FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

SINGLE DISCIPLINARY BODY FOR FINANCIAL ADVISERS

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Summary

The Financial Planning Association of Australia welcomes the Government's draft model for a new disciplinary function for financial planners. This reform is an essential component of the work to create a new professional framework for financial planners which commenced with the establishment of the Financial Adviser Standards and Ethics Authority (FASEA) in 2017.

The FPA supports many of the design features of the Government's draft model. The Government's recognition of the need to reduce duplication in the regulation of financial advice is significant and the proposal to wind up FASEA and remove the redundant oversight of the Tax Practitioners Board are important steps in achieving this goal. Similarly, the design of the disciplinary function within ASIC by building on the existing Financial Services and Credit Panel has the potential to be a substantial improvement over current disciplinary arrangements.

The FPA has made a range of recommendations aimed at improving the Government's proposed model. The most important of these is that the obligation for a financial planner to register under the model should rest with the individual practitioner, not with their Australian Financial Services Licensee.

The creation of a personal registration is an essential component of any professional framework and is commonplace in professions as diverse as health practitioners, lawyers, architects and tax agents. A personal registration becomes a valued symbol that a practitioner has completed their professional qualifications, is in good standing in the community and whose behaviour is guided by adherence to the profession's ethical principles. The benefits of registration are largely lost if it is tied to a financial planner's employment, duplicates the authorisation process and is treated as another administrative task to be completed by their licensee.

The FPA continues to believe that the best outcomes for both financial planners and consumers come about when the Government and the profession work together on the issues that we are facing. Many of the other recommendations the FPA has made focus on continuing and improving a collaborative approach between the Government and the financial planning profession.

The FPA looks forward to the Government's consideration of its recommendations and an ongoing dialogue about the implementation of this reform.

Single disciplinary body for financial advisers

The FPA welcomes the creation of a single disciplinary function for financial planners as an essential component of the professional standards framework established through the Financial Adviser Standards and Ethics Authority (FASEA) over the last four years.

Creation of the single disciplinary body

The Government's proposed model establishes a disciplinary function based on the Financial Services and Credit Panels (FSCPs) that ASIC is already able to convene to decide whether to impose a banning order on a financial planner found guilty of misconduct. Under the proposed model, the role of the FSCPs will expand to include considering a wide range of disciplinary matters involving financial planners, including breaches of financial services law and the FASEA Code of Ethics and whether a financial planner remains a fit and proper person to provide financial advice. ASIC will provide staff and supporting facilities to the FSCPs for this purpose, including for investigations and supporting the FSCPs' deliberations.

One of the FPA's principal concerns in the design of a new disciplinary system is that it does not unnecessarily increase the costs being recovered by the Government from the financial planning profession. The FPA's concern is particularly acute given recent and dramatic increases to the financial advice component of the ASIC industry levy, which has risen by 160 per cent in two years from $934 per planner in 2017-18 to $2,426 in 2019-20.

The FPA recognises that the decision to build the new disciplinary function within ASIC using the existing structure of the FSCPs has the potential to minimise costs. This approach will avoid the cost of establishing and sustaining a new and separate entity outside of ASIC. Making use of existing administrative practices may also help smooth the introduction of the new disciplinary function.

However, it is important to note that the FSCPs have not been widely used in the past and establishing any new function has the risk of unexpected costs and inefficiencies. The draft Bill provides a framework for establishing the disciplinary function, but many of these risks will be determined in regulation and administrative practices within ASIC which are not known at this time.

While the FPA considers that the creation of a new disciplinary function within ASIC and using the FSCPs could be a satisfactory model, the Government must take care to ensure the disciplinary function operates efficiently, effectively and at a minimum of additional cost.

Management of disciplinary matters

A critical question for the efficiency of the new disciplinary model will be how quickly and effectively it can deal with the range and volume of matters that are brought to its attention. The FPA's view is that the disciplinary function must be able to appropriately triage matters based on their seriousness and to quickly resolve the more minor disciplinary matters in order for it to focus limited resources on the more serious cases of misconduct.

The proposed model requires ASIC to convene an FSCP to consider a disciplinary matter, but only where ASIC has already decided a banning order against the financial planner is not

warranted. This step has the potential to delay an FSCP's consideration of a matter and its ability to resolve it in a timely manner.

One option to address this issue may be for ASIC to involve the FSCPs at an earlier stage in managing the flow of disciplinary matters that warrant attention. Given ASIC is managing both the banning power and the operation of the FSCPs, it should ensure these functions are integrated within ASIC so there are no unnecessary delays in considering disciplinary matters.

The FPA recommends that ASIC considers a method of triaging disciplinary matters to ensure that they are dealt with promptly and, in particular, the consideration of minor breaches is not delayed by ASIC deciding whether a banning order is warranted.

Once an FSCP has convened to consider a disciplinary matter, the goal should be to progress it to resolution within a reasonable timeframe. The proposed model does not include any time limits relating to resolving matters, beyond a requirement to provide a financial planner with 28 days' notice if an FSCP has decided to impose a sanction.

While ASIC should not be rushed in undertaking its investigations, nor an FSCP rushed in its deliberations, it is important to measure the time taken to resolve disciplinary matters and report performance against published goals.

In setting the requirements for a code monitoring compliance scheme, ASIC suggested that initial assessments of reported misconduct should be completed within 28 days of receiving the report. An investigation should be completed within a further 90 days and a matter should be determined within 60 days of it being referred to the decision-making body. The FPA considers that these would be appropriate performance targets for the new disciplinary body and their adoption would promote efficient and effective management of disciplinary matters.

The FPA recommends that ASIC adopts the targets in Regulatory Guide 269 for it to investigate reports and resolve disciplinary matters through an FSCP and to publicly report on its performance against those targets.

Membership of the Financial Services and Credit Panel

The proposed model allows for the relevant Minister to appoint a person to a list to be eligible to sit on an FSCP if the person has experience or knowledge in one or more of the following fields: business, administration of companies, financial markets, financial products and financial services, law, economics, accounting, and taxation.

The FPA supports the Minister selecting people with appropriate experience or knowledge to be eligible to sit on an FSCP. It is appropriate that people on the list of eligible FSCP members have appropriate experience or knowledge to consider disciplinary matters for financial planners, both to ensure the quality of decisions made by an FSCP and also to ensure that the FSCPs have credibility as decision-makers in the financial planning profession.

The proposed model then allows ASIC to select two or more FSCP members from the list of people appointed by the relevant Minister. In selecting people to sit on an FSCP, ASIC should have regard to the subject of the matters that will be considered to ensure that the people selected have an appropriate range of experience. At a minimum, ASIC should

consider the requirements for expertise set out in its regulatory guidance for a code monitoring compliance scheme and include at least one person who would meet the training and competency standards that would allow them to give financial advice and one person who has experience and knowledge of the principles of procedural fairness and administrative law.

Jurisdiction of the Financial Services and Credit Panel

For the FSCPs to be an effective single disciplinary model, they will need the ability to consider misconduct across the breadth of the financial planning profession. The proposed model allows the FSCPs to consider breaches of the professional standards set by FASEA, as well as a broad range of other matters including a contravention of financial services law, instances of fraud or insolvency, failure to give effect to a determination by the Australian Financial Complaints Authority (AFCA), and whether a financial planner remains a fit and proper person to give financial advice.

In addition to these specific matters, the FSCPs can take action on a breach of standard one of the FASEA Code of Ethics, which requires financial planners to comply with the law. This could be interpreted as any law that is relevant to the financial planner's engagement with their client and the provision of financial advice.

It is important for ASIC to note that the laws and regulators financial planners are required to comply with are significantly broader than just those regulated by ASIC. While this legislation creates a single set of standards covering ASIC, FASEA and the Tax Practitioners Board (TPB), the laws regulated by Office of the Australian Information Commissioner, Australian Prudential Regulation Authority, Australian Tax Office and AUSTRAC will also need to be considered within the jurisdiction of the single disciplinary body. To this point, the FSCP should be able to call on expertise from these regulators where required.

The FPA fundamentally supports a broad interpretation of the jurisdiction of the FSCPs provided a suitable nexus with financial advice is present. It will be important for ASIC to guide the deliberations of the FSCPs to ensure members understand the limits of their jurisdiction.

Operation of the Financial Services and Credit Panel

While many of the details of how FSCPs will operate will be set in regulations and ASIC policy, item 11 of the draft Bill sets out a range of operational matters that warrant some comment.

The proposed model provides for a minimum FSCP membership of two, with a chair who is an ASIC representative. In the event of a conflict of interest, a member must not be present and will not participate in considering the relevant matter. While removing conflicted members from an FSCP is essential, there is no obligation for ASIC to replace the member who has a conflict. As a result, matters could be decided by a single FSCP member and the ASIC chair.

Another option to consider is that the conflicts of interest test be administered before the selection of a panel to ensure that a full panel is in place for each case. This is common

practice in most judicial systems and avoids the risk of running panels with insufficient qualified members.

Given the seriousness of misconduct decisions, the FPA considers it would be appropriate for there to be a minimum of two FSCP members present for all deliberations, with additional members appointed to replace any that have stood aside due to conflicts of interest.

The draft Bill provides for members of the FSCP to be paid an allowance for their work. This is a common practice in deliberative bodies and is essential to ensure that members are compensated for the time they commit to FSCP membership. The current arrangements in which FSCP members are not paid an allowance are a significant disincentive for qualified and experienced people from industry agreeing to sit on the FSCPs and would hamper any expansion of the functions of the FSCPs.

The FPA supports the payment of an allowance to FSCP members to ensure ASIC can choose FSCP members from a pool of appropriately qualified and experienced people.

The draft Bill provides few requirements for ASIC or the FSCPs to notify relevant stakeholders about investigations they are undertaking. At present, the only time a financial planner is made aware that there is a disciplinary matter concerning them being considered, is when an FSCP issues a proposed action notice under section 921L. This gives a financial planner 28 days to respond, either with a written submission or by requesting a hearing.

While there are circumstances in which an FSCP investigation should be confidential while evidence is being collected, the FPA considers that it would be appropriate in most circumstances for ASIC to notify a financial planner before an FSCP begins considering a matter related to them. This would allow a financial planner to cooperate more fully with the FSCP and to direct them to evidence that may assist them in making a more accurate determination in the first instance, rather than relying on the financial planner to respond after the FSCP has already made a determination on the matter.

In addition to notifying the financial planner, the FPA considers it would be appropriate for ASIC to notify the planner's Australian Financial Services Licensee (AFSL) and, if the planner is a member of a professional association, that association. AFSLs and professional associations are both important stakeholders in the operation of a disciplinary system, in many instances sharing complaints and evidence with ASIC (and other regulators). Sharing information will ensure these stakeholders are able to take action to support the FSCP's consideration of that matter, as well as to potentially identify other related matters that also need attention. The FPA has entered MOUs with other regulators to facilitate this transfer of information and this should be a feature of the FSCP model.

The FPA recommends that ASIC notifies a financial planner as soon as practical after it decides to convene an FSCP to consider a disciplinary matter concerning the planner and for ASIC to also notify the planner's AFSL and professional association.

The FPA also recommends that the draft Bill be amended to provide whatever power is necessary for ASIC to share information on disciplinary matters with relevant AFSLs and professional associations.

Sanctions

A key requirement for an effective disciplinary system is for it to have access to a range of sanctions that are appropriate for breaches with varying degrees of seriousness. The existing system in which ASIC only can impose a banning order on a financial planner, but no lesser sanctions, is a serious limitation and makes it difficult to effectively deal with minor breaches.

The FPA supports the FSCPs having access to a range of sanctions that can reflect the seriousness of the matter being considered. The proposed model provides a range of sanctions, including: a written warning or reprimand; a direction to undertake specified training, counselling, supervision or reporting; and a suspension or cancelation of the financial planner's registration.

This range of sanctions is a positive addition to the disciplinary model and will allow the FSCPs to match the severity of a sanction with the seriousness of the misconduct. For example, a minor matter could warrant a written warning or reprimand. A more serious matter may deserve specified training, counselling, supervision or reporting. A profoundly serious matter could expect a suspension or cancellation of the financial planner's registration.

The proposed model also allows an FSCP to issue an infringement notice for the contravention of a restricted civil penalty provision. The infringement notice is for 12 penalty units, which is currently $2,664. The FPA's view is that imposing a fine on a financial planner is a valuable option for an FSCP, but that it should be reserved for more serious matters that result from malfeasance or negligence. Given infringement notices are not subject to merits review, it will be important to ensure a strong internal review process is available for this sanction. Considering that an FSCP can also recommend that ASIC apply to a court to impose a civil penalty on the financial planner, the quantum of 12 penalty units would appear to be a reasonable balance between civil penalties and minor administrative penalties.

The model gives discretion to an FSCP to publish a sanction that it has imposed on a financial planner on the Financial Adviser Register. There is an argument that this power should be used sparingly as publication of a sanction is, in effect, an additional sanction as it involves publicly shaming the financial planner. However, it is vital that the new disciplinary function is transparent in its decision-making and gives confidence to the financial planning profession and the general public that misconduct is being addressed.

This outcome is best achieved by publishing the results of the FSCPs disciplinary hearings. The FPA is of the view that the interests of transparency outweigh the arguments against publication for all but the most minor of beaches. In addition to the sanction imposed, the FSCPs should publish a short rationale for their decisions - discussed further below under "Reporting, Feedback and Education".

To provide an incentive for financial planners who have received a sanction for misconduct to change their behaviour, it may be worth limiting the length of time for which a sanction is listed on the Financial Adviser Register (FAR). For example, in the same manner that some criminal convictions are spent after a period of good behaviour, the same could be done for sanctions listed on the FAR. A period of five or seven years may be appropriate, or a range depending on the severity of the sanction being imposed.

Given the range of sanctions that are available to the FSCPs and the rotation membership of those FSCPs, it will be important for ASIC to promote consistency in the application of sanctions to misconduct.

The FPA recommends that ASIC compiles a guide for FSCP members based on recent decisions to ensure an FSCP can make decisions consistent with precedent where appropriate.

Appeals and reviews

For natural justice to be done, it is important that financial planners have available appropriate mechanisms to appeal the decisions of an FSCP. The proposed model contains different appeal options depending on the sanction that the FSCP applies.

For administrative sanctions, a financial planner is able to apply to ASIC for internal review by the FSCP. However, ASIC is not obliged to agree to the review and if it does, the FSCP is not obliged to provide an answer to the planner. This is not an ideal arrangement as an appeal mechanism should not be subject to the discretion of the regulator and outcomes should always be provided to the appellant. Rather, internal review should be the right of any person who is subject to a decision by an FSCP. Financial planners can also seek merits review of an administrative decision through the Administrative Appeals Tribunal (AAT).

For infringement notices, a financial planner can apply to ASIC for an internal review only. As with administrative sanctions internal review is subject to ASIC's discretion, however they are not subject to merits review by the AAT. The explanatory memorandum for the draft Bill suggests that one option open to a financial planner is to refuse to pay an infringement notice and force ASIC to take action in court to enforce a civil penalty.

As with administrative sanctions, it is important that internal review for infringement notices is not subject to the discretion of the regulator. It is even more important in the case of infringement notices as there is no option for merit review. Forcing financial planners and ASIC to engage in costs court proceedings to resolve an appeal is not an option that should be encouraged and a genuine appeal option should be available to prevent this occurrence.

The FPA recommends that internal review of all FSCP decisions should be available to a financial planner without requiring ASIC's agreement to hear the review.

Reporting, feedback and education

An essential component of a professional standards framework is a mechanism to provide reporting, feedback and education from the body or bodies that make and interpret the professional standards to the profession itself. This allows the profession to develop a deeper understanding of how the standards apply to specific circumstances, adapt to new issues as they arise, and provides an opportunity for continued professional development.

A feedback mechanism for the FASEA standards has been largely missing since their introduction over the last four years. FASEA has published some additional guidance on its Code of Ethics, but this has been in response to the financial planning profession calling for clarification of how the principles contained in the Code should apply in specific circumstances. As there has been no disciplinary body charged with applying the Code to

cases of misconduct, there has not been an opportunity to bolster FASEA's guidance with real case studies and disciplinary decisions.

ASIC's focus as regulator under the *Corporations Act 2001* is on corporations and licensees rather than individual practitioners. As a result, ASIC's guidance tends to be prescriptive and compliance focused. FASEA developed its professional standards for individual practitioners that reflect their role engaging directly with consumers. Importantly, the Code is principles-based to permit and encourage financial planners to use their professional judgement in relation to each client.

The financial planning profession needs feedback on the Code that is focused on education and supporting the development of a common approach to professional principles. Regulatory guidance that is prescriptive is unlikely to achieve this. Instead, ASIC and the FSCPs should look to provide feedback in a form that supports a better understanding of the Code and emerging issues, rather than being compliance focused.

While the FSCPs and ASIC may not have capacity to undertake this function entirely on their own, it could be done through a joint approach with professional associations such as the FPA. Regular engagement like this will provide an opportunity for professional associations to raise issues with ASIC and the FSCPs that it can see and ensure education and guidance is targeting the most important areas of concern. The FPA's recent guidance on best practice for file notes, which was developed in consultation with the Australian Financial Complaints Authority, is a good example of how this cooperative model could work.

The FPA is of the view that ASIC and the FSCPs must include feedback to the financial planning profession in their remit and that this should be provided in cooperation with professional associations and focused on developing a strong, common understanding of professional principles in financial planning.

The FPA also supports publication of details of disciplinary matters, as it would have two substantial benefits. Firstly, it would help foster a better understanding of the application of the principles of the Code of Ethics to real life situations and, in particular, to emerging issues in financial planning. Secondly, it would provide valuable transparency in the operation of the FSCPs. Combined with the reporting of sanctions on the FAR, publishing a summary of each decision will boost confidence in the FSCP disciplinary model.

The FPA recommends that the FSCPs publish of a summary of each decision to apply a sanction (except for written warnings and reprimands), including a brief description of the facts of the matter, the reasoning of the FSCP and the outcome.

Registration of financial advisers

Individual registration is a critical component of a professional framework. It was central to recommendation 2.10 of the Financial Services Royal Commission and is currently required by the *Corporations Act 2001* as part of the FASEA reforms, albeit with ASIC taking a temporary no-action position while the Government develops its response to the Royal Commission recommendation.

The FPA strongly supports the need for a personal registration for financial planners as part of the push to improve professional standards for all financial planners. A personal registration provides a direct connection between the practitioner and their professional obligations and standards of behaviour.

Process for registering and renewing

The proposed model requires financial planners to be registered with ASIC to give personal advice. The model provides a single pathway to registration, which is for an AFSL to apply to ASIC to register a financial planner they have authorised. There is no provision for a financial planner to apply for registration personally and registration is only valid where a financial planner continues to be authorised by their AFSL.

The proposed model closely bases the registration process for financial planners on the AFSL system and effectively duplicates the existing authorisation process. This is a significant shortcoming of the model.

Making registration a responsibility of the relevant AFSL effectively breaks the personal connection between a financial planner, their registration and the professional body they are registered with. Registration becomes tied to their employment with a particular AFSL or financial planning business. Rather than being a consistent focus of their professional career, registration is reduced to an employment condition and part of the onboarding process each time they change jobs. In this context there is a real risk that registration is treated as a minor administrative task for the staff of the AFSL to complete in bulk.

The FPA strongly supports a model in which registration is the personal responsibility of each financial planner and is unconnected from their employment. Rather than show that the financial planner has a job, a professional registration should demonstrate that they have met their professional requirements, are in good standing and are ready to be engaged by an AFSL or financial planning business. A financial planner's registration should then follow them throughout their career and be a valued symbol of their professional status and commitment to uphold professional values.

A personal registration is a common factor in other professions. For example: lawyers must register with the court and law society in their state or territory; doctors, nurses and other health practitioners must register with the Medical Board of Australia; and tax agents (which already includes most financial planners) must register with the TPB. These are all personal registrations which reflect the practitioner having met their professional requirements and form a direct connection between the practitioner and the disciplinary function of their professional bodies.

To implement a personal registration system, only minor changes would be needed to the draft Bill. For example:

- sections 921U and 921V, which currently cover the application for registration of financial planners who are AFSLs and those who are authorised by AFSLs respectively, can be consolidated into a single new provision that allows for financial planners to apply for registration directly; and
- section 921W, which provides for renewal of registration, can be similarly simplified by allowing financial planners to renew directly.

These changes would have some flow-on effects on the administration of a registration scheme by ASIC. Most notably, ASIC would need to upgrade the operation of the FAR to accommodate a personal registration status as well as the existing data of the authorisation of a financial planner under an AFSL.

The FAR is commonly criticised for containing inaccurate, incomplete or out-of-date information about financial planners. For it to fulfil its potential as a resource for consumers and potential employers to check the professional qualifications, disciplinary record and authorisations of a financial planner, the FAR needs to be upgraded regardless of any other reforms. Establishing a personal registration for financial planners is a perfect opportunity to build the FAR into the valuable resource that it could be.

Registration and renewal also requires an attestation that a financial planner is a fit and proper person to provide financial advice and that they have met their obligations for continued professional development. This should properly be a personal attestation, not one done on the planner's behalf by their AFSL.

Finally, managing personal registrations for financial planners should not be a particularly onerous task. Other professional bodies routinely manage registrations for much larger numbers of practitioners. The Medical Board of Australia currently manages registrations for around 128,000 practitioners. The nation's law societies cover around 76,000 practising solicitors. The TPB registers around 78,000 tax agents. Compare this to a financial planning profession that numbers around 21,000 and the registration task should be entirely achievable.

The FPA strongly recommends that:

- **the registration requirement be redrafted as a personal responsibility for financial planners;**
- **that an application for registration or renewal is to be submitted by each financial planner and not an AFSL; and**
- **that the professional registration is not tied to employment or authorisation under an AFSL.**

Registration year and renewal dates

The proposed model requires registration for financial planners to be renewed annually and makes provision for the period of registration for each financial planner to align with the "registration year" of their AFSL. As a result, the first registration period for any financial planner is likely to be less than one year and may be substantially so. In addition, if a

financial planner changes their AFSL they will need to apply for a new registration with that AFSL and then renew again at the end of the new AFSL's registration year.

The cumulative effect of these provisions is that financial planners may need to register or renew much more frequently than once per year. With a registration fee being payable on each occasion and no provisions for pro rata discounts or refunds. Financial planners will also need to track changes in the registration year for their current AFSL and risk missing renewal deadlines due to confusion over the required date. Further, some financial planners are currently registered with multiple AFSLs which may lead to duplicate registrations or registrations being missed where one AFSL assumes another has completed the registration process. These challenges would further diminish the connection between the financial planner and their registration and make registration even more of an administrative task to be managed by their AFSL along with their authorisation, and for ASIC.

This complicated system of renewals could be easily avoided if registration were made a personal responsibility of each financial planner and not one linked to the AFSL. Financial planners' registration would commence on the date their application was approved and would run for the following year, regardless of any change in AFSL. Should ASIC wish to simplify the system even further, it could set a registration year and renewal date for all financial planners which would then build a common practice in the profession of renewing at a particular time of year.

The FPA recommends that the draft Bill be amended to remove the references to a AFSL's registration year and replace it with references to a registration year set by ASIC for all financial planners.

Wind up of FASEA and transfer of its function

The FPA strongly supports the Government's decision to wind up FASEA and the potential and welcome cost-saving that this provides. By executing FASEA's functions using existing Government offices and entities, the Government could save a substantial proportion of the FASEA budget - which is set at $5 million per annum pro rata in the 2021-22 federal budget. Controlling regulatory costs such as these is an essential step in making financial advice more affordable for all Australians.

Power to create and alter standards

The FPA supports the transfer of FASEA's standard-setting function to the Minister (under section 921G of the draft Bill), supported by Treasury's well-established consultation processes and subject to Parliamentary oversight of legislative instruments.

The FPA has publicly stated its concern about the timeliness and lack of stakeholder engagement in the consultation processes undertaken by FASEA to establish the education and professional standards now in place. The FPA believes there is a need for better engagement with the profession about how these standard-setting powers are exercised in the future.

Item 83 of the draft Bill repeals the requirement for the Minister to commence of a review of the FASEA framework (Divisions 8A, 8B and 8C of Part 7.6 of the *Corporations Act 2001*) before 31 December 2026.

While the FPA supports the transfer of the standard-setting powers to the Minister, and the resulting ability for the Minister to set and review the standards at any time, the FPA recommends it would be prudent to retain the requirement to formally review the standards as currently exists.

Approval of education providers and courses

The FPA supports the transfer of the requirement to approve education providers and courses to the Minister. The FPA understands the Treasury will support the Minister in executing this function and believes that Treasury should make use of the Financial Planning Education Council (FPEC) in undertaking this task.

The FPA established FPEC in 2011 as an independent body chartered with the responsibility of raising the standard of financial planning education and promoting financial planning as a distinct learning area. The FPEC comprises academics and financial planner practitioners.

The FPEC established the first tertiary curriculum for financial planning education and set the inaugural standards for accreditation of financial planning education providers and courses. Prior to the establishment of FASEA in 2017, the FPEC had approved 19 education providers to provide financial planning courses in Australia.

The FPEC 'gifted' its financial planning curriculum and accreditation framework to assist FASEA to assist in its work in determining appropriate standards for financial planning education. Since the establishment of FASEA, the FPEC has continued its mandate of raising the standard of financial planning education by:

- driving the development of university-level financial planning programs through the provision of advice for universities undergoing FASEA accreditation, and by liaising with and assisting FASEA on educational matters;
- supporting structures within the university environment to build financial planning as a discipline by supporting research forums, research grants and by supporting FPA Academic Awards;
- encouraging industry engagement with academia by promoting the university and industry partnerships, representing academics to regulatory bodies, supporting conferences and activities which bring academia and professional practice together; and
- encouraging the growth of enrolments in financial planning courses by promoting financial planning as a career path to university and high school students, seeking to develop and grow scholarship funds, supporting the growth of internships and professional year placements for graduates.

The structure, funding, and operation of the FPEC has continued to play an integral part in the development of high quality education programs in financial planning.

The membership of the FPEC is currently composed of volunteer experts. The current membership of the FPEC is:

Chair: Sharon Taylor – Associate Professor, Western Sydney University
Diana Bugarcic – Head Teacher Accounting & Finance, TAFE NSW
Robert Durand – Professor, Curtin University
Dianne Johnson – Lead Course Coordinator (Financial Planning), Griffith University
Ronald McIver – Lecturer, University of South Australia
Marc Olynyk AFP® – Senior Lecturer in Financial Planning and Superannuation, Deakin University
Vicky Ampoulous – Organisational Change Manager, CBA Group Super
Julian Place CFP® – Director, Financial Planning Association & Regional Manager, Oreana Financial Services
Rebecca Watt CFP® – Snr Remediation Manager, WBC
Dante De Gori CFP® – CEO, Financial Planning Association

FPEC ACTIVE SUB-COMMITTEE MEMBERS

Dr Syed Shams – Senior Lecturer, University of Southern Queensland
Dr Julie Knutsen – Adjunct Professor, VU Online
Loretta Iskra – Lecturer, University of Wollongong
Dr Md Akhtaruzzaman – Head of Discipline, Accounting and Finance, Australian Catholic University
Dr Abu Mollik – Senior Lecturer, Canberra University

The FPA would welcome the opportunity to discuss with the Treasury the outsourcing of the assessment and approval of education providers and courses, in line with the education standard, to the Financial Planning Education Council (FPEC).

Approval of foreign qualifications

The FPA supports the transfer of the power to approve foreign qualifications to ASIC. FASEA's FPS005 Foreign Qualifications Policy sets a process for the assessment, upon application from the individual, of foreign qualifications, including:

- individuals must provide a certified copy of their foreign qualification and a copy of the assessment from a Department of Education and Training (DET) approved body comparing the overseas qualification to an Australian qualification, using the Australian Qualifications Framework;
- FASEA will assess whether the foreign qualification gives the person qualifications equivalent to a degree or qualification approved for the purposes of meeting the education standard; and
- FASEA may also specify one or more courses the person must undertake to satisfy the education standard in addition to a foreign qualification.

The FPS005 Foreign Qualifications Policy states:

> *Financial services and financial advice in Australia are wide and complex fields with legal, taxation, investment and market requirements, contexts and products that are unique to Australia. Thus, ensuring that qualification obtained includes the FASEA competencies and/or a good level of understanding of Australian regulatory and legal obligations for Financial Advisers are important factors to be considered under this Standard.*

This assessment process is complex and would require expert mapping of the learning outcomes achieved by the individual through the foreign qualification, to the education standard in the Australian context.

Section 921J of the draft Bill requires that a person when applying to ASIC for the approval of a foreign qualification must use a prescribed form. To assist individuals, FASEA developed an online application process and published FG005 Foreign Qualification – DET Approved Provider Guidance. The FPA suggests these are helpful tools which ASIC should consider adopting.

The FPA would welcome the opportunity to discuss ASIC outsourcing to the Financial Planning Education Council (FPEC) the mapping of the foreign qualifications to the education standard to help inform ASIC's assessment of those qualifications.

Publication of approved courses and foreign qualifications

FASEA's FPS001 Education Pathways Policy states:

> *For those HEPs that seek to, and are successful in having programs and/or bridging courses approved by FASEA, their details and those of the programs and courses approved by FASEA will be included in the legislative instrument on approved programs and courses for the purposes of subsections 921B(2) and 1546B(1)(b) of the Act. This information will also be reflected in an approved degree list on the FASEA website.*

Since issuing its Relevant Providers Degrees, Qualifications and Courses Standard in December 2018, FASEA has approved a wide range of courses that meet the required curriculum standards including 75 historical courses, 56 current bachelor or higher degrees

and 35 bridging courses, and has updated the legislative instrument of approved courses on three occasions – March 2019, February 2020, and December 2020.

FASEA's publication and maintenance of a list of approved courses offers an interactive tool that provides a vital and more accessible list of the approved courses than the legislative instrument for education providers, the profession, those wishing to enter the financial planning profession, and consumers.

While the draft Bill appropriately transfers the approval of education courses to the Minister, it does not deal with FASEA's function of publishing and maintaining a list of approved courses on a public website, as required under the FASEA Education Pathways Policy.

The FPA recommends the responsibility for publishing and maintaining a list of approved courses on a public website should be placed on ASIC. ASIC is responsible for the financial adviser register which requires the listing of a financial planner's qualifications, and MoneySmart, and is a known and trusted source of information about financial planners for both the profession and consumers.

Similarly, FASEA's FPS005 Foreign Qualifications Policy states:

> *FASEA approved foreign qualifications will be added to FASEA's Foreign Qualification Precedent Database that will be available on FASEA's website. The Precedent Database will be updated periodically and consist of the following information:*
>
> *(a) Foreign Education Provider & Country*
>
> *(b) Course Name*
>
> *(c) Year Awarded*
>
> *(d) DET Approved Body Approval*
>
> *(e) FASEA Determination i.e. relevant or non-relevant degree*
>
> *If a foreign qualification is listed as approved by a DET approved body, FASEA will not require additional assessment by a DET approved body.*

FASEA's Education Policy FPS001 makes provisions for the recognition of prior learning (RPL) in assessing the appropriate education pathway for both existing and new advisers. The policy refers readers to FASEA's Approved Recognition of Prior Learning List for all approved RPL which is available for stakeholders on the FASEA website.

The FPA recommends consideration be given to:

- **the transfer of vital FASEA functions as stated in FASEA's policies, and require ASIC to publish and maintain:**
- **a list of Approved Degrees and Equivalent Qualifications and Courses to meet the Education Standard**
- **a Foreign Qualifications Precedence Database, and**
- **an Approved Recognition of Prior Learning List, and**

- **appropriate information sharing provisions to enable ASIC to publish and maintain a list of courses approved by the Minister as meeting the education standard.**

Exam administration

The FPA supports the transfer of FASEA's exam administration function to ASIC. Responsibility of overseeing the administration of the FASEA exam provides ASIC with the opportunity to streamline or automate the verification of exam results on the adviser register, which will provide efficiencies and potential cost reductions for both industry and ASIC.

As per section 1546B(3) of the *Corporations Act 2001*, the transition period for existing advisers to pass the exam is to end on 1 January 2022, which coincides with the transfer of the exam administration from FASEA to ASIC. To ensure fairness in the system, exam fees should continue to be individually incurred and remain consistent.

On occasion FASEA has provided, to the profession and individual candidates who did not pass the exam, feedback on the exam areas for improvement.

Candidates who were unsuccessful in this exam will receive additional individual feedback to highlight the curriculum areas where they have underperformed. They will also receive an invitation to a FASEA led webinar to help them understand their results and provide guidance on how to prepare for their next sitting.

This feedback mechanism is vital to ensure planners strengthen their knowledge and skills for providing advice to clients. As per FPS006 Examination Policy, FASEA has also published on its website information and material to assist planners with exam preparation including FG003 FASEA Exam Preparation Guide and reading list, tips for preparing for the exam, and importantly, practice questions.

The FPA recommends ASIC continues FASEA's function in providing individual candidates and the profession feedback to highlight the curriculum areas where underperformance has occurred in an exam sitting.

Continuing Professional Development

The completion of Continuing Professional Development (CPD) is a responsibility placed on the individual practitioner under section 921B(5) of the *Corporations Act 2001*. The FASEA CPD standard requires a CPD Plan to be developed based on the learning objectives for the individual practitioner across five key categories. The FASEA Code of Ethics also places a responsibility on the individual to be competent to provide the services they provide. The FSCP's oversight of the Code includes compliance with the Code's competency value and standards nine (that all advice be offered with competence) and ten (develop, maintain and apply a high level of relevant knowledge and skills).

The current obligations in the *Corporations Act 2001* for the oversight of the individual's compliance with the FASEA CPD standard is based on the entity's licensing system given the current absence of an individual adviser oversight mechanism. However, the introduction of the new adviser registration obligations and the FSCP as a single disciplinary body providing oversight of an individual adviser's compliance with the standards of the Code,

creates a system that will enable the individual to certify their compliance with the CPD standard as part of the annual adviser renewal process.

In other professions, it is the individual who is responsible for making a declaration of compliance with relevant CPD obligations and submitting evidence of CPD undertaken when required by the authorising body. For example, tax agents and medical practitioners are required to make a declaration at the time of renewal of registration that the practitioner has complied with the CPD standard set by the Tax Practitioners Board and the Medical Board of Australia (respectively). Evidence and records of the practitioner's CPD activity must be maintained for audit purposes.

In line with the FPA's recommendation on adviser registration, the FPA recommends a CPD compliance declaration and evidence should be submitted by the individual to ASIC through the annual registration process. To streamline requirements, the individual's CPD year should commence on the registration day.

Reporting requirements

FASEA must produce and publish an annual report under section 921ZC of the *Corporations Act 2001* that includes information and statistics on the implementation of the standards such as the exam administration (candidate numbers and results) and course approvals for example. The draft legislation does not include reporting requirements in relation to the ongoing implementation and oversight of the standards.

Public reporting provides transparency to the regulatory system and insights into the performance of the financial advice profession. It is also prudent given the cost recovery mechanisms that will likely apply to the transfer of the FASEA functions to ASIC.

The FPA recommends consideration be given to annual reporting requirements on the performance of FASEA standards, in particular:

- **FSCP's single disciplinary body function;**
- **adviser registrations;**
- **professional year numbers on the FAR;**
- **exam registration and aggregated results statistics;**
- **education providers and courses approved by the Minister; and**
- **approval of foreign qualifications.**

Regulation of tax (financial) advisers

Tax (financial) advice and tax (financial) advisers were brought into the Tax Practitioners Board (TPB) regulatory regime in 2013 based on an assessment by the Government that financial planners were providing limited tax advice in the normal course of providing a financial service to consumers. It is undeniable that there are tax implications that financial planners must consider when identifying appropriate advice strategies and recommendations for each client. Ensuring the competency of financial planners and the oversight of ethical services in relation to the tax implications therefore act as an important consumer protection mechanism.

The model developed by Government at the time was a co-regulatory model which was intended to create a "...framework best meets the objectives of ensuring the consistent regulation of all forms of tax advice and minimising the compliance costs on entities in the financial services industry". While the TPB has made significant positive progress in engaging and understanding financial planners as part of their regulatory work, it is generally acknowledged by the TPB and the profession that the TPB operates as a secondary regulator to ASIC and has identified minimal regulatory gap or risk for consumers with the provision of tax (financial) advice services by financial planners.

Further, the merging of a regulatory framework based on corporations being responsible for the delivery of financial services into a regulator who is focused on regulating the individual practitioner has not been a neat fit. The difference between a tax (financial) advice service and a financial advice service is not sufficient for the TPB to have been able to provide separate, distinct or additional protective regulatory standards or guidance to the financial planning profession. This is evident from TPB regulatory guidance broadly quoting obligations set by the *Corporations Act 2001* or ASIC. This is further the case with the more recent implementation of the Financial Advisers Standards and Ethics Authority (FASEA) and the implementation of its standards. In numerous examples, the TPB has acknowledged and interpreted that there are few gaps in their regulatory regime which are not covered by the *Corporations Act 2001* or the FASEA standards.

Finally, in relation to arguably the most important function of a regulator, consumer protection, the cases the TPB has brought against tax (financial) advisers to this point in time appear to be primarily in relation to breaches of laws which carry their own penalty regimes (for example failing to lodge tax returns), failing to complete the duplicate (and in some instances quadrupling) registration obligations, or failing to notify the TPB of a termination of registration on ceasing practice. These specific examples do not seem sufficient to require a regulatory framework covering tax (financial) advice services and the regulatory inefficiency and cost which it creates. We would also point out that consumers do not recognise the term tax (financial) adviser in the same way they identify with the professional services provided by a financial planner, accountant, or lawyer, and maintaining the term just continues to increase consumer confusion. At a minimum, the terms in Tax Agent Services Act 2009 (TASA) should be replaced with the terms found in the *Corporations Act 2001*.

In saying this, there are differences and there are gaps between the requirements in the *Corporations Act 2001*/FASEA standards and those in the TASA. The TPB regulatory regime has a specific focus on complying with tax implications of services provided by professionals to ensure consumers are appropriately protected. This protection requires specific

knowledge and experience which is demonstrated in the differences between *Corporations Act 2001*/FASEA standards and those in the TASA.

The TPB has expressed concern that specific tax topics and matters may not be given the necessary focus in the education and training standards for financial planners given the breadth of knowledge required to provide financial advice. While tax matters may be captured under each of the FASEA standards, tax may not be adequately referenced to the satisfaction of the TPB which has resulted in the current situation of duplicated standards being imposed on financial planners, specifically two entry and ongoing education standards. This situation will not change under the draft legislation as it is proposed to give the Minister powers to make standards for financial planners and make standards for tax (financial) advisers. Equally the draft Bill proposes that financial planners must still be required to be registered as tax (financial) advisers, just via ASIC rather than the TPB.

Given the Government's intent is for there to be a single set of standards for the financial planning profession, the proposed modifications to TASA in the draft Bill do not appear to achieve this outcome for a number of reasons. Firstly, the drafting of the Bill fails to meet the Government's intention of creating a single set of professional standards for financial planners and a single regulatory regime. To achieve a single regulatory regime, financial planners should be removed from the TASA entirely.

Secondly, the drafting will still require AFSL's and Corporate Authorised Representatives (CARs) to register with the TPB. This itself has two challenges. Firstly, AFSL's and CAR's rely on having a sufficient number of individual tax (financial) advisers to meet the sufficient number test and register with the TPB. If tax (financial) advisers are unable to register with the TPB from 1 January 2022, this obligation will cannot be met. Secondly, the draft Bill will not remove the obligation for AFSLs and CARs to comply with the TPB Code of Professional Practice and therefore require their practitioners to also comply. As a result, tax (financial) advisers operating under an AFSL or CAR (which is all of them) will still be caught by a second, duplicate set of professional standards.

The FPA recommends that the draft Bill remove the requirements for AFSLs and CARs to register with the TPB from the TASA.

Single set of standards

The FPA supports the Government's aim to deliver a single set of professional standards for financial planners. To achieve this intent, it is important to consider the existing FASEA standards and identify any gaps in relation to the tax laws taken into account when providing financial advice in the best interest of clients.

FASEA Code of Ethics

Both the FPA and the TPB have mapped the FASEA Code of Ethics with the TASA Code of Conduct. This mapping indicates that the standards are consistent and cover the same principles with no significant gaps.

FASEA Education

The FASEA education standard for new advisers includes a tax course (as approved by the TPB) and a course in commercial law (as approved by the TPB) at AQF7 level or above. For existing advisers, the FASEA education pathways include recognition

of RPL and bridging courses to make up the education equivalence of the degree requirement. The TPB's existing registration pathways include education and experience requirements. Further analysis is required to identify any potential gaps in relation to tax education in the FASEA education pathways.

FASEA Continuing Professional Development
The TPB acknowledges the FASEA standard in its recently released Exposure Draft CPE Policy. The FASEA CPD standard requires individual learning objectives to be set based on the financial planner's knowledge and service offerings to maintain competency and grow knowledge. Tax laws would be captured under FASEA's four CPD categories and specific tax topics could be included in an individual's CPD Plan where necessary (which operates in practice already).

FASEA Professional Year
To commence a professional year (PY), the individual must meet the FASEA education standard under the new entrant pathway, including the completion of a tax course (as approved by the TPB) and a course in commercial law (as approved by the TPB) at AQF7 level or above. Tax laws would be captured under FASEA's PY standard which requires an individual to meet certain learning outcomes in four distinct quarters.

FASEA Exam
The FASEA exam standard already tests the practical application of financial planner' knowledge in Financial Advice Regulatory and Legal requirements including chapter seven of the *Corporations Act 2001*, anti-money laundering, privacy and importantly the TASA requirements.

Given the alignment between the TASA and FASEA standards, the FPA is concerned that the draft Bill maintains the status quo of duplicated standards, and therefore duplicated compliance costs, adding significantly to the complexity of the regulatory regime with no additional consumer benefit.

The FPA strongly recommends that the Minister is given the power to establish a single set of standards for financial planners only and that this power is contained in section 921G of the draft Bill.

The FPA recommends that Treasury reviews the FASEA standards to ensure that they appropriately cover the provision of tax advised and tax laws relevant to the provision of personal financial advice to retail clients. This process should be undertaken in consultation with the TPB and the financial planning profession. Any recommended amendments to the FASEA standards should apply after an appropriate transition period.

The FPA would welcome the opportunity to work with the Treasury, the TPB and other stakeholders to identify appropriate transition arrangements to achieve a single set of standards for financial planners that incorporates tax advice and tax laws.