



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

18 March 2020

Tax Practitioners Board
GPO Box 1620
SYDNEY NSW 2001

Email: tpbsubmissions@tpb.gov.au

Dear Sir / Madam

Review of the Tax Practitioners Board's (TPB) Continuing Professional Education (CPE) Policy for tax practitioners

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide input into the Tax Practitioners Board's (TPB) review of its CPE Policy for tax practitioners.

The FPA supports a regulatory regime that is simple and broadly addresses the core issues at the heart of CPE provision, without creating additional complexities or regulatory burdens. Our submission is based on this principle.

As discussed in our submission, the FPA strongly encourages the TPB avoid unnecessary regulatory duplication and to accept the completion of CPD for FASEA purposes, and associated record keeping and evidence, as meeting the TPB's requirements for tax (financial) advisers.

We would welcome the opportunity to discuss with the TPB the issues raised in our submission. If you have any questions, please contact me on ben.marshan@fpa.com.au 02 9220 4500.

Yours sincerely

Be Marshan CFP® LRS®
Head of Policy and Standards
Financial Planning Association of Australia

¹ The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally.
- We are recognised as a professional body by the Tax Practitioners Board.



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

Tax Practitioners Board CPE Requirements

Submitted to:

Tax Practitioners Board

18 March 2020



FPA's key position

The new CPD (CPE) requirements set by the Financial Adviser Standards and Ethics Authority (FASEA) represent a significant increase in CPD obligations for personal financial advice providers, including relevant providers who are registered with the TPB as tax (financial) advisers.

The high FASEA standards have already commenced for these practitioners and licensees. Financial advice providers have embedded appropriate processes and systems in their business to ensure compliance with the requirements for both licensees and relevant providers, as set in the Corporations Act and by FASEA.

The TASA requires relevant providers and licensees who provide a tax (financial) advice service for a fee to be registered with the TPB. As detailed below, the TASA Code sets competency standards, which apply to both licensees and individuals registered as tax (financial) advisers. These competency standards relate to the services the tax practitioner provides, as well as the tax (financial) adviser's ability to ascertain the clients' state of affairs and ensure that taxation laws are applied correctly.

The legislated FASEA Code of Ethics Standard 1 requires relevant providers to "act in accordance with all applicable laws". To meet the values of the Code, FASEA's FG002 Financial Planners & Advisers Code of Ethics Guidance also requires relevant providers to "exercise due care and skill in the way you meet your obligations in the law in respect of the advice you provide to each client including Australian Taxation laws".

These FASEA standards will therefore capture the Tax Agent Services Act, its Code of Professional Conduct including the competency requirements, and laws administered by the Tax Commissioner, as they are "applicable laws" for licensees and relevant providers who provide a tax (financial) advice service.

The TASA Code competency standards and FASEA Code requirements combine to ensure tax laws and the TASA are included in the FASEA required CPD Plan for relevant providers.

The FPA welcomes the TPB's demonstrated intent to ensure the revised CPE Policy aligns with the requirements set by FASEA. However, unless the TPB explicitly accepts CPE completed for meeting FASEA's CPD requirements without exception or being subject to conditions, tax (financial) advisers will unfairly face an unnecessary level of duplicated red tape that will create a significant regulatory burden with no additional benefit to the client.

The FPA notes that the TPB have mirrored many of the FASEA requirements in the proposed amendments to its CPE policy. However, as these proposals do not replicate in whole the higher FASEA requirements without conditions, it creates two mis-matched systems that will lead to confusion and more red tape for tax (financial) advisers.

The FPA's comments relate solely to the TPB's CPE requirements as they apply to tax (financial) advisers. The FPA acknowledges that tax agents who provide accounting services, and BAS agents, operate under a different licensing regime to financial advice providers. Hence, we are not recommending these same FASEA standards be imposed on other TPB registered practitioners. The current TPB CPE Policy, and other policies, establish a precedent in this regard as they set different requirements for particular types of practitioners based on their registration category and the services they provide clients.



However, for tax (financial) advisers the FPA strongly recommends that the revised TPB CPE Policy explicitly state that the TPB will accept the tax practitioner's compliance with the FASEA CPD requirements for the purpose of meeting the TPB's CPE requirements.

The following elements of the FASEA CPD and proposed TPB CPE requirements demonstrate the disparity between the standards that will result in the unfair, costly, and unnecessary regulatory duplication for one type of tax practitioner – tax (financial) advisers – which will deliver no benefit for clients. Rather, requiring these practitioners to adhere to a second lower standard requirement will take time to complete and only serve to drive up the cost of providing advice, which will be passed on to clients in higher fees and less time for client services.

Recognition of CPE completed for FASEA purposes – non-conditional

The TPB's recognition of the completion of CPE for FASEA's purposes should not be subject to the following conditions, as stated in the discussion paper:

- the activities completed must be relevant to the tax agent services (including BAS services and tax (financial) advice services) provided; and
- the activities completed must be provided by persons or organisations with suitable qualifications and/or practical experience in the subject area.

The FPA suggests these conditions set a lower standard than the FASEA requirements and therefore should not apply to tax (financial) advisers.

For example, as stated in TPB(I)20/2014, a tax (financial) advice service consists of five key elements:

1. a tax agent service (excluding representations to the Commissioner of Taxation)
2. provided by an Australian financial services (AFS) licensee or representative (including individuals and corporates) of an AFS licensee
3. provided in the course of advice usually given by an AFS licensee or representative
4. relates to ascertaining or advising about liabilities, obligations or entitlements that arise, or could arise, under a taxation law
5. reasonably expected to be relied upon by the client for tax purposes.

This includes:

“Personal advice (as defined in the Corporations Act 2001), including scaled advice and intra-fund advice, which 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.

Any advice (other than a financial product advice as defined in the Corporations Act 2001) that is provided in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee that involves application or interpretation of the taxation laws to the client's personal circumstances, and it is reasonable for the client to expect to rely on the advice for tax purposes.”



The definition of a tax (financial) advice service is reliant on the definition of personal financial advice in s766B of the Corporations Act and therefore sets the parameters and makes it appropriate for the TPB's unconditional acceptance of the completion of CPD for FASEA purposes as meeting the CPE standards for tax (financial) advisers.

The TPB requires that recognised CPE must “... *be provided by persons or organisations with suitable qualifications and/or practical experience in the subject area*”. However, the Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018 requires licensees to have a CPD Policy which must include “...*a process for ensuring CPD activities are provided by persons and/or entities that are appropriate (with accredited standing, expertise and academic qualifications and practical expertise as appropriate)*” as set in the FASEA Policy.

The FPA suggests that the FASEA standard for appropriate CPE providers is higher than the requirement set by the TPB (including the requirement that licensees must have a process to ensure the provider is appropriate), making this an obsolete condition of the TPB's recognition of CPE completed for FASEA purposes.

Licensee CPD Policy and oversight

Section 5 of the Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018 requires a responsible licensee to maintain and publish a CPD policy that its relevant providers adhere to. FASEA requires the CPD policy to include the Licensee's:

- Overall approach to CPD
- Process for approving CPD activities and the mechanism for allocating hours to these
- Approach to any CPD plans created for relevant providers
- Process for ensuring CPD activities are provided by persons and/or entities that are appropriate (with accredited standing, expertise and academic qualifications and practical expertise as appropriate)
- Approach for those affected by extenuating circumstances such as medical, disability or parental leave
- Approach for existing relevant providers moving licensees
- Approach for relevant providers who have recently completed their Professional Year
- Approach for relevant providers working part-time
- Approach to evidencing outcomes of CPD
- Approach to record keeping, and
- Approach to auditing compliance with the policy.

The Licensee CPD policy serves three purposes:



- it provides a transparent framework for ensuring the CPD activity that is undertaken by relevant providers is meaningful, appropriate, and enhances skills and knowledge based on the individual's CPD Plan
- it sets a commitment to and process for licensee oversight of relevant providers' compliance to the FASEA CPD requirements, and
- it provides a formal policy and process under which licensees assess and approve CPD activity as meeting the FASEA standards.

This licensee oversight of the relevant provider CPD reinforces s912A(1)(e) and (f) of the Corporations Act that requires that: (1) A financial services licensee must (e) maintain the competence to provide [its] financial services; and (f) ensure that its representatives are adequately trained, and are competent, to provide [its] financial services.

Sections 30.10(7) to (10) of the TASA Code fall under the key principle of 'competence' and require that tax (financial) advisers must:

- ensure the tax (financial) advice services they provide, or are provided on their behalf, are provided competently
- maintain knowledge and skills relevant to the tax (financial) advice services they provide
- take reasonable care to ascertain clients' state of affairs
- take reasonable care to ensure that taxation laws are applied correctly.

The FPA notes that as the TASA Code of Professional Conduct requirements apply to TPB registered licensees relying on the TPB's sufficient number requirements, these provisions require licensees to monitor its tax (financial) advisers competence. CPD is a key means of ensuring competency is maintained.

However, unlike the FASEA standard, the TPB does not require licensees to have in place a set CPD Policy, nor does it require licensee approval of CPD activity.

Section 922HB of the Corporations Act requires licensees to lodge a report with ASIC of a relevant provider's non-compliance with the FASEA CPD standard, which is then noted on the ASIC Financial Adviser Register against that individual adviser.

Approval of CPE activities/providers

Currently, the TPB does not approve CPE activities or providers, nor does it require any form of approval of an activity. The TPB proposes to maintain this current approach.

In contrast, FASEA sets a higher standard:

- FASEA requires each relevant provider to have a CPD Plan, set with their licensee, to ensure the activity undertaken meets the "Qualifying CPD" requirements and has a clear objective as to how it will develop and improve the individual's knowledge and skills
- 70% of all CPD activity undertaken must be approved by the Licensee



- FASEA has set a stringent guide for approving CPD activity requiring licensees to consider:
 - the level of expertise of the CPD provider;
 - expertise of facilitators and/or those delivering the CPD;
 - the level of learning undertaken; the stated learning outcomes for the CPD activity;
 - the volume of time in undertaking the CPD activity; and
 - the approach for verification of learning outcomes achieved
- Relevant providers are required to report against each planned activity undertaken including providing critical reflection on what they have learnt from the activity

Qualifying CPD and hours

FASEA has made it clear that it expects desired learning outcomes to be achieved through undertaking CPD activity. Its policy states:

“As well as high level competencies such as demonstrating capabilities in critical thinking, critical self-reflection and ensuring professional behaviours, vital skills are required to be developed. The table below addresses these skills by reference to CPD categories with minimum hours per year for each category. The balance up to 40 hours must consist of qualifying CPD from these categories or other selected by the Adviser or Licensee.” (Pg 6)

Qualifying CPD is defined in s7 of the Legislative Determination and requires the activity to have sufficient intellectual or practical content, and be designed to enhance relevant providers' knowledge and skills.

FASEA has set a high standard for qualifying CPD of 40 hours per year, including 9 hours of professionalism and ethics, and has capped professional or technical reading at 4 hours per year.

Importantly, the qualifying CPD an individual is to undertake is set (and reset annually), monitored and reported against, through a CPD Plan, which proactively and strategically identifies and targets areas for improvement in the relevant provider's knowledge and skills to enhance client outcomes. The CPD Plan ensures the qualifying CPD selected is appropriate for improving the individual relevant provider's knowledge and skills.

As stated above, the FASEA Code of Ethics Standard 1 requires relevant providers to “act in accordance with all applicable laws”. As the Tax Agent Services Act, its Code of Professional Conduct including the competency requirements, and laws administered by the Tax Commissioner, are “applicable laws” for licensees and relevant providers who provide a tax (financial) advice service, these laws will be captured in the subject area categories for FASEA purposes.

While the TPB has proposed to adopt in part the FASEA Qualifying CPD standards, as these requirements are not mirrored exactly, the differences between the TPB and FASEA requirements create a mis-match system. This will increase red tape. It is unnecessary duplication as the type of CPD activity, and the knowledge and skill areas the TPB is trying to ensure are addressed, will already be captured under the FASEA standard.



Record keeping

The TPB require that record keeping must show how the CPE activity is relevant to the tax agent service provided.

Section 6 of the Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018 goes further than this, requiring each relevant provider to have a CPD plan, the implementation of which must be monitored by the licensee (s6(7)(a)). Section 6(6) requires that:

A relevant provider's CPD plan (including as amended) must identify areas for improvement in, and development and extension of, the provider's competence, knowledge and skills and describe the qualifying CPD activities the provider will complete during the CPD year to achieve those improvements.

The Corporations Act requires licensees to notify ASIC if a relevant provider does not comply with the CPD standard (s922HB), and to retain evidence of a relevant provider's compliance with the CPD standard (s922HC). If a relevant provider does not meet the CPD standard, it must be entered on the ASIC Financial Adviser Register (FAR) (s922Q).

Compliance with these obligations can only be met through stringent record keeping and documentation in a CPD log and against a relevant provider's CPD Plan. FASEA requires an individual to report against their plan including self-reflection of the learning outcomes gained through the CPD activity and how these outcomes will benefit clients.

FASEA has set a standard that without appropriate records captured by the individual to validate training, a determination of achievement against CPD targets will not be able to be made by the licensee on their behalf. Relevant providers have strict record keeping requirements under FASEA which includes validation of activity undertaken, well exceeding the TPB's record keeping requirements where no validation is necessary.

The FASEA record keeping requirements are different to the TPB obligation requiring practitioners to show how the CPE activity is relevant to the tax agent service provided. This is a significant concern as it will place two different record keeping obligations on tax (financial) advisers.

The FPA recommends documentation produced by relevant providers for FASEA record keeping obligations, be accepted by the TPB for its CPE standard for tax (financial) advisers.



FPA response to consultation questions

Q1 Do you have any comment regarding continuation of the TPB's current approach to the purpose of CPE (see paragraphs 16 and 18 in this discussion paper)? If you do not agree, please provide reasons.

No further comment.

Q2 Is the proposed minimum CPE hours requirement appropriate (40 hours per annum for all tax practitioners), or should it be changed to something else (and if so, how much and why)?

While the FPA supports the proposal to increase the minimum number of hours required for all tax practitioners to 40 hours per year, we recommend the TPB unconditionally accept the completion of CPD for FASEA purposes for tax (financial) advisers.

It is vital that it is clear that the TPB CPE requirements for tax (financial) advisers, alongside the FASEA standard, do not result in relevant providers needing to do more than 40 hours. The FPA is concerned that the raising of the standard to 40 hours, and the proposed inclusion of subject categories in the TPB Policy, may result in tax (financial) advisers needing to undertake more than 40 hours. This would be unreasonable and unfairly impact this category of tax practitioner.

The FPA is concerned that without clear TPB acceptance of the completion of FASEA CPD, the requirement to complete 40 hours for TPB and 40 hours for FASEA may result in tax (financial) advisers unfairly having to undertake additional CPD to ensure they are compliant.

Q4 Should the TPB incorporate any specific comment or requirement in relation to subject areas/categories – in particular, should the TPB:

- i. recommend areas/types to be completed by tax practitioners (without being prescriptive as to minimum hours in specific subject areas), or
- ii. mandate a minimum number of hours in CPE subject areas/categories similar to FASEA's approach⁸, or
- iii. make no further changes/comment (do neither of the above)?

The FPA is concerned that the raising of the standard to 40 hours and the inclusion of subject categories in the TPB Policy may result in tax (financial) advisers needing to undertake more than 40 hours, even in circumstances where they have achieved the learning outcomes in their licensee approved (FASEA) CPD Plan. This would be unreasonable and unfairly impact this category of tax practitioner.

For this reason, the FPA recommends the TPB implement option iii above - *make no further changes/comment (do neither of the above)*, for tax (financial) advisers.



Q5 Do you have any suggestions about how the TPB should implement any changes to its CPE requirements in relation to the minimum number of hours and/or subject areas required, noting that the TPB would allow for sufficient lead-in time for any changes?

For example, should the TPB employ a calendar-year model starting from 1 January, or commence application of any changes from a practitioner's next registration renewal?

An annual reporting requirement would support the TPB's proposed move away from a triennial CPE standard to an annual hourly requirement.

The Corporations Act requires licensees to notify ASIC of its CPD year, including the day on which the CPD year is to begin (s922HA). Imposing different requirements on tax (financial) advisers and licensee would require practices to operate two record keeping systems at great expense.

The FPA recommends the TPB accepts the licensee's CPD year for the Corporations Act requirements for tax (financial) advisers.

In relation to tax (financial) advisers, the TPB should also accept the record keeping documents completed by tax (financial) advisers for FASEA's CPD purposes. Additional record keeping requirements would create an unfair and unnecessary regulatory burden for this category of tax practitioners.

The FPA supports a regulatory regime that is simple and broadly addresses the core issues at the heart of CPD provision, without creating additional complexities or compliance burdens. Hence, we recommend the TPB accept the completion of CPE for FASEA purposes for tax (financial) advisers.

Q6 Should the TPB's requirements be reduced for tax practitioners who work part-time? If so, on what basis and to what extent should the TPB's requirements be reduced?

FASEA has taken the following position for CPD requirements for part time providers:

"In special circumstances if the relevant provider is working part-time for the whole of the CPD year, with the prior written consent of the licensee, they must complete at least 36 hours of CPD activity in each CPD Year."

The FPA supports the TPB's proposed requirement of 36 hours of CPD for part time tax (financial) advisers, as this is consistent with FASEA's standard.

Q7 Do you have any feedback in relation to the TPB's proposed view regarding CPE activities (see paragraphs 26 to 28, and paragraphs 31 to 33 in this discussion paper)?

Paragraphs 26 to 28

28. Further, while noting that compliance with FASEA's CPD requirements does not automatically equate to compliance with the TPB's CPE requirements for tax (financial) advisers, the TPB also understands a likely outcome is that tax (financial) advisers who



complete CPD activities that meet the CPD requirements of FASEA and their Australian financial services licensees (where required) are also likely to meet the TPB's CPE requirements. It is expected that a tax (financial) adviser will exercise appropriate judgement under the current self-assessment arrangements to ensure that CPD/CPE activities counted are relevant to the tax (financial) advice services they provide.

Paragraph 28 should be read in conjunction with paragraph 40 of the discussion paper:

The TPB proposes no change to the current approach in relation to counting compliance with other CPD/CPE requirements. However, the TPB does propose to further clarify that a tax (financial) adviser who meets FASEA's CPD requirements is also likely to meet the TPB's CPE requirements, and that it is expected they should be able to demonstrate how the CPE activities completed are relevant to the tax agent services / BAS services / tax (financial) advice services they provide (reflects their service offerings).

The TPB's suggestion that the "likely outcome" is that tax (financial) advisers who complete CPD activities that meet FASEA's CPD requirements, are "also likely" to meet the TPB's requirements, will create significant uncertainty as to whether tax (financial) advisers can rely on this statement. This may unfairly impact one type of tax practitioner as TFAs may unnecessarily undertake additional CPE as they do not have confidence in the TPB accepting the TFA's compliance with FASEA's CPD requirements.

As stated in our CPD Policy, the FPA holds the following view of the purpose of CPD:

Continuing Professional Development (CPD) is an integral part of a professional framework. Not only is it a way of maintaining currency of technical knowledge and ensuring members remain professional; it is also a way of growing new knowledge and expanding members' abilities as professionals. It should never be viewed merely as a compliance burden, but instead of a method of improving personal and professional confidence and proficiency.

This is consistent with the FASEA CPD Policy which provides the following definition of CPD:

FASEA defines CPD as the range of learning activities which professionals maintain and develop throughout their career intended to ensure that they retain their capacity to practice professionally.

CPD is considered to be a career learning process and is not restricted by subject or time. It is an integral part of the professional framework, intended to both maintain currency of technical knowledge and assist relevant providers remain professional; it is also a way of growing new knowledge and expanding abilities as professionals.

As stated in the consultation paper, the TPB's purpose of CPE is generally consistent with FASEA and Recognised Professional Associations', such as the FPA, stated purpose. However, we are concerned that the following statement included in the TPB's purpose may be restrictive and contradict the position taken by FASEA and the FPA:

imperative in assisting tax practitioners' knowledge and skills (relevant to the services they provide) to adapt and improve as the law, society and their individual practice changes



The TPB may have included this statement to indicate that the CPE should be relevant to the type of tax practitioner – that is, BAS agents, tax (financial) adviser or tax agent service. However, ‘relevant to the services they provider’ implies that the CPE activity must be relevant to existing services only. As per the above stated purposes, FASEA and the FPA believe CPE is about continuing development and learning to expand a practitioners’ skills and abilities, not just maintaining knowledge about existing abilities and services.

This approach is reflected in the TPB’s position on CPE activities, which includes tertiary courses and other educational activities. Tertiary and educational course are usually undertaken by practitioners to expand knowledge, skills and qualifications in order to expand the types of services they offer clients.

The FPA is concerned that CPE being tied to ‘services provided’ would restrict the ability to include education as CPE, if that education is related to a service the tax practitioner does not currently provide but plans to provide once they have completed the education. For example, a tax (financial) adviser or tax agent does not currently provide SMSF services but is undertaking SMSF education so they can expand their services to include SMSF advice in the future.

This issue is particularly important in relation to TPB’s ‘recognition of other CPE’, and specifically recognition of the completion of CPD for FASEA purposes.

We would encourage the TPB to clarify the current purpose of CPE to ensure it permits and encourages practitioners to expand their abilities and service offerings. This approach and wording should also be reflected in the requirements and language used throughout the CPE policy, particularly in relation to recognition of other CPE.

As discussed above, the FPA strongly recommends the TPB accepts compliance with FASEA’s CPD requirements as complying with the TPB’s CPE requirements for tax (financial) advisers.

[Paragraphs 31 to 33](#)

31. The TPB proposes no change to its approach, noting that CPE needs to be relevant to the tax agent services / BAS services / tax (financial) advice services provided by the registered tax practitioner. It is also reiterated that the current example listing of CPE activities is non-exhaustive.

The FASEA CPD Policy includes study for the purposes of attaining a professional designation. While noting that the TPB has indicated the example listing of CPE activities is non-exhaustive, given that the TPB has made it clearly that compliance with the FASEA CPD requirements will not automatically be accepted as compliance with the TPB’s CPE policy, the list of CPE activities may be relied upon by its registered practitioners and AFS licensees for determining whether CPD activity would be accepted for both sets of duplicative requirements.

The FPA recommends the TPB:

- accept CPD activity completed for the purpose of meeting FASEA’s CPD requirements, and
- include study undertaken to attain a professional designation on the TPB’s list of CPE activity.



32. However, while the TPB proposes to continue with a non-prescriptive approach and recognises that practitioners are in the best position to exercise professional judgement on what they require, the TPB is considering the following proposals:

- *making recommendations as to particular areas/types of CPE to be completed by tax practitioners (without being prescriptive as to minimum hours in specific subject areas)*

See FPA's response to question 4 (above).

- *further clarifying that a tax practitioner should be able to demonstrate how the CPE activities they have completed are relevant to the tax agent services / BAS services / tax (financial) advice services they provide (reflects their service offerings), including sufficient detail in CPE logs, and also noting that a tax (financial) adviser who meets FASEA's CPD requirements is also likely to meet the TPB's CPE requirements.*

See FPA's response to paragraph 28 (above), and to question 9 (below)

33. Further, the TPB proposes that completion of additional study to satisfy the new FASEA education standard (so that a currently tax (financial) adviser can continue to operate as a financial adviser) can count toward the TPB's CPE requirements, if it is relevant to the tax (financial) advice services being provided.

The FPA supports the TPB's proposal that the completion of study undertaken to meet FASEA's education requirements count towards the TPB's CPE requirements, as this is consistent with the FASEA CPD standard.

Q8 Do you agree with the TPB maintaining the 25% reading allowance (see also paragraph 21 in this discussion paper)?

The proposed TPB professional and technical reading requirement should not apply to tax (financial) advisers as this policy will be inconsistent with the FASEA standard.

FASEA caps professional and technical reading at 4 hours (as opposed to 10 hours (25%) proposed by the TPB). Importantly, FASEA requires professional and technical reading undertaken by relevant providers to be approved by the licensee. In approving the material for CPD purposes, licensees must follow the guide set by FASEA (see above).

The TPB proposal to require "CPE logs to contain sufficient detail to explain how the professional or technical reading is relevant to the tax services provided" should not apply to tax (financial) advisers.

Licensee activity approval, and the record keeping requirements and documents required by FASEA (explained above) should be accepted by the TPB in relation to professional and technical reading undertaken by tax (financial) advisers.



Q9 Do you have any suggestions on how tax practitioners should be required to demonstrate that the CPE completed reflects their service offerings (for example, what evidence should be required, and how frequently)?

Should the TPB require CPE logs to contain sufficient detail to explain how a tax practitioner's professional or technical reading is relevant to the tax services provided?

The TPB proposal to require "CPE logs to contain sufficient detail to explain how the CPE completed their service offering...and how professional or technical reading is relevant to the tax services provided" should not apply to tax (financial) advisers.

As previously stated, licensees must consider the following FASEA criteria when approving all CPD activity, including technical reading:

- the level of expertise of the CPD provider;
- expertise of facilitators and/or those delivering the CPD;
- the level of learning undertaken; the stated learning outcomes for the CPD activity;
- the volume of time in undertaking the CPD activity; and
- the approach for verification of learning outcomes achieved

Licensees must approve 70% of a relevant providers CPD activity, including technical and professional reading.

FASEA has made it clear that it expects desired learning outcomes to be achieved through undertaking CPD activity. FASEA requires each relevant provider to have a CPD Plan, set with their licensee, to ensure the activity undertaken meets the "Qualifying CPD" requirements and has a clear objective as to how it will develop and improve the individual's knowledge and skills. Relevant providers are also required to report against each planned activity undertaken including providing critical reflection on what they have learnt from the activity.

The detail required to be entered and maintained by the relevant provider in the FASEA CPD log is significant. Overlaying this with different requirements for the TPB's CPE purposes will create an unnecessary regulatory burden and duplication of paperwork, while delivering no consumer protection benefit.

The TPB should accept the information required in the FASEA CPD log as evidence of completing appropriate CPE for TPB's purposes for tax (financial) advisers.

Q10 Do you have any feedback in relation to the TPB's proposed approach to recognising CPD/CPE undertaken to satisfy requirements of other bodies, including TPB Recognised professional associations and FASEA (see paragraphs 34 to 37, and paragraphs 40 to 41 in this discussion paper)?

See comments above.



Q11 Do you have any comment regarding continuation of the TPB's current approach to approval of CPE activities/providers (see paragraph 42 in this discussion paper)?

The FPA supports the proposal regarding the continuation of the TPB's current approach of not approving CPE activities or providers.

FASEA's CPD framework includes a stringent guide for licensees to approve 70% of relevant providers' CPD based on stated learning outcomes. TPB approval of CPE activity would add significant complexity to this system.

Q12 What evidence/level of detail should the TPB require from tax practitioners to assure compliance with the TPB's CPE requirements, and how and when should tax practitioners be required to provide evidence about their CPE?

For example, should the TPB continue to be pragmatic and apply a risk-based compliance approach, or require practitioners to provide detail/evidence annually or upon renewal?

The FPA acknowledges the benefits of requiring evidence of CPE activity completed in enabling the TPB to adequately perform its oversight of tax practitioners. However, as discussed above, the FPA is concerned that any log/documentary requirements introduced by the TPB would duplicate those already in practice in the financial planning profession for the purposes of meeting FASEA's requirements. Any additional requirements would be disruptive and expensive for practitioners with no consumer benefit.

The FPA strongly recommends the TPB accept the CPD log and documentation for the purposes of providing evidence of meeting the TPB's CPE requirements.

Q13 Do you agree with the TPB's proposal in relation to record keeping requirements (see paragraphs 49 to 50 in this discussion paper)?

The FPA supports the requirement to maintain CPE records for 7 years as this is consistent with the FASEA CPD requirements.

As discussed above, the CPD Plan and record keeping requirements set by FASEA should be accepted by the TPB for tax (financial) advisers. Imposing additional and/or amended record keeping requirements on these practitioners will duplicate regulatory requirements set by FASEA and embedded in licensees' and firms' business systems and processes for no client benefit.

Q14 Do you have any comment regarding the TPB's approach to extenuating circumstances (see paragraph 53 in this discussion paper)?

The FPA supports a case-by-case basis for considering extenuating circumstances to meeting its CPE requirements. As indicated in the discussion paper, it would be beneficial for tax (financial) advisers for the TPB to provide some transparency to this process.



The FPA has received a noticeable number of enquiries from members confused about what does and does not meet the TPB's requirements. There is particular confusion around what is a tax (financial) advice service that does not fall under the definition of financial advice in the Corporations Act. The lack of clarity around how a tax (financial) advice service is different to financial advice results in uncertainty as to the CPE requirements. As discussed above, the requirements in the FASEA Code and the TASA Act combine to overcome this issue if the TPB unconditionally accepts the completion of CPD for FASEA purposes as meeting the Board's requirements.

The penalty for not meeting the TPB's CPE requirements in suspension. This can be the same penalty as more severe acts such some cases involving fraud and dishonesty. Suspension of TPB registration can affect the relevant provider's legal ability to practice.

Acting fraudulently or with dishonesty is usually an intentional and deliberate act. Influencing factors, including those outside of the relevant provider's control, may impact the individual's ability to meet CPE requirements.

Non-compliance with the FASEA CPD requirements is noted on the relevant provider's listing on the ASIC FAR. However, licensee oversight of the implementation of the individual's CPD Plan significantly reduced the risk of non-compliance.

The FPA is concerned that the penalty for breaching TPB's CPE Policy is significantly higher than that of set in the Corporations Act and is disproportionate to the breach.

Therefore, the FPA recommends a more educational and staged approach to penalties to apply to the potential range of breaches of TPB's CPE requirements be considered. For example, additional CPD activity to be completed by first offenders, ranging to more significant penalties for deliberate and repeated breaches.

Consideration should also be given as to extenuating circumstances as to why the breach occurred.

We also suggest the TPB accept the FASEA CPD requirements for practitioners who take a career break.