

January 2016

AFA Submission Summary – Response to Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015

The Association of Financial Advisers Limited (“AFA”)

The Association of Financial Advisers Limited (“AFA”) has served the financial advice industry for 69 years. Our aim is to achieve Great Advice for More Australians and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a code of conduct
- investing in consumer-focused research
- Providing professional development pathways for financial advisers
- Providing the professional certification of the Fellow Chartered Financial Practitioner (FChFP) designation
- connecting key stakeholders within the financial advice community
- educating consumers on the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians’ reach their potential through building, managing and protecting wealth.

This document is a public summary version of the submission prepared for Government.

Introduction

The AFA supports recognition of financial advisers as a respected profession, contributing to trust and confidence in the sector, through upholding high levels of education, ethical and professional standards. We welcome the opportunity to provide comments on the exposure draft Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015.

In this submission we include the following:

- A. Summary of key concerns
- B. Recommendations

A. Summary of key concerns

1. Consultation timing.
2. Transitional arrangements for existing advisers to be longer – and include recognition of existing advisers experience and competency.
3. Monitoring and enforcement of a code of ethics - including Professional Association membership and code subscription.
4. Standard setting body – including the importance of having small business adviser practitioner experience on the board.

B. Recommendations

1. Longer consultation period

Of significant concern is the short timeframe provided to review, consider and consult with our members on the exposure draft, especially spanning the end-of-year holiday period where many offices are closed. There has been insufficient time to consult sufficiently with our members on the implications on their businesses given the serious impact this framework could have on their short term plans, as well as longer term future.

2. Amend transitional arrangements for existing advisers

We have serious concerns with the proposed transitional requirements, especially the timeframes, and reinforce the importance of seeking arrangements that recognise the experience and competence of existing advisers. Our members, particularly the older, very experienced advisers have expressed strong views about the time and cost impost of the currently proposed pathways. The majority of experienced advisers are recognised veterans of the industry with large and supportive client bases achieved from delivering quality outcomes for their clients over many years.

These advisers because of their experience and age are arguably best positioned to empathise with the large cohort of Australians approaching retirement and considering confronting lifestyle and financial decisions around challenging issues like certainty of income, aged care and estate planning. The impact of the proposed requirements for degree-equivalent qualifications will cause a drastic decline in the number of experienced, quality advisers available to serve consumers through their retirement years.

As Directors of companies have best interest duties under the law, so too do financial advisers have a best interest duty under law to act in the best interest of their clients. Education levels and exams will not change that for these highly experienced and effective financial advisers as it wouldn't for experienced directors and company leaders not possessing the degree level qualifications of their younger counterparts.

It is widely documented that access to and participation rates of high school leavers in university courses is much higher today than it was a generation ago. The AFA believes that requiring an experienced older existing adviser to achieve a university qualification will result in a significant negative impact to the operation of the industry. It is the AFA's preference that the government set the standards for existing advisers at the AQF6 or equivalent assessment level in Regulation as that would provide much needed certainty and clarity in the near term. In the absence of the government being prepared to do this, we support the view that the first standard includes equivalent competencies for existing advisers to be approved by the standards body.

Older, experienced advisers who are already recognised with a strong and untarnished track record of giving quality advice, who have abided by professional association codes, and who have shown a long term commitment to keeping their professional development current, should not be subject to unnecessary red-tape to re-validate their competence. Whilst in their later years as a practising adviser, the prospect of facing considerable time, cost and the stress of

completing new degree-equivalent courses and doing an examination that is not reflective of operating in the advice environment, will drive a significant number of quality advisers to consider earlier retirement. The prospect of thousands of quality, experienced advisers exiting early over the next 3 years is an extremely concerning consequence of the proposed framework if it is implemented without changes being made.

2.1 Recommendations to recognise proven experience, competency and specialisation

2.1.1 Consideration for specialists being exempt from comprehensive assessment requirements that would not be relevant for giving advice in their specialist area.

2.1.2 Amendments to the proposed framework for existing advisers to enable recognition in lieu of the exam and competency requirements for those advisers who already have a proven, long-term track record, where they can:

- a) Prove a strong and untarnished track record of giving quality advice and at least 6 out of the last 8 years as a practising adviser (consistent with the TPB requirements for approved course exemptions); and
- b) Prove no ASIC breaches or adverse FOS claims; and
- c) Hold a minimum of the equivalent of the Advanced Diploma of Financial Planning or higher such as a professional certification eg Fellow Chartered Financial Practitioner (FChFP); and
- d) Prove no historical breaches of professional association codes; and
- e) Prove a long term commitment to keeping professional development current, as evidenced through completion of continuing professional development points; and
- f) Maintain current membership of a recognised financial advice professional association and adhere to that Associations code (which will include the Model Code).

2.1.3 That the terminology 'exam' be replaced with 'assessment'. This is more relevant to assessing the actual practice and process of providing quality advice; and is a meaningful term for consumers. It will give the standards setting body the flexibility to apply appropriate adult-learning assessment methods to ensure that the competency standards are met, rather than testing performance in a traditional school-like exam-setting, which is quite different to the delivery of advice in practice.

2.2 Existing advisers

- **Recognise prior learning and competencies.** The draft wording does not provide flexibility for the new body to recognise prior learning not at degree level in conjunction with the experience of existing financial advisers. The issue we are trying to address is enabling the standard setting body to consider prior learning of existing advisers including relevant and appropriate courses and continuing professional development, as well as experience, rather than being restricted to degree-level and above. **We recommend** in s921B(2) meaning of education and training standards, preconditions for relevant providers be amended such that the **first standard can include an equivalent competency** approved by the standards body. In s1546B amend such that the provider must have met s921B(2) or completed a **competency pathway** approved by the standards body.
- **That the second standard is that the person has passed an assessment approved by the standards body**
- **Time and cost impost** - Concerns that the timeframes are much too tight for existing advisers trying to successfully run a small business as well as accommodate additional training on top of current education requirements. For example, the average cost per post-graduate unit is approximately \$2,000 per unit. Using the example of a Graduate Diploma of Financial Planning (8 units), this implies a cost of \$16,000 per adviser. In addition, the intersection between the registration of advisers under the Tax Practitioner Board and the proposed Standards Setting Body is problematic as many advisers also need to complete further education requirements under the TASA requirements for corporations and tax law.
- **Course roll-out.** Concern whether in the proposed timeframes that the standard setting body and course developers can ready and deliver sufficient courses and capacity for all advisers to be able to meet the standards in time.
- **Consequences.** We also note concerns about the consequences for advisers not meeting the requirements within the proposed timeframes impacting their ability to continue to advise and service their clients. Potentially thousands of clients would become unadvised overnight.

3. Monitoring and enforcement of code of ethics

The AFA acknowledges that the model code of ethics is to be standard across the industry, and that this can be embedded in the professional association codes. **We recommend** mandatory Professional Association membership and code subscription.

3.1 Recommend mandatory membership of professional associations.

Given the role of professional associations includes upholding the highest standards of behaviour of its members, these bodies are best positioned to improve, maintain, monitor and enforce standards. Professional associations through peer learning and support and reviews, in addition to code enforcement and conduct remediation are best placed to support the breadth of advisers' professional development needs. This is recognised by many Licensees and organisations giving support to mandatory membership. Given the costs involved to establish, monitor and enforce compliance with the future framework, it will be more cost-effective to build scale through professional association membership than to develop other monitoring and enforcement bodies. The full cost of developing these parallel monitoring and enforcement bodies for non-members of professional associations should be borne fully by those financial advisers that intend to use those parallel providers. Members of professional associations should bear none of that cost.

3.2 Recommend default subscription to professional associations' code enforcement.

Professional associations are best placed to monitor and enforce compliance with the code. If Licensees are to be enabled to assume the role of code provider for their authorised representatives, it raises serious concerns around potential conflict of interest. In addition, it will be costly and creates duplication of structures and processes already in place with the professional associations.

The explanatory memorandum makes references to costs of implementing the proposed framework at \$165m per year. Based on an estimate of 20,000 advisers being within the framework, this is a cost of \$8,250 per adviser before additional costs relating to exams, assessments, additional courses, degrees or designations are added to the bill. This cost can be significantly reduced through the recommendations we have made in this submission and in particular by not duplicating the role of professional associations in enforcing a code of ethics.

Both the AFA and other professional associations have had an extraordinary track-record for our members being significantly underrepresented in ASIC breaches and we believe this speaks to the professional culture developed throughout our membership and supported by our own code.

For both effectiveness and efficiency, the AFA recommends that where advisers are already a member of a professional association, that automatic model code subscription (which will be embedded within the association's code) is through their current association. If advisers are members of multiple associations, they would select which one to subscribe to for the purposes of the model code monitoring and enforcement and this could be noted on the ASIC Financial Adviser Register (FAR).

If the Licensee pathway option is to remain, and we strongly believe that it shouldn't, then advisers could choose the monitoring obligation placed upon them be conducted by the Licensee's third party code monitor, providing that third party must report all breaches to both ASIC and the Professional Associations to which the adviser belongs.

3.3 Recommend obligation on Licensees to report alleged breaches to monitoring body

Recommend the addition of a section 921JB to clarify that an obligation be placed on Licensees to notify the code monitoring body within 30 days of a Licensee first becoming aware of an alleged breach.

3.4 The AFA also supports:

- Mandating membership of a professional association as the preferred approach for financial advisers to comply with the model code.
- Supportive of the view that problems may be caused by the licensee pathway, including duplication of monitoring and enforcement models, confusion for clients, and lack of clarity for AFS licensees' compliance systems. Also recommended are amendments to section 921F, 921H and 921JA to ensure assistance by licensees to professional associations in monitoring, reporting and investigating an alleged breach; code monitoring expertise, and notifications.
- That if the Licensee Code model is to remain, and we strongly believe that it should not, then the third party organisation monitoring adherence to the code be required to

report actual breaches direct to ASIC and any professional associations to which the adviser belongs, and not just to the Licensee.

- Obligations to compel licensees, and advisers to **provide information** to each other and professional associations in a timely manner be clarified.
- Given the complexities surrounding any alleged breaches, we support the view that only **actual breaches** fall under the reporting requirements to ASIC.

4. Standard setting body

4.1 Ensure small business advice practitioner experience is represented on the Board

Given the critical impact that decisions of the standard setting body will have on financial advice practitioners, it is imperative there is adequate representation for the advisers who will be impacted, many of whom are in small business.

The AFA recommends the industry representatives include at least one director with recent practitioner experience including owning a small financial advice practice. The impact of these changes will be felt greatest within the ranks of small business advisory practices. The coal face experience and practical implications upon providing advice and client service will be integral to effective decision making of the standard setting body.

4.2 The AFA also notes.

- a **statutory body** rather than a body corporate be the structure for the standard setting body;
- that it will only have **a year to develop and put in market standards -this seems unrealistic;**
- the legislation be sufficiently **flexible to allow the standard setting body to approve competency pathways** and recognise alternative minimum qualifications and alternative competency pathways for existing advisers, as well as **contemplate a combination of a qualification, recognised prior learning and existing competencies, professional designation, specialisations and experience as transitional arrangements for existing financial advisers;**
- **the definition of 'professional association'** be clarified as a body or association which represents relevant providers and operates a compliance scheme approved under s921H, and amendments that enable the proposed company limited by guarantee to recognise the difference between a professional association and an industry association;
- the function of the standards body section 921L(1)(b)(ii) be amended to include relevant providers and professional associations representing practitioners;
- the body **consults** with all relevant parties when setting and reviewing standards;

- the **objects** of the body are contained in the **constitution**, and there is periodic **external review** of the body based on these objects;
- ministerial modifications relate only to **significant changes**, to ensure the co-regulatory model is balanced and promotes ongoing professionalism of financial advice;
- the **standard setting body is inclusive, accountable and transparent** to the public.

5. Other recommendations

- **limit the use of the term financial adviser to those persons who have met the standards** – ie not to be used by timeshare promoters or wholesale advisers.

Concluding remarks

We acknowledge the tight legislative timeframe, however these key concerns and outstanding issues are significant for the AFA's members and their clients and we are anxious that each of the concerns and recommendations we have raised on their behalf receive full consideration.

The importance of improving the public's confidence in, and understanding of the role of financial advisers in assisting them to build, manage and protect their wealth can't be underestimated. Financial advisers enable clients to consider lifestyle possibilities that they previously thought were unattainable. They encourage their clients to be financially self-sufficient both in retirement and in times of medical catastrophe and premature death through the use of life insurance. Financial advisers guide individuals and families through life defining moments from marriage, to children, divorce, redundancy, starting businesses through to maintaining an income and lifestyle in retirement to placing aging parents into quality aged care.

So, whilst we agree that higher minimum education standards is a signpost that is easily understood as indicating a profession, equally the AFA wants to ensure that the value of individuals experience and past exemplary conduct is accorded the respect it deserves. Professions are made up of individuals committed to the pursuit of excellence in their chosen field and achieving positive outcomes for their clients. Experience is vital and the loss of quality experienced professionals from any field of endeavour can have long lasting effects on culture, community and economic value.

These reforms are needed and if they are to achieve their aims then they need to delicately enable the transition of existing practitioners into the future-state of the financial advice profession. They must also establish a professional framework that other people aspire to join as a practitioner.

The reforms also need to bring all practitioners under the nurturing eye of the professional associations that are best placed to provide leadership, professional development, peer communities, cultural norms and effective code monitoring completely free of economic or commercial bias. Since 2008 financial services has been removing conflicts of interest and it is important that these changes do not introduce a new conflict through Licensees being responsible for their own code.

We look forward to the opportunity to discussing and resolving these matters.

Regards

Brad Fox

Chief Executive Officer

Association of Financial Advisers