FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

Ms Meghan Quinn
Division Head
Financial Systems Division
The Treasury
Langton Crescent
Parkes ACT 2600

20 June 2016

Via email: professionalstandards@treasury.gov.au

Dear Ms Quinn

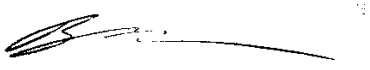
REF: Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Government on the Exposure Draft package of legislation and regulations for the Professional Standards of Financial Advisers Bill.

The FPA welcomes the sensible approach taken by the second draft of these measures to help ensure the sustainability of the financial planning profession, in particular the more practical time frames for existing financial planners to meet the transition time frames. The FPA would like to state its support of this very important framework to bring the broader financial advice industry closer to the level of professionalism FPA members have voluntarily been subscribing to since 2007.

We would therefore encourage the Government to expedite the passage of this important legislative framework, setting up of the standards setting body and allowing the new standards to be set as soon as possible. We offer the comments in the attached document with the intention of making the framework stronger or more efficient to ensure the success, rapid implementation and most importantly raise the professionalism of the broader community of financial advice providers. We look forward to the day when all financial advice providers are recognised by the community as being a true profession the way FPA members are.

Yours sincerely



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FPA SUBMISSION
CORPORATIONS AMENDMENT (PROFESSIONAL STANDARDS OF FINANCIAL ADVISERS) BILL 2016

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Introduction

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Government on the Exposure Draft package of legislation and regulations for the Professional Standards of Financial Advisers Bill.

The FPA welcomes the sensible approach taken by the second draft of these measures to help ensure the sustainability of the financial planning profession, in particular the more practical time frames for existing financial planners to meet the transition time frames. The FPA would like to state its support of this very important framework to bring the broader financial advice industry closer to the level of professionalism FPA members have voluntarily been subscribing to since 2007.

We would therefore encourage the Government to expedite the passage of this important legislative framework, setting up of the standards setting body and allowing the new standards to be set as soon as possible. To further highlight this, we have been inundated by member enquiries asking how they can comply with this package of legislation as soon as possible and seeking details of the new standards.

We would therefore like to clearly state that we believe the proposed framework is now right. The following comments and proposed amendments are made with the intention of making the framework stronger or more efficient to ensure the success, rapid implementation and most importantly raise the professionalism of the broader community of financial advice providers. We look forward to the day when all financial advice providers are recognised by the community as being a true profession the way FPA members are.

Amendments to Bill

Section 921B(5) and Section 921D(2)(a)
Section 921B(5) includes a note which states that a provisional relevant provider is not required to complete continuing professional development (CPD) as set by the standards body. This is replicated through an exemption provided at section 921(D)(2)(a).

We do not believe provisional relevant providers should be carved out of the requirement to complete CPD. There may be instances for example where the provisional relevant provider has completed their education obligations a number of years before completing their professional year, or the professional year is conducted over multiple years due to the program or part time work, and therefore there is significant benefit to requiring the provisional relevant provider to complete ongoing CPD.

Recommendation: remove the note at 921B(5) and the exemptions under 921D(2)(a).

Section 921C(5) and Section 921D(2)(b)
For the purposes of consumer clarity, and ensuring only those individuals who operate within this new framework are able to call themselves financial planner/adviser, we do not support the exemption provided to those who provide personal advice on time-sharing schemes. While we understand this is replicated in exemptions provided in the Corporations Regulations 2001 around compliance with the FOFA package of legislation, this package is enshrining terms which provide

clearer consumer understanding, and this exemption has the potential to undermine this positive consumer outcome.

Recommendation: remove the exemption provided at 921C(5) and 921D(2)(b).

Section 921F

We are very supportive of the concepts legislated at 921F. We are aware of other parties which may present differing views to those of the FPA while providing overall support of the supervision framework. We would however provide the following comments for consideration.

We note that under the current drafting, the supervisor of the provisional relevant provider must approve the advice provided by the provisional relevant provider. This raises a number of potential issues which may need to be clarified to ensure appropriate working of the section of the legislation as intended.

Firstly, it isn't clear who is ultimately responsible for the advice being provided from the perspective of the operation of Section 961B of the Corporations Act 2001. It therefore isn't clear who a consumer would complain to, and who would bear ultimate responsibility for the advice. In the FPAs view, it would be appropriate for action to be taken against both the supervisor of the provisional relevant provider as well as the provisional relevant provider. For example, where advice is deemed to not have been in the best interest of the client, it would be appropriate for action to be taken by ASIC against the supervisor for allowing advice to be provided which is not in the best interests of the client which may include enforceable undertakings, fines or banning orders. While it would be inappropriate to penalise a provisional relevant provider in this manner, it might be an appropriate penalty to extend the professional year of the provisional relevant provider and require them to seek out a new supervisor to ensure they are appropriately supervised. From this perspective, we believe it is appropriate for both parties involved in the provision of the advice to have skin in the game to ensure appropriate responsibility and due care is taken for the advice being provided. Based on this, we would suggest the current drafting of 921F(6) is appropriate, but should a change be considered, as a minimum, both the supervisor and the provisional relevant provider should both have responsibility for the advice being provided. An alternate solution would be to mandate that the advice is prepared by the provisional adviser, but provided by the supervising adviser so there is clear linkage and responsibility.

A second issue we would note, but are unclear about the ultimate impact is that there are potential impacts for obtaining professional indemnity insurance under this section, where a supervisor may not be the provider of advice but maintains responsibility should the provisional relevant provider be the signatory to the advice.

Thirdly, we note that at 921F(7) there is the requirement for the supervisor of the provisional relevant provider to ensure the client is informed of the supervision arrangement is being under taken and they are responsible for the advice. We note in other legislative frameworks such as the Tax Agent Services Act 2009 (TASA), this has been achieved through the use of a standard disclaimer which had to be included in the SOA. A similar mechanism could also be considered by the Government to ensure consistent disclosure to a consumer and the ability to provide an education program, potentially through the ASIC MoneySmart website. Alternately, we will be asking ASIC to ensure this is contained within a terms of engagement which is signed by the client to ensure the client is made aware and acknowledges this arrangement is in place.

We are also aware that other interested parties may suggest that a licensee can act as the supervisor of the provisional relevant provider. We would highlight that in order to raise the quality and professionalism of the provision of financial advice to consumers, this would be better achieved through a direct mentoring relationship rather than by a back office function such as an advice vetting team. For this reason we recommend no change to the intent of the supervision framework away from being a one to one relationship (acknowledging that multiple supervisors may be involved depending on expertise, but in a one to one manner).

Recommendation: Ensure the supervisor of the provisional relevant provider is ultimately responsible for the advice provided, but consider whether the provisional relevant provider should also have responsibility for the advice provided. Consider a standard disclaimer for disclosing this relationship to consumers. Maintain the overall intent of the supervisor framework to increase professionalism through direct mentoring of provisional advice providers.

Division 8B

As a professional association with significant experience in monitoring our member's compliance with our FPA Code of Professional Practice, and managing complaints and breaches of the code we have a keen interest in the operation of this division. We therefore offer the following observations on the current drafting of this section.

Section 921LA

At section 921LA(5)(a) we note that our current service standard for investigating a potential breach of the FPA Code of Professional Practice is 90 days. In general we are able to meet this service standard. However there may be cases where this is not met due to the planner or licensee not cooperating in the investigation or due to unavoidable mitigating factors. These may include the planner changing licensees and the quality of the licensees meeting their record keeping obligation or the planner leaving the country for an extended period of time. We would note however that where a hearing is required to implement sanctions, this will take significantly longer than the 90 day period to make a final determination based on the requirement to run a hearing through the FPA Conduct Review Commission.

Recommendation: consider extending the 90 day time frame for completing investigations.

Comments on interaction of Compliance Schemes with ASIC and ASIC Regulatory Framework.

The introduction of Code of Ethics compliance schemes has the potential to add further confusion to consumers and licensees around making and handling complaints. Consumers may raise complaints under this framework which may have jurisdiction with the licensee, an external dispute resolution scheme, a code of ethics monitoring scheme or ASIC. We would therefore recommend that ASIC provide both clear consumer education on who complaints should be raised with in the first instance, but also for licensees so they know how to handle complaints made by consumers directly to them and who to report them to where required.

We would also note in relation to running investigations against our Code of Professional Practice, at present ASIC is prohibited from sharing information with the FPA Conduct Review Commission (the FPA's Code Monitoring Scheme) which would allow us to conduct an investigation in a timely and efficient manner. We question whether ASIC has the ability to report complaints which are

directed to ASIC which may involve a breach of the code of ethics to the code monitoring scheme of the relevant provider and provide any additional information or material ASIC has obtained for the purpose of efficiently running this investigation. This would involve a reverse sharing of information under Section 921MB as drafted and potentially an amendment to ASIC's enabling legislation.

We would envisage that this can be enabled through entering into a memorandum of understanding between approved compliance monitoring schemes and ASIC to openly and transparently share information about subscribers of a code monitoring scheme between each other. In our experience, we are able to more quickly assess and deal with consumer complaints and investigations of member conduct than ASIC has been able to in past instances. These investigations however can be hampered and delayed where ASIC is not able to share information. Without this it is difficult to see how code monitoring schemes will be able to successfully manage their monitoring obligations where insufficient information, or no information, is shared by ASIC. Overall these arrangements would also allow ASIC to be more efficient in their regulatory and conduct compliance work by allowing monitoring schemes to carry investigatory and conduct management obligations in a co-regulatory manner with the compliance monitoring scheme.

We make a further point that ASIC currently requires under RG183 that code compliance schemes must be independent of the professional association they are monitoring codes on behalf of. This is in conflict with the principles laid out in Section 921J(c) and would further add to the cost of running such schemes where other code compliance schemes are currently in place. We would therefore recommend that either the legislation is drafted to be in line with current ASIC guidance, or ASIC is requested to update their regulatory guidance in line with this legislation to permit professional associations to run their own code compliance monitoring schemes.

Recommendation: ASIC to develop clear complaints handling guidelines for licensees and consumers. Consider amending legislation to enable ASIC to share information with Code Monitoring Schemes under memorandum of understanding. The legislation or ASIC RG183 need to be amended so they are in line with each other.

Section 921P

We request that section 921P(2)(ii) be amended to allow the standards body to approve other exams or assessments which meet the criteria set by the standards body to also be approved, even if this is restricted to the transition period for existing relevant providers. This will allow more flexibility for both existing relevant providers and individuals looking to become relevant providers going forward, and has the benefit of the standards setting body outsourcing the production and administration of the exam as a cost saving measure. We would also suggest, that with appropriate time limits, some existing relevant providers may have recently passed exams which could be deemed to meet the criteria set by the standards body. Both of these measures have the benefit of making completion of the exam more efficient for existing relevant providers but not undermining the integrity of the overall framework.

Recommendation: allow the standards body to approve other assessments which meet their standards and criteria for the exam.

Section 921R

We note that the Government is now proposing to establish the standard setting body as a Commonwealth company for the purposes of administering the new framework. We would again reiterate the benefits shown in other professions and jurisdictions that the most successful way to raise professionalism within an industry is for the profession to set these standards themselves, even where there is a co-regulatory framework mandated. We therefore question whether setting up a Commonwealth company to mandate obligations on the industry will be accepted as professionalism or merely compliance.

We are keen however to see a rebuilding of trust and confidence in the financial advice industry and for it to take its place in Australia as a true profession. Therefore we acknowledge that this may be the only way to progress the reform agenda through Parliament, and are therefore supportive of this model.

We would raise that it is still currently unclear how the body will obtain both initial and ongoing funding going forward.

We would also raise the following amendments to the draft legislation.

At section 921R(c)(iv) we propose the following amended drafting:

> At least 3 directors (excluding the chair of the board) must have experience in ~~*carrying on a financial services business or providing a financial service*~~ ***providing financial advice****;*

At section 921R(c)(viii), while we are broadly supportive of this requirement, we do question whether an academic with appropriate skill and understanding of financial advice will be able to be found to fill the board position. The FPA set up Financial Planning Education Council which has successfully demonstrated that a group of academics who are engaged and passionate about financial planning education standards can set an agreed standard and approve courses despite members of the board being involved in, responsible for and running financial planning courses without conflict issues arising.

Finally, we would request that while the minister has the ability to appoint members of the Board, that there is consultation of the financial planning community in the nomination of candidates for Board positions.

Recommendations: Amend 921R(c)(iv) to ensure the directors have experience providing financial advice. Consider amending 921R(c)(viii) to remove the exemption on current academics. Consult with financial planning community on Director nominations.

Subdivisions B and C

We make the following minor suggestions in regards to the register of relevant providers.

Firstly, we note that the current register is called the Financial Adviser Register (FAR), and we wish to ensure there was not a duplication of registers created by Subdivisions B and C.

Secondly, we would note at sections 922E(h)(i); 922F(m)(i); and 922Q(u)(i) that there is a difference between education qualifications and certifications or designations obtained through course work or award, and would ask that these be specifically separated in the register. It will allow consumers to check that their financial planner/adviser is firstly appropriately qualified, and then would allow easier identification of more highly qualified or specialised relevant providers for consumers. The current format of the FAR makes this very difficult for consumers to see the

difference between these two (very different) pieces of information about the relevant provider they are selecting.

Recommendation: separate qualification from certifications/designations on the register of relevant providers.

Section 1546BA

We note that in the explanatory memorandum for this section that the definition of the relevant provider who can be exempted from the exam is a "*highly qualified expert in their field"*. We would question how this will be defined, and whether this will ensure the integrity of the overall framework, particularly as we would assume a highly qualified expert in their field either won't be a relevant provider (based on either being an academic or in a supervisory/expert position), or wouldn't have any issues passing an exam which tests their knowledge and understanding of the field they are an expert in. We would also note that most financial planners would consider themselves an expert in their field and are in many cases highly qualified which could lead to the body being inundated with exemption applications which would appear not to be the intention of the exemption.

Recommendation: consider whether providing an exemption for the exam will impact the integrity of the framework.

Section 1546D

We would request that the standards body be able to approve pro-rata and exemptions to the requirement to meet the standards it sets for CPD in exceptional circumstances. We would highlight there may be instances where due to ill health or parental leave that a relevant provider may not be able to meet the CPD standards for a particular CPD year. In these instances, the standards setting body should have the ability to exempt of pro-rata the requirements for that year, and potentially the ability to set an individualised program going forward for the relevant provider.

We also highlight that there is an obligation under TASA to complete continuing professional education (CPE). We would request consideration be given to ensuring that a single CPD framework is developed rather than requiring a relevant provider to operate under 2 separate and potentially different CPD/CPE frameworks with 2 separate regulators. This is a significant cause of confusion and additional cost to industry at present. We would recommend consideration be given to amending TASA to accept CPD completed under this new framework to be counted as meeting the CPE obligations. We acknowledge that there may need to be some work done between the TPB and new standards body to ensure relevant knowledge areas are covered to obviate this duplication.

Recommendation: Provide the standards body with exemption or pro-rata powers within section 1546D for exceptional circumstances. Consider amending TASA to recognise CPD completed under this new framework as meeting CPE obligations.

Explanatory Memorandum

Regulatory Impact Statement

It is not entirely clear if this section of the Draft EM has not been completed or how the costs have been determined. An FPA Professional Partner has indicated that just to meet the requirements under Section 1546B(1) will cost between $11,500 and $21,500 per planner depending on their current level of qualifications and up to 700 of their planners may need to do some level of further study. Beyond the cost obligations for continuing professional development which is a current obligation, it is difficult to estimate the remaining costs until more is known about the content and structure of the exam, the nature of the professional year and until ASIC has determined the requirements for the code monitoring schemes.

We also have not been provided with any information for how the funding of the new standards body will be paid for by industry, although again we would assume there would be a per-planner cost of some form or another. We would expect to be consulted in more detail and provided with cost estimates of this prior to the legislation being introduced into Parliament.

We highlight that this will have a significant impact on the cost of advice provided to consumers in an environment where consumers are already turned off by the cost of advice as financial literacy rates continue to be a significant concern.

Recommendation: Complete a full regulatory impact statement on the full legislative package.

The new education standards

At section 2.14 it is noted that the standards body may approve international courses as meeting the education standards. While there are some aspects of financial planning education which would be universal – such as client engagement principles – much of a financial planner's role and obligations involve understanding Australian laws, regulations and conduct obligations. We would point to ASIC Regulatory Guide 146 dealing with this at paragraphs 85 and 86, and would encourage the new standards setting body to replicate this facilitative approach through the use of bridging courses.

Recommendation: Consider amending the EM statement on approval of international degrees as requiring appropriate bridging.

Provisional relevant provider – additional requirements

We note the obligation for provisional relevant providers to be supervised for a minimum of a year is similar to the obligations under the TASA, in that a relevant provider (or tax (financial) adviser) is unable to be fully registered as a relevant provider until they have at least 12 months of relevant supervised experience. We would point out that given the similarity in obligations, there is a benefit to a provisional relevant provider being deemed to have met both standards during their professional year. We believe this may require an amendment to TASA to clarify this point. It would be a further significant cost obligation on licensees to further supervise a new planner for a further 12 months if the TPB is not able or willing to recognise the supervised professional year as meeting their obligations.

We would also highlight that individuals who are existing financial planners in other jurisdictions or are returning to being a relevant provider after taking an extended career break from providing advice may have significant experience in the skills of providing advice to consumers, and setting the same standards for the professional year may be problematic. Therefore there may be need for the standards setting body to be able to provide some flexibility around the professional year in exceptional circumstances. We aren't recommending that the obligation be removed, but that flexibility is able to be provided.

Recommendation: Consider an amendment of the Tax Agent Services Act 2009 to state that relevant providers (i.e. those who have completed the professional year) meet the experience requirements for the purposes of registering as a tax (financial) adviser. Consider providing the standards body the ability in exceptional circumstances the ability to facilitate alternate arrangements for the professional year.

Transitional provisions for existing providers

We note that at section 6.16 there is a description of those who may be deemed as having sufficient expertise to not be required to complete the exam. We note that the follow on states "….*incur the unnecessary and costly compliance burden of passing an exam".* While we are supportive of the integrity of the overall framework to raise professional and education standards of financial planners closer to those met by FPA members, the premise that the exam will be both costly and a compliance burden to a highly qualified expert suggests the possibility that passing the exam would be out of reach for most financial planners. We would suggest this language be amended or consideration be given to what function and scale the exam is being proposed on top of the other costs discussed in the regulatory impact statement section above, bearing in mind that the relevant provider now also has a degree level or equivalent level of qualification.

Recommendation: Consider amending the EM language at section 6.16.