code with the existing IDR/EDR system for financial services.

EDR schemes consider complaints against financial planners as they relate to breaches of the law. However, it is currently unclear whether complaints relating to breaches of the TAS Act and therefore the TASA Code will fall within the jurisdiction of financial services EDR schemes. This is a significant issue and fundamental point of clarity in relation to the TPB's PII requirement. The Exposure Draft is currently silent on the TPB's PII requirement's interaction with the existing complaints system for financial planners.

Determining the interaction of the TASA regime with the existing complaints system for financial planners may be complicated by the fact that tax advice is usually integral to and integrated throughout the provision of financial advice. The tax component of the advice cannot be easily separated out from the rest of the advice.

Hence, the FPA calls on the TPB and EDR schemes to undertake urgent and further consultation with all stakeholders, on the application of TASA in the complaints system. How these two systems interact will have a significant impact on the response from the PII market and the ability of licensees to meet the TPB's requirements within the required timeframe.

d) Applicable dates for maintaining PII cover the meets TPB's requirements

The FPA notes that the section '*what maintain means'* on page 6 of the Exposure Draft states:

> *In circumstances where an applicant for registration does not maintain PI insurance that meets the TPB's requirements at the time of applying for registration and indicates to the TPB that they will be able to maintain PI insurance once registered, the TPB will consider the applicant to meet its PI insurance registration requirement.*
>
> *If the applicant is granted registration, the TPB will generally require that the now registered tax (financial) adviser provides the TPB with details of how they meet the TPB's requirements within 14 days from the date that the tax (financial) adviser receives notification that their application for registration has been granted.*

This requirement is restated in Table 2: How the PI insurance requirements will apply.

However, the Implementation period states:

> *If a tax (financial) adviser has a current PI insurance policy that does not meet the TPB's requirements, the policy can continue during the implementation period. However, upon lapse of that policy or by 1 January 2017, whichever occurs first, a tax (financial) adviser must obtain a policy that complies with the TPB's requirements.*

The FPA suggests these dates do not align and the requirements are contradictory. We recommend the TPB amend document to provide clarity around how these requirements work together.

e) Use of the term tax (financial) adviser

As this policy details the requirements for tax (financial) advisers, the FPA suggest the term tax (financial) advisers should be used throughout the policy. The FPA therefore recommends the term 'agent' be replaced with 'tax (financial) adviser'.

f) Transition terminology

The TASA regime for financial planners is to be implemented under the *TASA transition arrangements.* The TPB also has separate transition arrangements specifically to assist tax (financial) adviser to comply with its PII requirements - under the TPB's *staged approach to implementation* for its PII requirements. For understandable reasons, the requirements and dates for the two sets of transition arrangements are different. The FPA suggests that the TPB use '*PII Implementation period*' and '*PII operation'* to clearly identify these transition arrangements as being different and separate to the TASA transition arrangements.

g) Table 4, Step 1: Assess the business

The FPA suggests including in this table additional factors for tax (financial) advisers to consider when assessing their business for PII purposes. For example, the following points in relation to the nature of the tax (financial) adviser's business, as stated on page 11 of the TPB Exposure Draft:

- the volume of business in terms of turnover (see the Key terms section of this exposure draft)
- the number and kind of clients
- the kind or types of tax advice provided
- the number of representatives
- the degree of risk.

Alternatively, the FPA suggest amending the wording in Table 4 to reference the above list. For example, "Assess the nature of the business such those factors listed on page 11 of this policy."

2. TPB(1) D20/2014 – What is a tax (financial) advice service?

a) What is a taxation law

A 'taxation law' is defined in the Income Tax Assessment Act 1997, and also stated in the TASA Code of Professional Conduct, as:

> (a) 'any Act of which the Commissioner of Taxation has the general administration (including any part of an Act to the extent to which the Commissioner has the general administration of the Act);
>
> (b) any regulations under the Acts in paragraph (a) above, and
>
> (c) the *Tax Agent Services Act 2009* and the regulations made under that Act.'

The FPA acknowledges and understands that the Commissioner of Taxation has administration of the Superannuation Industry (Supervision) Act 1993 (SIS Act), and therefore laws relating to superannuation and self managed superannuation funds (SMSFs) also fall under the definition of 'taxation law' and are captured under the TASA regime. A fundamental point of clarification is that 'taxation laws' are not limited to taxes. This must be clearly and regularly stated by the TPB.

The FPA strongly recommends the TPB include the definition of 'taxation law' upfront in its policy on the definition of *What is a tax (financial) advice service*. For clarity and emphasis purposes, the FPA also recommends all (or many) references to 'taxation law' and 'tax advice' be stated as follows:

> ……taxation law, including superannuation laws.
>
> ……tax advice, including superannuation advice.

b) Element 1 – tax agent service (excluding representations to the Commissioner)

The FPA suggests the use of simple language would provide a clearer explanation of element 1 of the definition of a tax (financial) advice service. For example, the FPA suggests the following wording:

> *To be a tax (financial) advice service, the service must be a tax agent service, but excludes representing a client to the Commissioner. Only registered tax agents are permitted to make representations to the Commissioner.*

c) Clarity of the application of the definition

Paragraph 17 states:

> *For the purposes of being a tax (financial) advice service, it does not matter whether the advice is financial product advice or dealing in a financial product as defined in the Corporations Act 2001. This means that the service will usually take the form of tax advice that can reasonably be expected to be relied on for tax purposes that is given for the purpose of helping to fully inform a client about their current and future financial affairs. As such, it could be given:*

a. *as part of a strategic discussion about a client's long-term financial objectives;*
b. *in the course of advising a client about the relative merits of particular financial products or other investments; or*
c. *in the course of advising a client about non-financial products such as real property.*

The FPA assumes the intent of this paragraph is to state that the TAS Act applies to tax advice provided to consumers regardless of whether or not that type of advice is defined in another Act, namely the Corporations Act. The FPA is concerned that the meaning of this paragraph is unclear and recommends the following amendments to clarify this paragraph:

For the purposes of being a tax (financial) advice service, it does not matter ~~whether~~ if the advice is not financial product advice or dealing in a financial product as defined in the Corporations Act 2001. The TAS Act applies even if the tax advice falls outside the advice definitions of the Corporations Act. This means that the service will usually take the form of tax advice that can reasonably be expected to be relied on for tax purposes that is given for the purpose of helping to fully inform a client about their current and future financial affairs. ~~As such~~ For example, it could be given by a licensee or representative of a licensee:

a. *as part of a strategic discussion about a client's long-term financial objectives;*
b. *in the course of advising a client about the relative merits of particular financial products or other investments, or*
c. *in the course of advising a client about non-financial products, such as real property or collectables.*

Further, the inclusion of an example would be helpful to clearly demonstrate to financial planners that the TAS Act applies to tax advice, not the financial advice definitions of the Corporations Act. The FPA offers the following example for the TPB's consideration.

A client seeks advice from a representative of an AFS licensee, on investing $50,000 in art work and $20,000 in wine as short and medium term investment options. The representative calculates the potential CGT payable on these investments over a five year period, and discusses other tax implications of the investments for the client. Even though art work and wine are non-financial products, and therefore the advice does not fall under the Corporations Act definitions, this tax advice will be captured under the TAS Act as it is provided under an AFSL, considers the client's personal circumstances and the client can reasonably rely upon the advice provided for tax purposes.

d) Element 5 – reliance for tax purposes

As the FPA has previously mentioned, the primary purpose of the tax advice provided by financial planners is to assist the client to understand the potential tax liabilities that may arise in relation to recommendations the planner provides in a financial plan, and therefore enable the client to make an informed decision about the financial advice provided. It is not for claiming tax entitlements with the Commissioner. As planners do not assist clients to actually claim tax entitlements, it is common practice for financial planners to encourage clients to seek detailed tax advice from a registered tax agent for this purpose. Therefore, the FPA seeks clarification around the term 'reliance / rely on for tax purposes' in relation to financial planning. For example, paragraph 22 states:

Whether the entity providing the service suggested or encouraged the client to seek further independent advice in relation to the matter.

As stated above, this is common practice for financial planners. Does this mean that the tax advice provided by planners cannot be relied upon? And therefore planners do not meet the element 5 requirement of a tax (financial) advice service?

Further, paragraph 22 indicates the circumstances, complexity and nature of the advice provided to a client should be considered in determining if a client 'can reasonably be expected to rely on the advice for tax purposes'. Again, financial planners commonly either work with a registered tax agent or encourage their client to seek further tax advice from a registered tax agent. So, it is unclear whether the assessment of the circumstances, complexity and nature of the advice relates to the financial planning advice in total, or just the tax component of the advice, even if this component of the advice is outsourced.

The FPA suggests the clarity of the application of paragraph 22 to financial advice would be improved by the inclusion of financial advice examples, such as:

Receipt of superannuation benefits

- *John is age 58 and contemplating retirement in the near future. He has retirement benefits of $400,000 that he may take as either a lump sum or a pension. John seeks financial advice on when may be the best time for him to retire and how he should take his benefits in order to pay out the remaining $80,000 on his mortgage and produce ongoing income in retirement.*

John's financial planner recommends that he defer his retirement until age 60 and that he take part of his benefit as a lump sum to pay out his mortgage and use the remainder to commence an account based pension. In making this recommendation, the financial planner has considered the impact both before and after age 60 of superannuation lump sum taxes, taxation of superannuation income stream benefits, including any tax offsets, and income tax and capital gains tax on future investment earnings. John's financial planner encourages John to seek further tax advice from a registered tax agent in order to claim his future entitlements and meet his future tax obligations.

The advice on John's tax position provided by the financial planner is aimed primarily at ensuring that he can most effectively use his accumulated superannuation to meet one-off expenses and provide his required retirement income. It is provided to enable John to make an informed decision about the planner's recommendation on how to meet John's financial and retirement goals.

Eligibility for small business CGT concessions

- *George is a small business person nearing retirement age, but with very little in superannuation. He wants to sell his business and use the proceeds to fund an income in retirement. He seeks financial advice on his options for achieving this.*

George's financial planner discusses with him the availability of small business CGT concessions that may apply on the sale of his small business. He outlines how they may be used to either minimise or eliminate any CGT liability that would otherwise arise and also how the exempt amount can be contributed to superannuation under the CGT contributions cap.

George's financial planner encourages him to seek further tax advice from a registered tax agent in order to meet his future tax obligations.

The financial planning advice on George's tax position is aimed primarily at identifying how the CGT concessions can be used to maximise the amount George can contribute to super.

The FPA also recommends the TPB clarify the application of element 5 – rely on for tax purposes, to the provision of financial advice. It may be helpful to consider including financial advice circumstances under which the TPB does not believe a client can rely on the tax advice for tax purposes. Expanding the explanation of 'apply and interpret tax laws' under a new Element may assist in this regard.

e) Conditional adviser registration

The FPA notes that paragraph 12(e) of the TPB's CPE Exposure Draft refers to a 'conditional adviser:

*Under the TASA a tax (financial) adviser may be registered as a **conditional adviser**, that is a tax (financial) adviser who has a condition imposed on their registration in respect of the subject area in which the tax (financial) adviser may provide tax (financial) advice services. The TPB recognises that this category of tax (financial) adviser may not provide a broad range of tax (financial) advice services. The TPB is of the preliminary view that this category of tax (financial) adviser complete a minimum of 45 hours of relevant CPE over three years.*

However, this *What is a tax (financial) advice service* Exposure Draft does not include reference to or a clear definition of a 'conditional adviser' registration.

There are a number of financial planners who may provide advice only on one or two specialised advice areas, most commonly life risk advice and superannuation advice, to which a conditional adviser registration may be appropriate. However, without a clear definition and criteria of a conditional adviser, financial planners may incorrectly assess that the services they provide permit them to register as a conditional adviser. This could put financial planners at risk of non-compliance if they incorrectly register with the TPB, and potentially impact on the consumer protections of the TASA regime. It may also result in the TPB receiving numerous incorrect applications.

The FPA recommends the TPB include a clear definition of 'conditional adviser' including:

- What constitutes a 'conditional adviser',
- Whether the definition and the 'conditional adviser' registration option is restricted in its application – for example, it applies only to certain types of financial advice or tax (financial) advice services,
- Examples of the financial advice services that relate to the 'conditional adviser' registration option,
- The TPB standards that may apply only to 'conditional advisers' (versus fully registered tax (financial) advisers,

- Conditions and restrictions that apply to this category of registration, particularly in relation to the services such advisers are permitted to provide consumers,
- The process for applying for 'conditional adviser' registration, and
- Whether those registered as 'conditional advisers' are required to include a specific disclaimer in relation to the tax (financial) advice service they provide.

f) Intra-fund and scaled advice

The FPA notes item 2 in Appendix A - Examples of tax (financial) advice services specifically refers to scaled advice and intra-fund advice as a form of personal advice and is therefore considered a tax (financial) advice service, when it also involves the application or interpretation of the taxation laws to a client's personal circumstances and it is reasonable for the client to expect to rely on the advice for tax purposes.

The FPA strongly believes that intra-fund advice and scaled advice can only be provided as personal advice though limited in its subject matter. Therefore, the FPA acknowledges and supports the TPB's specific reference to intra-fund and scaled advice as personal advice in item 2.

g) Consistent use of terminology

The FPA suggests the clarity of the TPB's guidance would be strengthened by using certain terms in a consistent manner. For example, the Exposure Draft applies the term *entity / entities* to both the provider of the advice and the client. To illustrate this point, the provider is referred to as an *entity* in the following paragraphs (not an exhaustive list):

1. From 1 July 2014, *entities* that provide tax (financial) advice services for a fee or other reward may start registering with the Tax Practitioners Board (TPB).

10. Under the Corporations Act 2001, an *entity* that carries on a financial services business in Australia needs to hold an 'Australian financial services license….

13. *Entities* in the financial services industry usually provide their *clients* with a range of advice

Whereas in the following paragraphs, the client is referred to as an *entity*:

6. To be a tax (financial) advice service, the service must be a tax agent service, other than a tax agent service that involves representing an *entity* in their dealings with the Commissioner.

18. To be a tax (financial) advice service, the service must relate to:

- ascertaining liabilities, obligations or entitlements of an *entity* that arise, or could arise, under a taxation law; or
- advising an *entity* about liabilities, obligations or entitlements of the *entity* or another *entity* that arise, or could arise, under a taxation law.

To further illustrate the impact of using this term to describe both providers and clients, paragraph 22 states:

- the availability of other expert/s and the ability of an *entity* to form their own judgment or rely on their own knowledge.

In this instance the word entity could apply to either a client or the provider of the service.

In recognition of the legal meaning of the term 'entity', the FPA recommends the TPB use Corporations Act terminology commonly used by the financial advice profession to clearly differentiate consumers and tax (financial) advisers, in all TPB policy documents relating to the provision of tax (financial) advice services. For example, the FPA suggests the use of the terms 'client' and 'provider'.

h) General advice definition (page 5)

Change to 'All other financial product advice' (currently produce advice).

3. TPB(EP) D5/2014 – Proposed continuing professional education policy requirements

a) CPE hours

The FPA supports the standard of 60 CPE hours over a three year period or aggregation of CPE activities over a triennium. Our principle is we should have appropriate standards of education to represent our professionalism.

We support this standard on the basis the areas of advice across wealth accumulation, wealth protection and wealth transfer all involve consideration of the tax implications in order to ensure the advice is appropriate to the client's needs.

With the breadth of the advice areas and the relevance of taxation impacts we want to ensure that financial planners are providing advice that has the appropriate knowledge and application of the relevant taxation laws knowing the reality is that client's expect to rely on the advice they are provided.

This does not remove the need to confirm the individual's specific tax position with their accountant however, it is reasonable in most cases for the consumer to rely on the tax considerations provided and calculated as part of the advice and therefore financial planners ongoing CPE needs to be at an appropriate standard.

We support the recognition of the CPE hours from other related CPE activities, particularly those from other recognised professional bodies.

b) CPE for certain categories of conditional advisers

The FPA notes paragraphs 19-22 refer to 'conditional adviser' registration. As mentioned above in response to the Definition Exposure Draft, this category of registration is has not been clearly defined by the TPB or in the TASA. This could put financial planners at risk of non-compliance if they incorrectly register with the TPB as a 'conditional adviser', and potentially impact on the consumer protections of the TASA regime. It may also result in the TPB receiving numerous incorrect applications.

The FPA recommends the TPB include in its CPE policy, a clear definition of 'conditional adviser' (refer to section 2(e) of this submission for a detailed recommendation).

c) Relationship with initial registration education requirements

With a diverse background of education and experience there may be relevant situations where the completion of a course prescribed by the TPB for registration purposes is a valid CPE activity.

The FPA agrees with the principle that if a tax (financial) adviser has 'no relevant prior education or knowledge' of taxation laws, that the training undertaken to gain this initial knowledge and meet the TPB's registration education requirements cannot count towards the TPB's CPE requirements.

However, the majority of financial planners through their formal education and/or ongoing professional development have undertaken and completed a considerable amount of tax education and training. The assumption that they haven't is incorrect and without basis.

The FPA recommends that tax (financial) advisers who have undertaken formal education and/or ongoing professional development education and training on taxation laws, should be permitted to count as CPE the completion of any additional formal tax education required to meet the TPB's registration education requirements.

This approach recognises and legitimises prior learning and is consistent with professional bodies.

As the majority of financial planners will have completed either the Diploma or Advanced Diploma of Financial Planning as a minimum which includes taxation modules, then any additional education would be relevant for CPE.

The industry submits that the registration requirement as a tax (financial) adviser is, effectively, for doing what financial planners have always been doing, then it would make reasonable sense to allow any additional training course (for TPB registration purposes) to be counted as CPE.

The FPA suggests the TPB could allow registration education training undertaken to count only for the year in which it is undertaken - that is, not to negate most of the CPE requirement for the next two years.

d) Extenuating circumstances

In a profession where there is a number of women taking career breaks for maternity reasons as well as men taking career breaks for personal and professional reasons, the FPA believe the limited examples of situations which would be considered 'extenuating circumstances' are insufficient.

There are circumstances, such as international work placements and leave to be a primary carer, where it is not practical to expect a regular level of completion of CPE activities, either due to accessibility or availability of activities.

The FPA notes that the extenuating circumstances listed in paragraph 38 apply to tax agents and BAS agents, and that it is appropriate for this policy to apply equally to tax (financial) advisers. As such, the FPA recommends the TPB review its extenuating circumstances provisions for all registered entities.

As an alternative, the FPA suggests a requirement could be placed on the individual that in the case where CPE was not maintained they are required to demonstrate currency of knowledge before commencing advising activities. This would be consistent with the requirements commonly used by licensees and professional bodies in the advice profession.

The FPA also recommends paragraph 39 be extended to explain the point at which an application for extenuating circumstances must be made.

e) CPE activities

The FPA recommends the separation of the points under paragraph 29. The following statement should be a discrete point of its own:

The provision of a tax (financial) advice service will not, of itself, constitute a CPE activity.

f) Application of CPE requirements under licensee registration

The FPA believes there is currently confusion as to who is required to meet the TPB's CPE requirements when a licensee registers as a tax (financial) adviser. For example:

- is it only those representatives nominated and registered to meet the sufficient number test?
- is it all advisers as they are caught under the supervision requirements?
- is it only the supervisors?
- is it all representatives who provide a tax (financial) advice service on behalf of the licensee?

The FPA recommends the TPB's CPE policy clearly state who (that is which individuals) must meet the CPE requirements under the sufficient number test. This must include when the CPE requirements apply for licensees registering during the notification phase, transitional phase and standard phase.

Additional TPB Information Sheets

The FPA is concerned that there is a lack of clarity around certain key aspects of the TASA regime which is causing significant confusion and concern within the financial planning profession. We therefore request the TPB undertake consultation to develop additional Information Sheets on the following key issues:

- Registration and transition arrangements
- Sufficient number test and supervision requirements