

Commonwealth Statutory Declarations Review  
Courts Section  
Civil Justice Policy and Programmes Division  
Attorney-General's Department  
3-5 National Circuit  
BARTON, ACT 2600

By email: [statdec.review@ag.gov.au](mailto:statdec.review@ag.gov.au)

13 April 2017

Dear Reviewers,

### **AFA Submission – Review of the Statutory Declarations Regulations 1993**

The Association of Financial Advisers Limited (AFA) has served the financial advice industry for 70 years. Our objective is to achieve Great Advice for More Australians and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

### **Summary of the AFA's position on Regulations**

The AFA considers the *Statutory Declarations Regulations 1993* (Cth) (**'the Regulations'**) to be generally fit for purpose and generally meeting the needs of the community – except insofar as where the Regulations impose increased costs on many consumers of financial advice by not permitting them to use the professional that they have partnered with as an authorised witness on statutory declarations. This restriction also causes confusion for many consumers of financial advice and for those employed in financial services who know that financial advisers are trusted to verify identity documents and witness consumer signatures on application forms, but whom cannot also witness those same consumers' signatures on associated documentation like statutory declarations. Prescribing financial advisers in the Regulations will also support the Government's recognition of the financial advice professional.

The AFA recommends that to address these issues, there is a genuine unmet community need for people who are entitled to use the title “financial adviser” or “financial planner” to be included on the list of prescribed authorised witnesses under Schedule 2 of the Regulations.

## The reasons for the AFA’s recommendation

### *Reducing consumer costs*

Whether it be to protect their families with an appropriate suite of life insurance products, to overcome debt and plan for their retirement, to fund their families’ holidays and lifestyle or to achieve other life goals more Australians are seeking out quality financial advice to help them through life’s large and small decisions. As more and more research points to the increased wellbeing and other benefits associated with quality and professional financial advice, it is becoming increasingly apparent to many Australians that partnering with a professional financial adviser to help them achieve their life goals is a pragmatic thing to do. Accordingly, more and more financial advisers in Australia are embracing the moves toward increasing professionalism requirements and offering a greater suite of financial and professional services to meet the needs of their communities.

As more financial advisers move away from relying on institutional structures to support the financial services they deliver and join the growing community of financial advisers who want to be recognised for their professional standing, they are seeking greater opportunities to provide professional services beyond their core financial services training. Many financial advice firms now offer a greater range of services to service their communities’ needs, including:

- debt management and consolidation,
- life insurance protection,
- intergenerational planning,
- planning for and during retirement,
- superannuation consolidation and selection,
- self-managed superannuation administration and establishment services,
- investment portfolio design and management,
- investment recovery services,
- business consulting services,
- estate and succession planning,
- asset acquisition and disposal services, and
- other professional services.

Many of the processes associated with financial services and modern life require statutory declarations to be completed. Financial advisers often require their clients to complete statutory declarations in order to complete procedural tasks required to access and fully utilise some financial services. These can include State legislated statutory declarations, such as for estate planning and wills, as well as Commonwealth statutory declarations. The times that financial advisers assist their clients where a Commonwealth statutory declaration is required to be also be completed include, amongst other purposes:

- to support insurance claims,
- for superannuation beneficiary nomination purposes,
- to make shareholder claims on deregistered company funds,
- to confirm their financial position, income and expenses for social security purposes, and
- to support an application seeking re-issue of life insurance policy documents.

Unless the financial adviser is already an authorised witness due to being a dual professional (such as an accountant), works within a bank branch or a multi-disciplinary practice (for example, with an accountancy practice attached), when the financial adviser presents their client with a statutory declaration associated with one of the above purposes the client cannot complete the statutory declaration within the adviser's offices because they need to seek out an authorised witness. The AFA submits that consumers of financial advice should be enabled to have their needs met by their financial advisers being able to witness the statutory declarations.

### ***Resolving community confusion***

The inability for financial advisers to witness statutory declarations also causes confusion amongst the Australian public and those involved directly or indirectly in the Australian financial services sector, which is Australia's largest economic sector. Under the *Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) ('the AML-CTF Rules') financial advisers are required to verify the identities of people who are:

- involved in, or likely to be involved in, a transaction of AUD10,000 or more,
- US citizens, US-registered companies or owners of US real estate,
- politically exposed persons,
- beneficial owners of companies, and
- settlors of trusts.

Financial advisers carry the primary identity verification obligation when they provide Item 33 and Item 54 designated services under the AML-CTF Rules. However, the financial services companies whose products and services are consumed by financial advisers' clients rely on the financial advice firms to verify the identity documents of their customers when they provide a designated service to those people. This is because financial advisers are the 'face of' the distribution channel of many financial services. When financial advisers verify their clients' identity documents, they use stamps or writing on the copied documents to say that they "verify" (and sometimes say, "certify") that the identity documents (such as passports, drivers' licences and company or trust deeds) "are a true and accurate copy of the original".

Many of the people whose identities are being verified and most of the financial services sector employed in these processes view this act of verification as equivalent to when Justices of the Peace, solicitors and other authorised witnesses certifying copies of other documents for other statutory purposes. They query why a financial adviser can be trusted and authorised to perform an important identity document certification service but then cannot witness a statutory declaration that is also required to be completed for the same financial services or financial products. The AFA recommends the Attorney-General's Department resolve the confusion caused by financial advisers being trusted and authorised to verify identity documents under the AML-CTF Rules but not to witness statutory declarations.

### ***Supporting the Government's professional recognition of a financial advice profession***

Additionally confusing for the community is how this inconsistency can be maintained given the Federal Government has recently recognised financial advisers as being ready to join the ranks of recognised professions. Just over two months ago the Federal Parliament passed legislation to set own the professional standards requirements of financial advisers. The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* is the Federal Government's recognition that there is already a profession of financial advisers serving the needs of the Australian public and creates the means by which the profession will be measured going forward. Including in this legislative framework is a new statutory authority who will oversee the transitional requirements of existing financial advisers.


Being an authorised witness to statutory declarations is a hallmark of community trust in a profession or occupation. Like other professions, financial advisers are required to comply with their professional association's Code and demonstrate ethical behaviour toward their clients. The requirement to comply with a Code of Ethics will become a uniform statutory obligation in 2020 when section 921E of the *Corporations Act 2001 (Cth)*<sup>1</sup> comes into effect. The majority of financial advisers are already subject to ethical oversight through their membership of a professional association, and association membership continues to grow in anticipation of some professional associations becoming Code of Ethics Compliance Monitoring Schemes during 2019.

As the professional standards requirements upon financial advisers have now been defined, the Australian community's need for financial advisers to deliver equivalent professional services – and be seen to be equivalent to other professions – will grow as a consequence. The AFA submits that the care that most financial advisers demonstrate toward their clients and the skill required to execute professional financial services – including that which is taken to verify identity documents under the AML-CTF Rules – illustrate why the Federal Government has recognised financial advisers as being ready to join the community of recognised trusted professions. The Attorney-General's Department's inclusion of financial advisers as authorised witnesses will serve to support the Government's recognition – playing an important early first step in the coming transition of public perception.

### Concluding remarks

The AFA submits that there is a genuine unmet community need for financial advisers to be authorised witnesses of Commonwealth statutory declarations. Many Commonwealth statutory declarations are required to be completed by consumers of financial services. These should be able to be completed within all financial adviser's offices, not just the minority of them that have some other form of authorised witness recognised employees. To continue to restrict this imposes an unreasonable cost upon consumers in the form of search and time costs.

Adding those who can use the title "financial adviser" or "financial planner" to the list of authorised witnesses under Schedule 2 of the Regulations will also resolve over a decade of confusion within the community. This will especially have an impact upon those directly or indirectly involved in the financial services sector because they know that financial advisers are already trusted (and indeed, required) to attest to the accuracy of identity documents under the AML-CTF Rules. Recognising financial advisers amongst recognised professionals will also help to improve trust in the sector and demonstrate the Government's recognition of the financial advice profession.

If you require clarification of anything in this submission, please contact 

Yours sincerely,



<sup>1</sup> Inserted by Item 12 of the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.