



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

23 December 2015

By email: [professionalstandards@treasury.gov.au](mailto:professionalstandards@treasury.gov.au)

Dear Ms Quinn,

**RE: Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015**

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback and proposed amendments to the Exposure Draft legislation for Professional Standards for Financial Planners.

The FPA supports the policy reform agenda to increase education, standards and ethics of financial planners. This reform has been long overdue and we congratulate the Government on this. The FPA has not only been a loud voice in advocating for these reforms, we have been a leader in setting education and professional standards for our members, which we believe help raise professionalism and build trust and confidence in consumers accessing financial advice.

However, raising the education standards of financial planners/advisers can only be achieved under a transition plan that is actually workable and practical.

Specifically the exposure draft needs to be amended to address the proposed requirement for existing financial planners to have to complete a bachelor degree or equivalent by 1 July 2019. This requirement if not addressed will have very serious implications. It is physically impossible for any individual to be able to complete a bachelor degree within 2 years (i.e. between 1 July 2017 and 30 June 2019), let alone doing so working full-time. The consequence of this measure will be a dramatic reduction in financial planner numbers, which will impact tens-of-thousands of clients being left without their financial planner to service them, hundreds of small businesses closing their doors resulting in large numbers of support staff/employees out of work.

Further, raising education standards alone will not deliver the necessary improvements in the provision of financial advice to consumers. The FPA supports the proposal to have all financial planners subject to a Code of Ethics, however the options for meeting this obligation are insufficient in meeting this objective. The exposure draft significantly reduces the role of professional bodies in



relation to the new professional standards framework. This does not align to the policy objective or the recommendations made by the PJC that had bi-partisan support.

Therefore, it must be noted that the FPA will be unable to support and advance the new framework, including the establishment of the standards body in the absence of our proposed changes, specifically the transition arrangements for existing financial planners and the recognition and approval of professional body codes of ethics.

The FPA notes this submission has been presented in addition to the one provided as part of the industry consensus group and we would welcome the opportunity to discuss our feedback and proposed amendments further.

If you have any questions, please do not hesitate to contact our General Manager Policy and Conduct, Dante De Gori, or myself on 02 9220 4500.

Yours sincerely

**Mark Rantall**

CEO

Financial Planning Association of Australia Limited



**Exposure Draft**

**Corporations Amendment (Professional  
Standards of Financial Advisers) Bill 2015**

**FPA submission to:**

The Treasury

**24 December 2015**



## INTRODUCTION

The FPA has continued to lead the way in raising the bar of education and professional standards for financial planners, financial advisers and relevant providers (financial planners) since it was established. In 1992 two separate entities, the Australian Society of Investment and Financial Advisers (ASIFA) merged with the International Association for Financial Planning Australia (IAFP) to form the FPA. Its first Code of Ethics and professional obligations were introduced in 1992, some 9 years prior to the introduction of the Financial Services Reforms (FSR) Act (2001) and at a time when legal requirements for the provision of financial advice were quite limited.

We developed and required members to complete a Diploma of Financial Planning (DFP 1-8), again pre-FSR, when no education requirements existed in the law and before the introduction of the Interim Policy Statement 146 and the subsequent introduction of the ASIC Training Register. Our first courses defined financial planning in Australia and strongly influenced the direction of financial planning education.

In 2009, we announced that our members would be banned from receiving commissions and conflicted remuneration effective from 1 July 2012, before the PJC Inquiry into financial products and services was established and the resulting Future of Financial Advice (FoFA) reforms developed.

We introduced a world-first Code of Professional Practice including Ethics, Practice Standards and Rules under the core principle of 'client first' in 2008, again before the development of the FoFA requirements.

In 2011, we established the Financial Planning Education Council (FPEC), an independent body chartered with the responsibility of raising the standard of financial planning education and setting the standards for accreditation of financial planning education programs.

The FPA has always had experience requirements for membership entry, highlighting the vital importance of the professional development gained through on the job training which enables the application of the knowledge gained through education. This is an imperative element for a ticket to practice, yet has never been a regulatory requirement. The FPA has filled this gap for those financial planners voluntarily willing to professionalise.

And in 2010 the FPA announced a requirement that all new members must hold an approved degree.

The FPA has been at the fore of setting appropriate and high standards and requirements specifically for financial planners to continuously raise the bar of professionalism and protect consumers. Our continuous drive to professionalism is soundly supported by our financial planning practitioner members.

Professional membership is a proven model for raising the standards for advice providers that has been continually successful in Australia since the FPA's inception. Professional obligations work to protect consumers.



Public policy should improve consumer protection in the most efficient and effective manner. To introduce new requirements in the law is an expensive and lengthy process and often does not fully deliver on the intended objectives. However, the nature of law making makes it challenging to improve.

The FPA and other professional bodies continuously review their obligations, including education requirements, to ensure they are instilling professional behaviours in financial planners and financial advisers that deliver quality, appropriate and considered advice that Australians deserve. Professional bodies are such an integral and embedded part of the profession they can identify and address emerging issues to protect consumers.

Professional obligations are not limited to the definition of 'financial product advice' in the Corporations Act and are specifically developed for financial planners. A fundamental flaw of the law is this definition as it ties the provision of advice to financial products limiting its regulatory reach.

Professional obligations are not tied to product sales rather focus on the transparent engagement with clients and their needs. Professional bodies have public interest at their core.

The FPA urges Treasury and the Government to support the consumer protection benefits provided by professional bodies and to reflect this in the regulatory design.



## NEW EDUCATION STANDARDS

The FPA agrees and supports the need to increase the minimum education standards and requirements for those providing financial advice to consumers. A key tenet of the FPA's drive towards achieving the highest standards of professionalism is the requirement for higher levels of education for financial planners. The FPA already leads the way with an approved degree and minimum experience requirements for membership.

Determining an appropriate framework and timing for financial planner education is an extremely complex issue which crosses multiple regulators, multiple industries, and impacts on the availability, accessibility and affordability of advice for consumers. Such a framework must consider the practical implications for existing financial planners while not restricting new entrants into the profession, and ensuring consumer protection is enhanced while the accessibility and affordability of advice for consumers is maintained.

The FPA supports an increase to training standards and education requirements for financial planners, however the FPA does not believe it is appropriate to mandate an increase in the minimum education level in the absence of recognition of a solid framework for financial planner education which clearly shows how all the elements work together to improve financial planner competency.

The FPA supports the proposal for the new education framework for new financial planners from 1 July 2017, which will be a bachelor degree or equivalent. The FPA however does recognise that this will present challenges in the supply cycle of new financial planners into the industry that may result in the cost pressures for advice onto consumers.

Further the FPA does not support any exemption or carve out from the new education and standards framework. The proposal to carve out timeshare operators is not acceptable. If timeshare operators are providing personal financial advice then they must be required to meet the same education and professional standards as all other financial planners (i.e. 'relevant providers').



## TRANSITION ARRANGEMENT FOR EXISTING FINANCIAL PLANNERS

The FPA does not support the transition process as outlined in the Exposure Draft for existing Financial Planners. There are four main reasons for this:

1. The requirement for existing financial planners to complete a bachelor degree is not appropriate;
2. The 2-year time frame to complete the transition of a bachelor degree is not possible;
3. The requirement completely ignores the current qualifications and training, experience, and ongoing education of existing financial planners; and
4. The costs and implications for complying with this requirement will be very extensive on industry and consumers.

**The FPA strongly recommends that the draft legislation be amended to allow for the new standards body to decide on the appropriate transition pathway for existing financial planners.**

While the FPA believes no blanket grandfathering should apply, there is a need to acknowledge Recognised Prior Learning (RPL), including existing qualifications, ongoing Continued Professional Development (CPD) and licensee required training, as well as relevant experience, of existing financial planners.

Assuming that the new standards body takes or bases the new education standards on the current FPEC curriculum or framework as offered by the FPA in our response to the PJC inquiry, the transition arrangements must also reflect that the FPEC curriculum was only released in late 2012 with the first course accredited as meeting the FPEC requirements in 2013. It is therefore not possible for the bulk of existing financial planners to currently meet the new minimum standard, even if they hold a relevant degree qualification or higher in financial planning, as their degree would probably not have been approved by the FPEC framework.

Further, where financial planners have completed a degree level or higher qualifications in “relevant related fields” such as finance, accounting or commerce, there is no certainty that these degrees will be accepted or approved as meeting the standards set by the standards body, particularly as core competencies may have been obtained at non-degree level to meet existing RG146 compliance.

As existing financial planners generally work full time, any further education would be undertaken on a part time basis. The transition arrangements for existing financial planners must reflect this and ensure an appropriate timeframe is provided to enable any necessary upgrading of initial or bridging qualifications to be undertaken part time to avoid a mass exit of advice providers on 1 July 2019.

Many good existing financial planners have a wealth of experience in providing quality tier 1 personal advice to consumers, and hold a diploma qualification. The relevant diploma qualifications have changed significantly over the past decade as the legal requirements set in RG146 have been amended many times. However, RG146 never required an individual to gain a qualification such as a Diploma to be compliant. The amendments to RG146 increased the number of knowledge areas to be covered in a program. An individual could complete a program of study at AQF5 level and limit this to



a specialisation area of knowledge such as superannuation or insurance rather than cover all the knowledge areas. This significantly changed the quality of RG146 compliant courses and highlights the need to consider each individual's qualifications on its merits, combined with their experience, to determine the appropriate transition arrangements.

For example, a financial planner may have completed a financial planning diploma in 2009 which was RG146 compliant. The planner also holds a Life Risk Specialist (LRS) accreditation from the FPA, has maintained CPD throughout his professional career, and has been providing life risk personal advice (only) to consumers for more than 5 years. While the planner's diploma was compliant with the RG146 requirements current in 2009, it did not cover some of the core knowledge areas contained in the FPEC curriculum, specifically taxation and estate planning. Acknowledging this life risk planner's qualifications and experience, appropriate transition arrangements could require the successful completion of an assessment in the missing knowledge areas such as estate planning and taxation to meet the Tax Agent Services Act 2009 (TASA) requirements set by the Tax Practitioners Board (TPB) to meet their minimum education requirements.

Because of the important role work experience plays in the development of an individual's knowledge and skills, and the different learning outcomes gained depending on the education program undertaken, universities universally assess each individual's previous education, training and experience against course pre-requisites and in considering appropriate exemptions. This includes assessing whether an individual needs to undertake a full degree program, or whether a bridging course or individual subjects to fill education or knowledge 'gaps' is appropriate. This is a well-established RPL process that should be leveraged and can appropriately assist existing financial planners, and licensees, to transition to the new education standards.

As with most industries, the education industry is also going through major change and innovation at the moment. As noted, we agree and support the requirement for new planners to have their education standards base lined at a bachelor degree level, however we note that the term "qualification" may not future proof the legislation for these changes to the education industry. Individuals may be able to complete courses, training or obtain experience which provide appropriate levels of knowledge to meet the equivalent of a bachelor degree, and should be able to be appropriately assessed as meeting this level of competency.

The FPA has consulted with its practitioner members, licensees, education providers and the FPEC regarding appropriate and workable transition arrangements and commencement dates for moving to a new education standard for financial planners, and have provided examples in **Appendix A**. Due to the plethora of complex issues involved, we would recommend and support that the legislation empowers the new Independent Body to conduct further detailed consultation to identify how the introduction of new standards could be achieved for both new entrants into the profession and existing financial planners and set an appropriate transition process.

A final issue is that the EM also does not make it clear that the standard set should be a bachelor degree as a minimum for new providers, and therefore where a relevant provider has completed





higher qualifications (i.e such as the CFP® designation) these are appropriate to be assessed as having met and surpassed the minimum requirements, as we believe is the intention of this law.

**RECOMMENDATION:**

**Section 921B meaning of education and training standards**

*Preconditions for relevant providers*

(2) The first standard is that the person has completed a bachelor degree, or equivalent qualification competency, approved by the standards body.

Ensure the *Explanatory Memorandum (EM)* makes it clear that a bachelor degree is the minimum standard required, but higher qualifications are able to be obtained and meet this standard.

**Section 1546B Existing providers to meet certain education and training standards**

*Completion of qualifications*

(1) An existing provider must have done either of the following by 1 July 2019:

- (a) the provider must have met the education and training standard in subsection 921B(2);
- (b) the provider must have completed a competency pathway approved by the standards body.

The draft note following the provision should be deleted.

Furthermore, the *EM* should be amended to explain the interplay between these two sections and the underlying principle of lifting the minimum qualification for all financial planners and the flexibility for the standards setting body to approve alternative competency pathways for existing financial planners, to recognise professional designations and to ensure that transitional arrangements are manageable for the industry within the mandated timing for transition and implementation of the new framework.



## PROFESSIONAL YEAR – NEW FINANCIAL PLANNERS

As discussed in our introduction, the FPA has always considered experience as being a critical factor in considering a financial planner for professional membership. Requiring new entrants into a profession to meet experience requirements is a widely used practice. The medical, building, accounting and legal professions, for example, all require new entrants to undertake on the job training to apply the theoretical knowledge they have gained through meeting the education requirements of the relevant profession. Work experience allows theory to be put into practice, and facilitates learning outcomes that cannot be achieved through a text book. Work experience requirements are a vital element of the education framework as they reinforce the knowledge gained through the formal education undertaken to meet the course requirements.

We therefore support the new standards body mandating the professional year program (year of work and training) intended to enable new financial planners to obtain experience in providing financial advice, engaging with clients, formulating strategy, gaining a practical understanding of disclosure obligations and making ethical decisions while under an appropriate level of supervision and oversight that caters for different business models operating in the industry, specifically considering small businesses and regional areas.

All financial planners undertaking the professional year should be subject to supervision and oversight and clients should be aware the financial advice provider has not yet completed their education and training standard.

The FAR should clearly identify that the financial planner has or has not completed the professional year. AFS licensees should be obligated to notify ASIC of the status of their financial planners with regards to the professional year.

In order to achieve this outcome, we believe the sequencing of professional standards framework for new financial planners needs to be amended in the legislation to allow the new standards body to prescribe an order for completion of standards based on the content of the exam (assessment) they set, but allowing for the flexibility of registration on the FAR prior to completing the professional year.

To operate effectively, the professional year program will need to allow new planners to further develop their advice skills such as: communications; client interviewing; compliance and risk management; ethical competencies; develop experience in understanding their client's needs, objectives and financial position; experience making and documenting recommendations; and gaining agreement from the client to implement these recommendations.

We also recommend that the professional year be set at a minimum of a year to enable more flexible implementation of Professional year programs for those with alternate working arrangements, as well as the ability to build longer programs where desired by the licensee.



#### RECOMMENDATION:

Specifically, we believe these sections should be amended Section 921B(3) as follows:

(3) The third standard is that the person has undertaken at least a year of ~~either or both~~ work and training under supervision that meets the requirements set by the standards body.

The professional year program could take place before a financial planner is registered on the FAR, but it should not be a precondition for a financial planner to be registered where the status of the professional year is prominently disclosed, including on the FAR.

#### REGISTRATION EXAM

The FPA has not in principle supported the introduction of a national exam for financial planners. A national exam for providers of tier 1 personal financial advice was initially proposed by ASIC in April 2011 to achieve the following objectives:

- To ensure all planners have the requisite competence to perform their duties to a reasonable minimum standard.
- To provide a benchmark for training organisations to ensure that the individuals they train have the necessary skills, knowledge and competence to pass the exam.

The FPA has previously advocated that a new education framework with a degree qualification, a professional year, ongoing CPD and professional membership with a Code of Ethics achieve these objectives in a much more efficient, effective and timely manner with significantly less impost and cost on government, consumers and the profession as they leverage proven systems and structures already in place.

Throughout the consultation process with the PJC inquiry, industry stakeholders, Treasury and Government, the FPA has become sympathetic to the notion of a one-off registration exam that can help in the transition process for existing financial planners. This would be similar to the registration exam used for existing SMSF Auditors. **However, this was on the premise that existing financial planners would not be required to complete a bachelor degree as part of the transition. The Exposure Draft is now proposing that existing financial planners would have to complete both a bachelor degree and sit an exam within a 2-year timeframe – this is not acceptable or appropriate.**

Further as the draft legislation currently stands, the FPA is requesting that exemptions from the exam be provided, especially to those financial planners that have demonstrated higher education and professional standards such as CFP® professionals.

Notwithstanding our position on the Exam, it is acknowledged in the education and professional industries that individuals learn in a number of different ways and that exams are often not an appropriate way of testing an individual's knowledge and understanding compared to other



assessment methodologies. While the FPA acknowledges that there is an imperative to mandate a base level of knowledge and competency that all advice providers have to consumers, we recommend that the standards setting body be able to design an assessment or set of assessments which better cater for different learning styles.

**RECOMMENDATION:**

Amend the EM to state that the exam can be designed as an assessment to allow the body to set a flexible assessment process.



## ENSHRINEMENT OF THE TERM FINANCIAL PLANNER/ADVISER

The FPA is very supportive of this measure and it is our strong belief that to strengthen consumer protection and to reinforce compliance to professional standards, the law must restrict the use of the titles financial planner and financial adviser to only those that meet the new education and standards framework – no exceptions!

A lack of restrictions on the use of the titles financial planner and financial adviser is, among other things, a significant gap in consumer protection. It leaves trusting consumers open to influence by unlicensed and unqualified individuals calling themselves financial planners.

To ensure there is clear consumer understanding and protection that any individual operating under the title financial planner or financial adviser are able to provide advice on Tier 1 products to retail consumers, and are registered on the FAR, we recommend the removal of exemptions currently included in the drafting of the legislation. This will ensure consumers are only provided financial advice by relevant providers who meet the education, ethical and professional standards set by the standards setting body. We therefore recommend that the exemption for time-sharing schemes at 921C(4) be removed to ensure consumers are clear that financial product advice is provided by relevant providers.

The FPA is also very supportive of the intent of Section 923C, however note some potential unintended consequences that we recommend be considered in amending the exposure draft.

### RECOMMENDATION:

We recommend amending Section 923C(2)(e) so that the following is not captured unintentionally and remain permitted:

1. the continued ability to use 'restricted' and 'trade marked terms' such as Certified Financial Planner® and CFP®; and
2. the use of the term (or like terms) as individual titles versus names of organisations and courses, and
3. that "and like terms" will be included on both the financial planner prohibition and the financial advice restriction.



## PROFESSIONAL BODY MEMBERSHIP AND CODE OF ETHICS

Professional standards and professional membership are more than a set of additional rules and standards. The primary emphasis of professional regulation is in the setting and enforcement of professional norms and behaviours, for the national public benefit. They encourage the 'norming' of ethical conduct and professional behaviours, building a sense of professional aspiration, pride and commitment to high professional ideals.

Whilst firms may play a significant role in setting standards of behaviour and conduct, it is the normative power of professional standards and their pull to behave ethically which offers the best prospects to significantly improve consumer outcomes. Professional standards speak universally to all members of the profession as they are business model agnostic. They encourage individuals to put their clients first and to resist adverse commercial interests. They install pride, a sense of belonging and public purpose.

Being a member of a professional body means you make a commitment to behave not only in accordance with the professional obligations, but in a manner that your peers expect and that you expect of your peers. This creates mutual respect and encourages other peers to follow your leadership and behaviours. This is the driver of cultural change that is needed in the financial services industry in Australia.

Licensees operate on complying with legal obligations. Requiring individual advice providers to be a member of a professional body will ensure licensees support of these professional behaviours. This will encourage cultural change at the corporate level and deliver sustainable improvements in consumer outcomes. In our view the model proposed will not assist industry to meet the Government and the community's key objectives to raise professional standards in relation to financial advice.

Most mature professions have a code of ethics which forms the foundation for the norms of professional behaviour and conduct in that profession. There are multiple professions operating in financial services in relation to financial product advice including financial planning, stockbroking and accounting professions. Each of these professions is currently served by one or more professional bodies. Each professional body has its own code of ethics. In each case the relevant code of ethics sets the foundational norms for professional behaviour for professionals who are members of that professional body.

### One Model Code of Ethics

The legislation requires the new standards body to establish a new single code of ethics across multiple professions in financial services. Such a code will need to be non-specific in order to be inclusive of the variety of existing professional norms practiced by the different professions in financial services. Though the FPA understands the presumed benefit and simplicity this approach provides to industry, it will potentially have unintended consequences such as compete with existing codes of ethics which form the foundations of professional practice by those professions. It will also lack formal and practical legitimacy – existing professionals are not to be formally represented on the new body that will create it.



The new single-code will also potentially conflict with existing professional regulatory frameworks – in the FPA’s case, an external code will potentially clash with the global Code of Ethics, global Practice Standards and Rules of Professional Conduct established by the Financial Planning Standards Board Ltd (FPSB) which have been incorporated into the FPA Code of Professional Practice. Further, it will have no practical legitimacy unless it is felt to be developed and owned by the professional community of financial advice providers and can be adopted into existing professional frameworks by the relevant professions in financial services.

If the new standard body’s code of ethics fails to match or better FPA’s existing code of ethics, it is unlikely the FPA can support it as it would mean the FPA would be adopting a lesser ethical standard than the international financial planning community.

For these reasons we believe it would be more appropriate and practical to give the new standards body the additional legal function of recognising existing professional body codes of ethics subject to some criteria than ensures the principles of consistency and simplicity that Government and Industry desire.

**RECOMMENDATION:**

The new standards body should be empowered to recognise/approve an existing professional body code of ethics on application to it by a professional body where it is satisfied:

- (a) the code of ethics is not inconsistent with the Corporations Act, or any ‘model’ code of ethics developed by the new standards body;
- (b) relevant providers who hold membership of the professional body will be subject to appropriate remedies and sanctions for non-compliance with the code of ethics; and
- (c) the professional body has appropriate arrangements in place to monitor compliance with the code of ethics by relevant providers who hold membership of the professional body.

The new standards body should also have a longer term remit or stated objective to work with existing professional bodies to achieve harmonization between professional codes of ethics.

We have made marked up changes to the draft Bill to incorporate this proposed alternative approach.

**Approval of Professional Body Compliance Schemes**

The FPA does not support the model for approval of compliance schemes as proposed in the draft Bill. The approach taken is top-down regulator centric and will not achieve the Government and the community’s key objectives to raise professional standards in relation to financial advice.

In our view it continues to misplace reliance on ASIC compliance, rather than on finding incentives that align good commercial practice to good consumer outcomes. Measures which produce better alignment between civil liability risk in practice, consumer interests and therefore drive better civil liability risk mitigation for the benefit of business owners and consumers will be efficient and effective



in a regulatory sense. They will encourage the right behaviours and reward innovation towards better practice.

There are strong reasons for compelling the adoption and supporting the role of professional bodies. In recent years, numerous cases of poor financial advice and fraud have come to light, with some consumers making considerable losses and the reputation of the financial advice industry being damaged in the process. For example, the collapse of Trio Capital resulted in consumers losing roughly \$176 million from their superannuation.<sup>1</sup>

While corporate collapses such as Trio Capital, Opes Prime, and Westpoint involved fraud, many consumers who invested in these products received personal financial advice. Professional, ethical and education standards should serve to assist financial planners to identify appropriate financial strategies and investments suitable to each client's circumstances, goals and needs. This is a fundamental form of consumer protection and must be at the core of providing personal financial advice to clients.

The FPA's review of data collected since 2009 on ASIC enforcement action concerning individuals in relation to financial advice, shows that FPA members represent significantly less than 5% of the overall ASIC enforcement action each year<sup>2</sup>. FPA members have also accounted for significantly less than 10% of financial planners banned by ASIC. **The fact that more than 90% of financial planners banned by ASIC were providers who are not members of the FPA and therefore not subject to the additional regulatory oversight of our professional obligations, clearly demonstrates the consumer protection benefits of professional bodies<sup>3</sup>.**

Statistical under-representation when compared to the total financial planner population in ASIC enforcement activity is a proof point of the positive effect of professional obligations. It demonstrates the vital role professional bodies play in 'norming' good professional behaviour beyond legal minimum standards, and the necessity of such obligations for the protection of consumers.

Therefore we propose an alternative consumer centric model for approving compliance schemes that is market driven and will encourage innovation in service delivery for the benefit of consumers.

In our view ASIC, AFS licensees, and professional bodies have key roles to play in enabling consumers to better identify who to trust for advice. The model needs to empower financial services consumers by answering the simple question of whether or not a relevant provider is a member of a professional body and as a consequence is bound by a (recognised) code of ethics. It will do this most effectively and efficiently if the breach allegation reporting function is redesigned and redirected towards professional bodies.

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<sup>1</sup> Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital, Final Report,

16 May 2012

<sup>2</sup> Based on publicly available enforcement information released by ASIC

<sup>3</sup> ASIC bannings analysed against FPA membership data





Under the alternative model we propose, ASIC and AFS licensees would have an obligation to report to the relevant provider's professional body whenever they suspect or become aware of conduct which could amount to a breach of the professional body's (recognised) code of ethics.

Under this alternative approach professional body membership is the key that unlocks public trust and confidence in financial advice. ASIC and AFS licensees will have an important role to play in assisting professional bodies to continue to identify and act on misconduct and to develop their monitoring and compliance systems for the benefit of consumers.

We have made marked up changes to the draft Bill to incorporate this proposed alternative approach.

Specifically, we believe section 921F, section 921H and section 921JA respectively should be amended to include new subsections which specify that the compliance scheme of a professional association or a licensee must:

- Ensure AFS licensees assist a professional association monitoring their code in the reporting of a breach or conducting an investigation of an alleged breach (s921F),
- Ensure breaches of the code are notified to ASIC by the professional association as part of notifications required for the FAR as well as notified to professional associations by AFS licensees and ASIC (s921JA),
- Require annual reporting by an independent third party monitoring the code (s921H), and
- Ensure the independent third party has expertise in monitoring codes and standards, not just auditing services (s921H).

Additionally, the legislation should not refer to 'alleged breaches' and all references should be deleted, with the exception of the additional provision about AFS licensees assisting with investigation of alleged breaches.

Furthermore, the explanatory material should be amended to better explain and recognise the role of professional associations.



## THE NEW INDEPENDENT STANDARDS BODY

The FPA supports the new framework establishing a new independent standards body to set and approve the education, ethical and professional standards for financial planners.

However, the FPA is unable to substantially support and advance the establishment of the standards body in the absence of further certainty regarding the new framework, especially where we believe the draft legislation presents difficulties for our members, specifically the transition arrangements for existing financial planners and the recognition of professional body codes of ethics.

It is necessary for the new framework to be substantially settled and for our outstanding issues to be resolved before the FPA is able to support the next phase of the reforms and progress the establishment of the standards setting body.

### Specific comments on the Exposure Draft

While we continue to support a statutory body as the preferred approach, we consider there are a number of important amendments needed to ensure the proposed company limited by guarantee can perform its functions as intended, including:

- Recognising the differences between a professional association and industry association,
- Ensuring the body consults with all relevant and interested parties when setting and reviewing the standards,
- Ensuring the objects of the body are contained in the constitution,
- Ensuring the body is externally reviewed periodically (envisaging every 3 years) based on the objects of the body,
- Mandating the constituency of the Board of the body,
- Recognising the role of the Minister in appointing the initial chair of the Board,
- Allowing the body to appoint the directors of the Board, including subsequently the chair of the Board,
- Ensuring the Minister has the ability to provide directions to the body as well as approve and revoke the body, and
- Ensuring notification of modifications of the constitution to the Minister and the ability for the Minister to disallow modifications relate only to significant changes.

This will allow the standards setting body to operate as an industry body with direction from the Government. This will be important to make sure the co-regulatory model is balanced. The constitution of the standards setting body should interact with the legislation and also promote further professionalisation of financial advice. This will also allow the standards setting body to be inclusive as well as accountable and transparent to the public.



Specifically, we believe these sections should be amended as follows:

**Section 921L Functions of the standards body**

(1) (b) to review those instruments regularly, in consultation with:

- (i) financial services licensees and industry associations representing financial services licensees; and
- (ii) relevant providers and professional associations representing relevant providers; and
- (iii) associations representing consumers of financial services; and
- (iv) ASIC and the Department; and
- (v) others.

Additionally, section 921L should be amended to;

- reflect the changes in terminology and sequencing in section 921B.
- Include the additional function to approve existing professional body code of ethics.

**Section 921MA Minister to nominate the standards body**

(2)(c) the body's constitution provides the following:

- ~~(ii) a member of the body is not entitled to a dividend;~~
- (ii) the body must have 7 directors;
- (iii) at least 2 3-directors (excluding the chair of the board of directors) must have experience as a relevant provider or in carrying on a financial services business or providing a financial service;
- (iv) at least 2 directors (excluding the chair of the board of directors) must have experience in representing consumers of financial services;
- (v) at least one director (excluding the chair of the board of directors) must have experience in the field of ethics;
- (vi) at least one director (excluding the chair of the board of directors) must have experience in developing and delivering courses and training for the financial services industry;
- (vii) a director must not represent any be employed by or be an office holder of a professional association, industry association, or association representing consumers of financial services, to which a director belongs;
- (viii) following appointment of the initial board of directors, a director, except the chair of the board of directors, must be appointed by the other directors;
- (xi) the Minister must appoint the initial chair of the board of directors and subsequently approve future chair appointments made by the other directors;
- ~~(x) a director, when appointing another director to the board, must not have an actual or perceived conflict of interest in relation to that appointment;~~



~~(xi) the Minister must not appoint, or terminate the appointment of, any other director of the standards body;~~

New subsection (d) The objects of the body must be described in the body's constitution.

### **Section 921S Modifications of the standards body's constitution**

(4) The body's constitution must specify the changes deemed to be a modification for the purposes of this section.

### **New section 921W Review of standards body**

Third party periodic review must be undertaken of the operation of the standards body, against the objects of the standards body.

Furthermore, the explanatory material should be amended to reflect these changes to the provisions and better explain the co-regulatory model where the standards setting body is intended to be an industry body underpinned by statute. For example, the consultation provisions should contain reference to "others" which we consider should include, in addition to those parties prescribed in the legislation, education providers, external dispute resolution schemes (i.e. Financial Ombudsman Service (**FOS**)), and other regulators (i.e. Tax Practitioners Board (**TPB**)). For example, the third party periodic review should be undertaken every three years to make sure the standards setting body continues to meet its objects.



## OTHER TECHNICAL AMENDMENTS

### **Section 910A Definitions - Professional Association**

For the legislation, the definition of professional association is too broad, and is used differently in 2 parts of the legislation – at 921H which should be limited to professional associations which represent relevant providers and at 921MA which we believe should be more broadly defined as an industry association. We therefore recommend that the current definition of Professional Associations be renamed “industry association” (with corresponding redrafting being made at 921MA(2)(c)(viii)), and a new definition of professional association be made as “means a body or association that represents relevant providers and operates a compliance scheme approved under s921H”.

### **Section 921E and 922HB**

We note that Treasury have indicated the removal of “alleged breaches” from Section 921E Note 1 and Section 922HB(1)(a), which we support. It is also not clear what events Section 921E(2) Note 1 is referring to.

### **Section 922F and Section 922Q**

We recommend 3.20 of the explanatory memorandum be specifically amended to include professional designations as being included as a component of a relevant providers education qualifications in relation to Sections 922F and 922Q.

We also note that Section 922Q also doesn't list that the relevant provider has passed the exam provision during the transition period. This further becomes a relevant amendment if our recommended amendments to the sequencing of being included on the FAR are made.

### **Section 922HA**

From a practical standpoint, licensees do not currently all run CPD programs on a financial year basis, with some using 1 March, 1 July, or 1 October to commence their CPD years. We also question the practicality of ASIC receiving notification within 30 days of the end of the financial year of CPD compliance for 22,500 financial planners.

We recommend to *redraft (1) to “on an annual basis” rather than “financial year”*.

We also note that most professions run CPD programs over triennial periods including existing financial planning CPD programs. This provides some additional flexibility in completion of ongoing competency maintenance to cater for career breaks and periods of career transitions. We therefore recommend that (4) be updated to:

(4) The evidence must be retained for a minimum of three years after the end of the annual CPD period.



### **Sections 921C and 1546C**

We note that a potential unintended consequence of Sections 921C and 1546C is that the transition period for existing providers may unintentionally be shortened if ASIC determines that it won't approve new license applications or grant new license conditions to an existing provider if they do not meet the requirements under Section 921B in the lead up to 30 June 2019.

### **The Term 'Breach'**

Given the current definition and understanding of the word Breach in relation to the Corporations act obligations of a licensee under Section 912D(1B), we suggest that the term breach be replaced with "failure to observe" or "failure to abide by" the Code of Ethics under Section 922L(2).

### **922F Information about a relevant provider who is not a financial services licensee**

*922F(1)(K)(ii) the relevant provider's membership (if any) of a professional association if an approval is in force under section 921H in relation to a compliance scheme of the association;*

The FPA has not confirmed support for this provision. This will be subject to whether amendments will be made to the exposure draft. The FPA suggests there may be a need for an additional component on the register – one for compliance scheme and one for professional bodies. A compliance scheme operator is in itself not a professional body.



## APPENDIX A

Existing financial planners - The transition arrangements for existing financial planners are proposed to cease on 1 July 2019. **The transition arrangements should provide exemptions, bridging and assessment options that appropriately acknowledge the previous education, qualifications, CPD and experience in providing tier 1 financial advice, of existing financial planners.**

Bridging course requirements could be satisfied by undertaking a unit(s) of study of an approved degree program (i.e. such as that of FPEC). To facilitate this, the new independent body would have a list of the subjects that can be taken from approved courses to enable existing financial planners and to only do the pieces of study needed to upgrade existing qualifications.

The FPA also recommends that professional designations, tertiary qualifications from related disciplines and the Advanced Diploma as considered as appropriate training level for transition considering the time frame provided for transition. Further should it should be noted that if required an assessment option should be available for existing financial planners where appropriate.

	Certified Financial Planner and other professional designations	Advanced Diploma (FP) or Tertiary qualification in a relevant discipline +++	Tertiary qualification in a non-relevant discipline and RG146 only	RG146 product specific specialisation (i.e. including 4 unit only diplomas etc...)
New Course requirement	Not required	Not required	It is up to the independent body to assess the relevance of the individual's existing education and experience.	It is up to the independent body to assess the relevance of the individual's existing education and experience.  This may be a: <ul style="list-style-type: none"> <li>• bridging course or units of study to fill knowledge and education 'gaps', or</li> <li>• assessment options in the knowledge or education 'gaps', if appropriate.</li> </ul>

+++ A *relevant discipline* is a discipline related to finance, financial planning, commerce, economics, business, tax, accountancy, or law