



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

11 March 2021

Tax Practitioners Board  
GPO Box 1620  
SYDNEY NSW 2001

Email: [tpbsubmissions@tpb.gov.au](mailto:tpbsubmissions@tpb.gov.au)

Dear Sir / Madam

**Exposure Draft Explanatory Paper TPB(EP) D44/2021 - Continuing professional education policy requirements for registered tax (financial) advisers**

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

The FPA is extremely disappointed by the TPB's reluctance to unconditionally accept the CPE<sup>1</sup> completed for FASEA purposes as meeting the TPB CPE requirements for tax (financial) advisers (TFAs).

As demonstrated in the attached excerpts from our previous submissions provided to the TPB over the past 18 months, and discussed at length in meetings and stakeholder forums during this period, the FASEA Legislative Instrument and CPE Policy set extremely high standards and detailed requirements for financial planners specifying the completion of (in summary):

- 40 hours of CPE each year (including a cap of only 4 hours of professional reading)
- across four mandatory competency categories
- 70% of all CPD activity must be approved by the practitioner's licensee
- activity to be undertaken is determined under a CPE Plan set specifically to develop each individual practitioner's knowledge, skills and potential future services to clients, with the CPE tracked by the licensee on a quarterly basis
- practitioners must provide a written reflection of the learning outcome achieved from each CPE activity undertaken, and
- a practitioner's failure to meet the FASEA CPE Policy requirements must be reported to ASIC.

*Attachment 2: Excerpt from FPA submission to the Review of the Tax Practitioners Board's (TPB) Continuing Professional Education (CPE) Policy for tax practitioners, dated 18 March 2020* discusses in detail the high standard set in the FASEA CPE Policy.

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<sup>1</sup> FASEA uses the terminology Continuing Professional Development or CPD, as defined in the Corporations Act. The TPB uses the terminology Continuing Professional Education or CPE, as defined under the Tax Agents Services Act. To ensure consistency in the terminology used in this submission, the FPA will use CPE.



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.

Since the 11 February 2021 release of the Exposure Draft CPE Policy for TFAs for public consultation, the FPA has received feedback from numerous practitioner members stating that the TPB draft policy (for example):

- is confusing
- requires TFAs to undertake an additional 120 hours of CPE on top of the FASEA requirement, and
- does not align with the record keeping timeframes for FASEA CPE which will mean that TFAs will need to maintain two sets of records.

Most significantly, practitioners are confused about:

- what exact TFA services they provide that are not also personal financial advice services under the Corporations Act, and
- therefore, what topic areas of CPE are not captured under the FASEA requirements, through the individual's licensee approved CPD Plan, that the TPB would expect a TFA to undertake.

The FPA has continued to request Treasury and the TPB provide clear examples of TFA services that fall outside the definition of personal financial advice since the proposed application of the Tax Agent Services Act to financial planners in 2008. Clear examples of services and circumstances in which a financial planner would be providing a tax (financial) advice service, but not personal financial advice, would help the profession identify the gaps in the CPE undertaken for FASEA purposes.

Without clear examples of these services, the TPB's proposed CPE policy for TFAs is confusing and unnecessarily creates additional red tape for financial planners that will provide no extra benefit for consumers. Rather, it will drive up the cost of financial advice for Australians.

The FPA notes the inclusion of paragraph 40 in the Exposure Draft, which states:

*The TPB expects that at the end of a registered tax (financial) adviser's CPE period, a registered adviser who is relying on the CPE completed for a recognised professional association, or for compliance with the Corporations Act 2001, should be able to demonstrate that they have complied with their CPE obligations with the recognised professional association and/or the Corporations Act 2001. In doing so, they will also comply with their TPB CPE obligations.*

While this implies a willingness to accept CPE completed for FASEA purposes as meeting the TPB's requirements, it is made conditional by the use of the words "should be able to", and the statement in paragraph 38 that "*the TPB will accept the registered tax (financial) adviser's compliance with their association's CPE/CPD requirements, or FASEA's CPD requirements, subject to the following:*



- *the activities completed must be relevant to the tax (financial) advice services provided*
- *the activities completed must be provided by persons or organisations with suitable qualifications and/or practical experience in the subject area*
- *the CPE/CPD completed meets the minimum level of CPE as specified in paragraphs 17 to 25 of this TPB(EP)”.*

*The FPA reiterates our previous key recommendation that the TPB unconditionally accept the completion of CPE for FASEA purposes, as meeting the TPB’s CPE requirements for tax (financial) advisers.*

In addition to feedback provided in previous submissions, the FPA also offers the following comments on specific elements of the Exposure Draft Explanatory Paper TPB(EP) D44/2021.

### What is relevant CPE?

#### **Paragraph 32 states:**

*.... a subsequent or higher level of course, or additional study undertaken to satisfy the education standard set by The Financial Adviser Standards and Ethics Authority (FASEA), relevant to the tax (financial) advice services provided may be acceptable.*

The FPA seeks clarity as to whether TPB’s consideration of study undertaken for FASEA’s education standards applies to a complete education program, such as a Graduate Diploma in Financial Planning, or only to individual subjects.

#### **Paragraph 33 states:**

*During periods of legislative change or where changes occur to a registered tax (financial) adviser’s professional practice, registered advisers should complete sufficient CPE to meet their knowledge and skill requirements. It is essential for registered tax (financial) advisers to maintain their knowledge and skills in order to provide competent and contemporaneous services to clients.*

The FPA seeks clarification as to the application of this statement - does this include changes in all laws, or laws and regulations under the Corporations Act, or just those laws administered by the Tax Commissioner and relevant to TFAs services?

### Example 6

Example 6 states:

*Clarke is a registered tax (financial) adviser. Clarke completes a unit of study through the Smart State TAFE that deals with the provisions of the TASA, including the Code, and its practical application for tax (financial) advisers and their practice.*

*This unit of study may count as CPE because Clarke is enhancing his knowledge of the regulatory regime in which he operates. Having knowledge of a registered tax (financial)*



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*adviser's obligations under the TASA will benefit Clarke in providing tax (financial) advice services to the public.*

Under the FASEA education standard, financial planners must complete study at a minimum of degree level which includes a requirement to complete study on the Financial Advice Regulatory & Legal Obligations (Corporations Act, Anti-Money Laundering, Privacy & Tax Practitioners Board), and Taxation and Commercial Law units as per the TPB's requirement to become Tax Financial Adviser.

*A TPB approved course in Australian taxation law (i.e. one unit in taxation law covering the required topics) "should include a component in the Tax Agent Services Act 2009(TASA), including the Code of Professional Conduct (Code)".*

Given it is a regulated requirement for financial planners to complete a unit of study on the TASA, including the TASA Code, at a minimum of a degree level, the FPA recommends the example refers a unit of study at AQF 7 or higher.

### Key terms

As per our previous submission, the FPA requests the removal of the definitions of BAS Agent and BAS Service from the TFA CPE Policy as such terms are irrelevant to tax (financial) advisers. The FPA recommends the inclusion of definitions of the following relevant key terms:

- Corporations Act
- Tax (financial) adviser
- Tax (financial) advice service
- FASEA
- FASEA CPD Policy

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](mailto:ben.marshan@fpa.com.au) 02 9220 4500.

Yours sincerely

**Ben Marshan CFP® LRS®**

*Head of Policy, Strategy and Innovation*

Financial Planning Association of Australia<sup>2</sup>

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<sup>2</sup> 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.

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## Attachment 1: Excerpts from FPA submission to the stakeholder consultation: Draft Explanatory Paper TPB(EP) 06/2014 - Continuing professional education policy requirements for registered tax (financial) advisers, dated 23 October 2020

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 and duplication. To this point, financial planners are subject to the regulations of 8 different regulators, and specifically in relation to ongoing professional education there are three regulatory regimes to comply with.

As detailed in our previous submission, the FPA strongly encourages the TPB to avoid unnecessary regulatory duplication and to unconditionally accept the completion of CPE for FASEA<sup>3</sup> purposes as meeting the TPB's requirements for tax (financial) advisers.

### Recognition of other CPE

The FPA welcomes and supports the inclusion of paragraph 37 of the draft Explanatory Paper TPB(EP) 06/2014 which states:

*The TPB expects that at the end of a registered tax (financial) adviser's CPE period, a registered adviser who is relying on the CPE completed for .... compliance with the Corporations Act 2001, should be able to demonstrate that they have complied with their CPE obligations with the .... the Corporations Act 2001. In doing so, they will also comply with their current TPB CPE obligations.*

This statement implies the TPB will accept CPE completed for FASEA purposes as meeting the TPB's CPE requirements.

However, paragraph 35 of the draft Explanatory Paper contradicts paragraph 37 and places conditions on the acceptance of FASEA CPE:

*Where a registered tax (financial) adviser ..... is required to meet FASEA's CPE requirements, the TPB will accept the registered tax (financial) adviser's compliance with .... FASEA's CPE requirements, subject to the following:*

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- 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

<sup>3</sup> FASEA CPD Legislative Instrument - Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018. <https://www.legislation.gov.au/Details/F2018L01817>



- *the activities completed must be relevant to the tax (financial) advice services provided*
- *the activities completed must be provided by persons or organisations with suitable qualifications and/or practical experience in the subject area*
- *the CPE / CPD completed meets the minimum level of CPE as specified in paragraphs 17 to 25 of this TPB(EP).*

This implies that the TPB has assessed the FASEA CPE requirements and concluded that FASEA accepts CPE that is 'not' relevant to the services provided by the practitioner, or the tax (financial) services provided by the practitioner. It is extremely unclear as to what gaps are in the FASEA CPE requirements that a practitioner will need to ensure it covers in order to meet the TPB's requirements.

In summary, the FASEA requires financial advisers to complete 40 hours of CPE each year of which 70% must be approved by their licensee (including a maximum 4 hours of professional reading). It includes minimum hours for CPE across four mandatory competency categories:

- Technical competence: acting as a technically proficient professional – 5 hours
- Client Care and Practice: acting as a client centric practitioner – 5 hours
- Regulatory Compliance and Consumer Protection: acting as a legally compliant practitioner – 5 hours, and
- Professionalism and Ethics: acting as an ethical professional – 9 hours
- The balance up to 40 hours must consist of qualifying CPE.

*The FPA requests:*

- *urgent clarification from the TPB as to why it has concluded that FASEA accepts CPE that is not relevant to the services provided by the practitioner, or the tax (financial) services provided by the practitioner, and*
- *examples of the CPE activity accepted as meeting the FASEA CPE requirements that would not be relevant to the provision of a tax (financial) advice service.*

The FPA encourages the TPB to revert to the attached "FPA's Key Position" section of our submission to the Board's Review of the Tax Practitioners Board's (TPB) Continuing Professional Education (CPE) Policy for tax practitioners, dated 18 March 2020, which provided detailed reasoning for the TPB to unconditionally accept the completion of CPE for FASEA purposes, as meeting the TPB's CPE requirements for tax (financial) advisers, as implied in paragraph 37 of the draft Explanatory Paper.

### Example 9

Example 9 of the draft Explanatory Paper states:



*Tim is a member of a recognised tax (financial) adviser association. As a member, Tim is required to complete 120 hours of CPE over three years. Tim's practice primarily deals with superannuation and life insurance matters.*

*Tim attends a CPE seminar provided by the association in relation to its potential merger with an international accounting association.*

*As this seminar is not relevant to the tax (financial) advice services provided by Tim, the seminar would not be considered to be relevant CPE by the TPB.*

The FPA requires qualifying CPE to meet the 5 pronged test of the FASEA standard. One of these conditions is an activity is required to develop knowledge and skills relevant to the provision of financial product advice and financial advice services. An activity covering a potential merger between FPA and another body, would not likely meet this test as it not relevant to the provision of financial advice (product or services).

As a professional body, the FPA would not offer CPE hours for its members to attend a seminar of a merger with another association. The FPA expects neither licensees nor the Standards body would accept this type of activity as meeting the FASEA requirements.

This is not a realistic example and *the FPA recommends it be replaced with helpful guidance for tax (financial) advisers such as an example of a CPE activity that would be accepted under the FASEA requirements, but not accepted under the TPB's CPE requirements*, as this is currently very unclear if such an example may exist.

### Minimum CPE hours

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 40 hours per year. The FPA is concerned that raising the TPB standard to 120 hours per triennial may result in tax (financial) advisers needing to undertake more hours if the TPB does not unconditionally accept the completion of CPE for FASEA purposes, and requires additional CPE on top of the FASEA requirements to be completed. 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 CPE, the requirement to complete 120 hours over 3 years for TPB and 40 hours per year for FASEA may result in tax (financial) advisers unfairly having to undertake additional CPE to ensure they are compliant.

### Triennial

The proposed use of a triennial CPE standard, commencing on the day a practitioner registers with the TPB, will create two dual systems and processes for tax (financial) advisers – one system based on 40 hours per year commencing on the licensee's CPD year for FASEA purposes; and a parallel system of 120 hours over three years commencing on the day each individual tax (financial) adviser providing financial advice under the AFSL's licence registers with the TPB for the Board's requirements.



While the use of a triennial system with a minimum of 20 hours per year provides a degree of flexibility for practitioners, imposing requirements on tax (financial) advisers that differ to the FASEA requirements would require practices to operate two record keeping systems at great expense.

With the introduction of CPD obligations under the Corporations Act, the FPA changed its CPD Policy from a triennial system to an annual hourly requirement to align with the FASEA standard. This change was widely supported by FPA members and licensees as it reduced the complexity, duplication and uncertainty that results from having to comply with multiple inconsistent requirements.

*The FPA therefore recommends the TPB adopt an annual CPE requirement which matches the CPD year recorded on the ASIC Financial Adviser Register for tax (financial) advisers.*

### Record keeping

The FPA welcomes and supports the TPB's proposal that it "...does not expect that an additional CPE log or record be maintained where a record is already maintained to satisfy the registered tax (financial) adviser's relevant obligations under the Corporations Act 2001".

The FPA suggests a 'certificate of completion' or 'certificate of attendance' would be appropriate as commonly used evidence of CPE completed and should be considered for inclusion in Example 10 of the proposed Explanatory Paper.

### Extenuating circumstances

The FPA supports the inclusion of extenuating circumstances in the TPB CPE policy. Given recent experiences in the current environment, the FPA suggest consideration of specifically including a pandemic as an example of a situation where it might not be possible for a tax (financial) adviser to complete the minimum level of CPE.

Extenuating circumstances could also apply to practitioners on maternity/parental leave, or extended leave from practice (such as long service or unpaid leave for personal reasons).

### Example 11

The FPA notes Example 11 included a reference to "...Mya not having completed the minimum seven hours of CPE in the first year". This appears inconsistent with 20 hour minimum proposed under the draft Explanatory Paper.

### Key terms

*The FPA recommends the definitions of BAS agent and BAS service be removed from the Key terms of the draft Explanatory Paper* as these definitions are not relevant to CPE for tax (financial) advisers. FASEA and the FASEA CPD Policy should be included in the list of key terms for this policy.

### Example 4

Example 4 includes a statement "...regarding a new financial product that he [the tax (financial) adviser] **intends to sell** as part of the tax (financial) advice services he provides".





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The FPA is concerned about the language of this statement, in particular the phrase 'intends to sell'.

The act of selling implies the individual stands to gain a payment or benefit from a 'sales' transaction. This would be considered conflicted remuneration in the context of the provision of financial advice, which is specifically banned under the Corporations Act.

Section 961B of the Corporations Act, and the FASEA Code of Ethics require financial planners to consider the client's personal circumstances when researching and identifying appropriate and suitable financial strategies and potential financial products for their clients. Financial planners provide financial advice, which may or may not include a recommendation about a financial product or class of financial products. Financial planners must be knowledgeable in a range of financial products to adequately assess and compare the appropriateness of products for a client's circumstances and whether it is in the client's best interest to recommend a particular product to achieve the client's goals.

The FPA encourages the TPB to remove the reference to selling from Example 4.

As discussed in our submission, the FPA strongly encourages the TPB avoid unnecessary regulatory duplication and to unconditionally accept the completion of CPD for FASEA purposes, as meeting the TPB's requirements for tax (financial) advisers, as implied in paragraph 37 of the draft Explanatory Paper.



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## Attachment 2: Excerpt from FPA submission to the Review of the Tax Practitioners Board's (TPB) Continuing Professional Education (CPE) Policy for tax practitioners, dated 18 March 2020

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### FPA's key position

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The new CPD (CPE) requirements set by the Financial Adviser Standards and Ethics Authority (FASEA) represent a significant increase in CPE 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 CPE 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 CPE 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 CPE requirements for the purpose of meeting the TPB's CPE requirements.

The following elements of the FASEA CPE 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 CPE 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 CPE Policy which must include “...*a process for ensuring CPE 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 CPE 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 CPE policy that its relevant providers adhere to. FASEA requires the CPE policy to include the Licensee’s:

- Overall approach to CPE
- Process for approving CPE activities and the mechanism for allocating hours to these
- Approach to any CPE plans created for relevant providers
- Process for ensuring CPE 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 CPE
- Approach to record keeping, and
- Approach to auditing compliance with the policy.

The Licensee CPE policy serves three purposes:

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

This licensee oversight of the relevant provider CPE 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. CPE 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 CPE Policy, nor does it require licensee approval of CPE 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 CPE 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 CPE Plan, set with their licensee, to ensure the activity undertaken meets the “Qualifying CPE” requirements and has a clear objective as to how it will develop and improve the individual’s knowledge and skills
- 70% of all CPE activity undertaken must be approved by the Licensee
- FASEA has set a stringent guide for approving CPE activity requiring licensees to consider:
  - the level of expertise of the CPE provider;
  - expertise of facilitators and/or those delivering the CPE;
  - the level of learning undertaken; the stated learning outcomes for the CPE activity;
  - the volume of time in undertaking the CPE 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 CPE and hours

FASEA has made it clear that it expects desired learning outcomes to be achieved through undertaking CPE 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 CPE categories with minimum hours per year for each category. The balance up to 40 hours must consist of qualifying CPE from these categories or other selected by the Adviser or Licensee.” (Pg 6)*

Qualifying CPE 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 CPE 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 CPE an individual is to undertake is set (and reset annually), monitored and reported against, through a CPE Plan, which proactively and strategically identifies and targets areas for improvement in the relevant provider's knowledge and skills to enhance client outcomes. The CPE Plan ensures the qualifying CPE 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 CPE 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 CPE 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 CPE plan, the implementation of which must be monitored by the licensee (s6(7)(a)). Section 6(6) requires that:

*A relevant provider's CPE 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 CPE activities the provider will complete during the CPE year to achieve those improvements.*

The Corporations Act requires licensees to notify ASIC if a relevant provider does not comply with the CPE standard (s922HB), and to retain evidence of a relevant provider's compliance with the CPE standard (s922HC). If a relevant provider does not meet the CPE 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 CPE log and against a relevant provider's CPE Plan. FASEA requires an individual to report against their plan including self-reflection of the learning outcomes gained through the CPE 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 CPE targets will not be able to be made by the licensee on their behalf. Relevant providers have strict record keeping requirements under



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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.