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Mr Stephen Glenfield
Chief Executive Officer
Financial Advice Standards and Ethics Authority

By email: consultation@fasea.gov.au

Dear Mr Glenfield,

AFA Submission: FASEA - Financial Adviser Examination

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective 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 Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing 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.

1. Introduction

The release of the original FASEA exam proposal on 11 July 2018 caused a great deal of concern and anxiety amongst the financial adviser community. A potential 4 hour exam, with a lack of detail on the curriculum, a 65% pass mark (75% for ethics questions), closed book (including for the 891 Sections in Chapter 7 of the Corporations Act) and a lack of preparation materials or practice exams unfortunately set a benchmark that has disturbed and dismayed people across a broad spectrum of the political and industry sectors. This draft exam standard also led to a great deal of speculation with respect to the extent of the expected exodus of financial advisers from the profession. What was initially proposed by FASEA, caused a great deal of concern for advisers right across the age, qualifications and experience spectrums. Even those young advisers with post graduate qualifications expressed concerns with respect to their prospects for success in such a challenging exam. This proposal also led to an increase in financial adviser activity in terms of contact with members of the Federal Parliament and helped to bring the broader issue of the Professional Standards changes to the attention of many

in the National Parliament. Furthermore, the Federal politicians across the political divide, including lawyers, have also expressed amazement with what was proposed.

We note that there have been a number of changes to address the obvious problems with the first proposal, including the following:

- Reducing the length from a potential 4 hours to 3 hours plus 30 minutes reading time, however we believe that there is more room to reduce it further.
- Making the exam open book in terms of the statutory material relevant to the exam.
- Removing the limit on the number of re-sits, although the introduction of the three month timeframe between undertaking the exam and registering to sit it again, will naturally limit the number of re-sits.
- The commitment in the Policy Statement for FASEA to release practice questions, although we note that this is not referred to in the draft Legislative Instrument or the Explanatory Statement.

The AFA supports the need for an examination that will serve to confirm that all ongoing advisers have an acceptable understanding of the core requirements of being a financial adviser. Financial advice is an important profession and clients place a great deal of trust in their adviser. They expect them to be knowledgeable, ethical, empathetic and good communicators. Clients make a significant investment in their relationship with their financial adviser, including time and openness about their goals and personal circumstances. They justifiably expect that their financial advice partner is of good character. Importantly, they expect to retain an ongoing relationship with their adviser and are not expecting them to be deregistered if they do not quite achieve the new standards set by this regime.

It has for some time been our expectation that passing the exam was a way for advisers to demonstrate their capability to their clients. We also envisaged that it was a mechanism that would remove those who are fundamentally inadequate and that this was something that was in the best interests of their clients, the community and the financial advice profession as a whole. It is important to recognise that the exam is not a 'standalone' exercise, but part of the total Professional Standards package, including the Education Standard, for which a lot of advisers will be required to undertake the three FASEA bridging subjects as a minimum, and many more needing to complete an approved Graduate Diploma.

Financial advisers who find examinations difficult or suffer anxiety and those financial advisers in their senior years who have extensive experience and a passion for their profession and for their clients, may not have completed an exam for many years and will undoubtedly find what has been proposed to be very challenging. This is not a reflection of their ability or the quality of their advice, it is merely their capacity to perform effectively in the context of the pressure of an examination. Accordingly, it will be important for FASEA and others to assist advisers to prepare for sitting this exam.

We remain particularly concerned with respect to timing, as to whether existing advisers who are sitting the exam will have the opportunity to undertake study that will both count towards achieving the degree equivalence requirement and also assist in terms of passing the exam. In our view, it will take some time before approved Graduate Diplomas and bridging courses become available and therefore it may not be possible for existing advisers to complete the required study before they need to sit the exam, based upon the current timeframes. To prepare for an exam, pass the exam, and then go back to complete the majority of the required study again in order to attain the required qualifications does not make sense. The proposed timeframe to complete the exam is short and this is reliant upon everything having been built and available before the middle of 2019. We believe that FASEA and the Government should look at potential solutions to address this problem and provide advisers with more time to study in preparation for undertaking the exam.

There will be particularly significant consequences for advisers that are unable to successfully pass the exam within the required timeframe. They may be in a position where they sit the exam and are

awaiting the final outcome, yet get the news in December 2020 that they have still not passed the exam. This would virtually result in an immediate need for them to cease operating. This would work to the disadvantage of their clients who would be left without an adviser at such short notice. Given that a fundamental core of financial advice is about peace of mind, this will do nothing to ensure clients have peace of mind, and merely further erode confidence in the certainty of the financial advice sector. Additionally, the impact that this will have on the affected advisers, their families and their staff should not be underestimated. The impact will be greater in regional and remote locations where potential purchasers are limited and alternative providers may not exist. Being removed from the profession as a result of failing the exam is also a particularly humiliating way to leave the profession, and again in most cases will not reflect upon the quality of their advice and the many Australians who they have served over the years.

We recommend that a special provision for a minimum of a six month transition be put in place to allow these advisers, who do not pass the exam, at least six months to arrange the sale of their business or the transfer of their clients to another adviser. During this period, they should be able to continue to advise their clients, but would need to disclose their situation at the time that the advice is provided. This would at least allow them to exit their business with some level of dignity and to extract reasonable value from their business. The complexity of selling a business in a remote location or their clients finding an alternative provider of financial advice, should not be underestimated. This six month transition would also allow the adviser to prepare for life after financial advice, including how to support their family and cover the cost of their mortgage. We have recommended six months, which we believe is the minimum required period, however noting that there may be many practices up for sale at this same time, it may be more appropriate to provide a longer period.

It is our view that either the Policy Statement or the Explanatory Statement should have set out some example questions so that industry stakeholders had a genuine understanding as to how FASEA propose to apply the exam. Such additional context would also have been useful in assessing the appropriateness of the number of questions.

We note that the exam is going to cost \$540 (plus GST) per attempt. We are particularly surprised by the cost and believe that this cost could be significantly reduced, particularly if the exam was limited to only multiple-choice questions. As a comparison, a financial adviser can complete a four subject ADFP, with course materials and four exams for less than \$2,000. In the context of the significant scale that we are talking about, we are uncertain as to why it costs so much. A review of ACER's website, indicates that the two hour Law Admission test (LAT) is only \$178 (including GST). Again, we question why the cost of the Relevant Providers Exam is so high. It is also noted that the exam cost is referenced in the FASEA announcement, but not in any of the other documents.

We note the announcement of the appointment of The Australian Council for Education Research (ACER) Ltd as the Exam Administrator. The announcement does not address the issue of ACER's expertise to develop a financial planning exam and whether the development and management of the exam will be outsourced to a third party. The expertise to develop and run the exam is critical. At this stage, we do not have sufficient understanding or confidence as to who will be responsible for the development of the exam curriculum. We recommend changes to the structure and responsibilities for this outsourced arrangement.

We note that FASEA received 92 submissions with respect to the Education Pathways standard, yet issued the final Legislative Instrument only 9 days later in the week prior to Christmas. We do not feel that this is sufficient time to give due consideration to all the feedback received. The very limited extent of the changes that were made in response to the final Education Pathways Standard highlights for us the concern that has been expressed by many, as to whether this is a genuine consultation process. We trust that FASEA will give greater consideration to the feedback that they receive on the exam.

1.1 Summary of AFA Recommendations

As addressed below, our key recommendations are as follows:

- The curriculum needs to be defined on the basis of clearly set out learning objectives. Whilst the Policy Statement does refer to learning outcomes, we believe that much greater clarity and detail is required in terms of the proposed curriculum.
- The exam should be entirely multiple-choice in order to reduce the complexity of marking, reduce the cost and to speed up the process to generate results.
- The duration of the exam should be limited to two and a half hours plus 15 minutes reading time. We question the value of 30 minutes reading time, particularly if the candidate is not able to take any notes.
- The exam questions, particularly in the early versions, need to be assessed by a panel of practitioners to ensure that they are meaningful and the answers are correct.
- We note the reference to marking at the credit level. We believe that FASEA should follow the Higher Education Providers (HEP) standard for AQF 7, being a 50% overall pass mark. If it is assessed at a lower level then a 60% pass mark would be reasonable.
- Candidates should only be required to re-sit the sections of the exam where they did not achieve a 50% (or greater) score.
- Unsuccessful candidates should get feedback on which areas they need to improve, to assist them to pass the exam at the next re-sit.
- The exam should be conducted on-line wherever possible to minimise the cost and reduce the marking timeframe. Travel costs are likely to be significant for many financial advisers in regional and remote locations. Candidates should not be required to travel more than 100 kilometres to sit the exam.
- Preparation materials and practice exams should be made available well in advance of the commencement of the running of exams to assist advisers to prepare for the exam.
- The exam should be available in more locations and run every second month in 2019 and every month in 2020.
- To more effectively manage conflicts of interest, the setting and marking of exams should be separated from the administration of the exam.
- Advisers should be allowed the time to complete the applicable study as part of working towards achieving degree equivalence that is relevant to the exam, before sitting the exam.
- Advisers who do not pass the exam should have a at least a six month transition period in which to sell their business and exit the profession.

2. Response to the Draft Legislative Instrument

We have responded to the proposal based upon the structure of the draft Legislative Instrument and have addressed issues relevant to the Policy Statement and the Explanatory Statement where appropriate.

2A. - 4. Definitions

We recommend that the term ‘invigilated’ is defined in this section. It is used in the Legislative Instrument and is a term that may not be known to many stakeholders.

Our primary feedback on this section is with respect to the definition and requirements for an eligible candidate. Our feedback on eligible candidates is as follows:

- In our view, Section 4 (20) (a) (i) is suggesting that only existing financial advisers who were on the Financial Adviser Register on 1 January 2019 would be eligible to sit the exam as an existing adviser. In our view this is wrong and this requirement should align with the definition of an

existing provider in Section 1546A of the Corporations Act. This requirement could inadvertently exclude financial advisers on maternity leave or in-between licensees as at 1 January 2019.

- We also note that the definition of existing adviser in Section 1546A of the Act includes a person who provided personal advice in a foreign country between 1 January 2016 and 1 January 2019. It seems that where such an adviser is not reliant upon the overseas qualification criteria, there is no grounds to be eligible to sit the exam.
- Section 4 (20) (a) (iii) is suggesting that a Code Monitoring Body could impose a sanction requiring a person to sit an exam. We note that ASIC Regulatory Guide 269 does not include a reference to sitting the exam in the potential sanctions listed in RG 269.145. There is a reference to additional training and counselling, which we would consider to be more appropriate than forcing someone to sit the exam again. What would the consequences be if a financial adviser was ordered to sit the exam by a Code Monitoring Body and then failed that attempt?
- Section 4 (20) (a) (v) refers to a person who has completed a course of study overseas that is assessed by FASEA as substantially equivalent to an approved qualification. As we have stated in our submission on foreign qualifications, we do not believe that FASEA have provided a pathway for approval of foreign qualifications, and therefore feel that this eligibility criteria will never apply.
- Section 4 (20) (c) requires that a candidate has not sat the exam within the three months before registering. Whilst we accept that there should be a reasonable time between attempts (probably two months), we do not believe that there should be a restriction on waiting three months after the last attempt to actually register for the next attempt. The Examination Timetable section in the Policy Statement indicates that the exam will be held every quarter in 2019 and every second month in 2020. This would mean that it would be six months between attempts in 2019 and at least four months between attempts in 2020. We believe that two months between each attempt is reasonable and given that it has been proposed that the exams will be at least two months apart, we cannot see any reason to include this requirement of not being able to register until at least three months after the last re-sit.

We note that ASIC is currently considering the education and training requirements for Responsible Managers (ASIC Consultation Paper 305) and that they have proposed that each licensee has at least one Responsible Manager who has passed the FASEA exam. FASEA's proposed definition of eligible candidate appears to exclude a Responsible Manager who is not also a practicing adviser. We do not understand why FASEA would choose to exclude this scenario when ASIC have specifically proposed this.

With reference to the note at the bottom of Section 6, we believe that this should be a reference to subparagraph (a) (ii), not (a) (iii), given that (a) (ii) refers to education and training standard and (a) (iii) refers to a sanction by a Code Monitoring Body.

2B. - 5. Approval of Exams

We assume that this section is setting out that a candidate who successfully completes an exam, as set out in this standard, meets the requirements to pass the exam as required by Section 921B (3) of the Corporations Act. It is not clear to us that this Section actually meets that expectation.

2C. - 6. Standards: Knowledge and Skills Areas

We support the conduct of the exam at a suitably high level however noting that the AQF 7 level is a standard that typically applies at the end of a three-year degree and that this may be unrealistic as the first target for advisers who have not previously experienced tertiary level education. We also make

the point that if the exam is to be positioned at the AQF 7 level, then a pass mark of more than 50% is not appropriate. This needs to be taken into account.

We note the reference in Section 6 (3) of the knowledge and skills areas as they apply in relation to ‘financial products’. We recommend that ‘financial products’ should be changed to ‘financial advice’. The use of ‘financial products’ is at one level much too broad and unspecific for what is required in this context, and at another level potentially excludes financial advice where there is no product recommendation.

In terms of the ‘financial advice regulatory and legal obligations’ area, our greatest concern relates to Section 3 (a) (iv) and the requirement for candidates to have knowledge and skills in Australian taxation law and commercial law, as covered in relevant courses approved by the Tax Practitioners Board (TPB). The inclusion of the requirement for knowledge of these two courses has a fundamental impact upon the requirements of the exam. Firstly, it moves the exam into the area of technical knowledge that would be the case with understanding things like capital gains tax and all the complexity that arises with small business CGT roll-over relief. The inclusion of this scope of knowledge also places a requirement for candidates to have undertaken these two courses before attempting the exam. This is a key issue for many financial advisers who have relied upon the Tax Agent Services Act exemption for being a member of a professional association and having six out of the last eight years’ experience. Candidates would already be required to have completed the Code of Ethics and Regulatory and Legal Obligations subjects before sitting the exam. The inclusion of this TPB content would mean that they would need to have completed at least four subjects before sitting the exam and also have done additional study to prepare them for the ‘financial advice construction’ area. We support the inclusion of knowledge of a tax (financial) adviser’s obligations under the TASA, but not the completion of the Australian Taxation and Commercial Law subjects. We further note significant differences between what is stipulated in the draft Legislative Instrument and the Policy Statement. The Policy Statement refers to “Articulate the requirements for compliance with TPB requirements as a registered Tax Adviser”, which is very different to the draft Legislative Instrument. We firstly note that the correct term is ‘tax (financial) adviser’, not tax adviser. We separately address the material differences between the draft Legislative Instrument and the Policy Statement on this requirement. We make the point that the note at the bottom of Section 6 refers to TPB approved courses for tax agents, as opposed to tax (financial) advisers, which it should be. They are different.

We further recommend that greater clarity is provided in terms of the sections of Chapter 7 of the Corporations Act and the AML/CTF Act that are relevant for the exam. Importantly, only limited sections of the AML/CTF regime apply to financial advisers and this should be addressed in defining the scope for the exam.

In terms of the ‘applied ethical and professional reasoning and communication’ area we provide the following feedback:

- Section 6 (b) (iii) refers to solving dilemmas. We believe that the term dilemma needs to be defined.
- Section 6 (b) (iv) refers to the requirements of Standard Two of FASEA’s draft Code of Ethics. We are unsure why Section 6 (b) (i) includes a requirement that refers to the entire FASEA Code of Ethics (inclusive of Standard Two) and then Section 6 (b) (iv) separately refers specifically to Standard Two of the draft Code of Ethics. This appears to be duplication.
- Section 6 (b) (v) refers to the need for due diligence and the need to maintain client files and records. Firstly, it is unclear what is meant by due diligence in this context and secondly the requirement to maintain client files and records is already addressed in the draft FASEA Code of Ethics and is therefore already included as part of Section 6 (b) (i). It is also a requirement of the Corporations Act. Once again this is duplication.

In terms of the financial advice construction area, we are particularly confused as to what this area is intended to cover. We had initially thought that it was the financial advice process. Our specific feedback is as follows:

- The reference in Section 6 (c) is to financial product advice. This is in our view unnecessarily restrictive as there is much more that happens in financial advice that does not include financial products.
- What does ‘the environment in which financial product advice is sought and given’ actually mean? This could mean a great number of things. Environment has not been defined or explained in this context.
- Section 6 (c) (ii) refers to the need to prevent and avoid misconduct and inappropriate advice, however surely this should already have been addressed through the ‘applied ethical and professional reasoning and communication’ area.
- What does ‘population and community profiles at a retail client level’ mean? Personal financial advice needs to be tailored to the specific client, so how are population and community profiles relevant? This might be in breach of the Best Interests Duty.
- How does consumer behaviour and decision-making fit within the broader context of this knowledge and skill area? What exactly would a candidate need to understand to address Section 6 (c) (iv)? Does this curriculum requirement mean that candidate would need to have completed the behavioural finance studies before completing the exam?
- What does ‘the advice strategies suitable for different retail clients’ mean? This requirement potentially extends the scope of the exam to include technical content. It also seems to imply the provision of standardised solutions, which once again might be in breach of the Best Interests Duty.

In conclusion, we are particularly confused and uncertain about the intended content of the financial advice construction area. We do not believe that this area has been clearly defined and cannot see the connection between some of the elements of this area. In our view, this section highlights the importance of FASEA defining the learning objectives for the exam and then road-testing proposals with real financial advisers. We have very serious concerns about the development of the questions for this exam and the likelihood of the questions being meaningful and the answers correct. The challenge in developing real-world questions based upon academic content should not be underestimated. As a result, we recommend that a mechanism is put in place to appoint a practitioner panel to have oversight of the questions, particularly for the early versions of the exam.

2D. - 7. Standard: Exam Questions

For a range of reasons, we recommend that the exam be limited to multiple-choice questions. We make this recommendation in the context of the large number of advisers expected to sit the exam and the amount of short answer questions that would need to be marked in a very short period of time. We continue to expect that the vast majority of advisers will not sit the exam until the second half of 2020. This is a natural reality of the delays in finalizing the Education Standard and in having the necessary pre-requisite courses available. Multiple-choice questions will make the marking of the exam much quicker, reduce the cost of the exam and speed up the production of results as well as facilitate a consistent benchmark for answers.

With respect to the number of questions that have been proposed, we believe that it would be beneficial to explain how much time is intended for the short answer questions (in the event short answer questions remained). It would seem that each of the six (minimum) written questions would require 10 to 15 minutes, in which case the total allocation to these short answer questions would be 60 to 90 minutes. This would leave 90 to 120 minutes for the multiple-choice questions. Even allowing for 120 minutes, this would then limit the candidate to 1.875 minutes per multiple-choice question. We are conscious that the Policy Statement refers to applying knowledge in responding to questions and we are therefore concerned that the questions will be long and that candidates will have a very

limited time to read and answer each question. If the time available for the multiple-choice exam questions is only 90 minutes, then this would mean that the candidate has merely 1.4 minutes for each multiple-choice question.

We do not believe that this is adequate time for each question and suggest that stipulating the minimum number of questions in the Legislative Instrument will create problems that may result in a limit being placed on the wording in each question. It is not apparent to us that the practicality of this exam has been adequately considered. We would recommend that the minimum number of questions is either reduced or removed.

Section 7 refers to the written response questions requiring short answers or report writing. In this context, what does 'report writing' mean and how long would be required for a report writing response? We believe the required Degree Qualifications more than adequately addresses an adviser's ability to write. Notwithstanding the above points, we strongly recommend that the exam format be limited to multiple-choice questions.

There is no indication whether the questions and marks will be evenly split between the three nominated knowledge areas or otherwise. We believe that this should be clarified as it will impact the prioritisation of preparation.

2E. - 8. Standards: Duration of Exam

We believe that the exam could be reduced further to two and a half hours and 15 minutes of reading time. We do not see any reason for having 30 minutes of reading time, when Section 10 (14) prevents candidates from starting to record answers to exam questions (we assume this to also include taking notes) until after the reading time has ended. We therefore recommend that candidates are able to take notes during the reading time and that the reading time is reduced to 15 minutes.

We see that the note at the bottom of Section 8 suggests that eligible candidates may need to spend up to 60 minutes to complete pre-examination procedures and post-examination administration. This means that the candidates may need to be present for four and a half hours in total. This seems extreme. We cannot see why it would take as long as 60 minutes for pre and post administration. There is no reference to the prospect of candidates leaving the exam early or with respect to going to the toilet during the exam.

In assessing the duration, due consideration needs to be given to the differing groups of people who are going to be sitting this exam. Some of the candidates will be above the normal retirement age and will in some cases be challenged to retain concentration for such a long period of time. Others may have medical limitations related to general health, age or pregnancy that will restrict their capacity.

FASEA needs to give consideration to the candidates sitting the exam, as many older, or pregnant advisers or those with health conditions will struggle with a 4.5 hour total timeframe. This total time needs to be materially reduced.

2F. - 9. Standard: Marking Exams

We support the requirement for the exam to specify the maximum number of marks to be awarded for each question. We note the statement that "the questions in an exam, and the maximum marks that may be awarded for each question, must be approved by persons with appropriate expertise, appointed by the exam administrator". This only refers to who the questions must be approved by and does not address who will develop the questions. What does 'appropriate expertise' mean in the context of the approval of exam questions? Does this refer to exam question expertise or financial advice expertise? We believe it needs to include both.

This section is titled ‘marking exams’, however it refers to the setting of the exam and does not address the issue of marking the exam. Who will mark the written response questions in the exams and how will their required level of expertise be assessed? The question of consistency in marking the written responses is also an important issue to consider, which has not been addressed.

We would also like to see a service standard set for the timeframe to mark exams and provide candidates with the results. In our view this should be no longer than 4 weeks, and obviously much less if the exam is limited to multiple choice questions.

2G. - 10. Standard: Terms of Registration for Sitting Exams

Our feedback with respect to Section 10 is as follows:

- In terms of Note 1 under Section 10 (2), it is our view that the terms of registration and location of the exam should be published and available before registration, rather than given to the candidate upon registration. We do not believe that it is reasonable to provide the terms and the location after the candidate has paid. The location of the exam should be set out well in advance so that financial advisers can appropriately plan for their attendance at the exam centre.
- We note that the Policy Statement in the Examination Logistics section states that candidates will be required to bring their booking receipt and two pieces of identification, including photo ID, to the examination centre. Section 10 (4) states that the terms of registration may impose identification requirements and there is a note, that states ‘for example requirements for photo ID’. We question the inconsistency between these two documents on this point. We accept that one form of photo ID is necessary, however we cannot see any need for two forms of identity. If it is possible to travel overseas on the basis of one form of identification (a passport) and it is possible to check-in for a domestic flight on the basis of a driver’s license, then one form of photo identification should be sufficient for the exam. We also note that on the ACER website, there is an example where only one form of photo identification is required for examination entry.
- Section 10 (5) refers to the completion of the exam using a computer provided by the exam administrator. We would like to make the point that there are many financial advisers who will be sitting the exam who may not be particularly comfortable to complete an exam on a computer. There will be advisers in their senior years, who are less familiar with the use of computers and also others who are slow typists who will be at a disadvantage as a result. We believe that they should have the option to complete the exam using a pen and paper. We also believe that many will struggle with completing the questions online whilst at the same time accessing electronic versions of statutory reference material online on the one computer monitor. In the scenario where the statutory reference materials are provided electronically, we believe that two monitors should be provided. Additionally, these reference materials should be provided as PDF documents on the computer desktop (rather than the dependency of performing an internet search. Alternatively, if the statutory reference materials are provided as a hard copy (paper based) option, then only one computer monitor would be required. In any case, we recommend that advisers have the option of hard copy versions of these statutory reference materials that they can request in advance.
- Whilst it is not specifically stated, we assume that candidates will have access to the statutory materials during the reading time.
- Whilst we accept that it is inappropriate for candidates to have any equipment or study materials in the exam room (Sections 10 (7)), we believe it is absolutely reasonable for them to bring their phone to the exam and for them to have study materials to assist in final preparation before the commencement of the exam. On this basis we would argue that where candidates are expected to come to an exam location, that the exam administrator should provide secure storage at no additional charge.

- We believe that more details should be provided with respect to consideration of a candidate’s special needs as discussed in Sections 10 (8) and 10 (9).
- With respect to Sections 10 (14), we believe that there should be clarification to indicate that a candidate can take notes on a separate piece of paper during the reading time.
- In terms of Section 10 (16), we believe that unsuccessful candidates need to be given feedback on where they have incorrectly answered questions, so that they can better prepare for their next attempt. It is unreasonable to provide them with no information on where they need to improve. We also question the reference to a credit level in this section. If FASEA propose a 65% pass mark, then why not explicitly state this? A reference to a credit level is in our view, less than adequately transparent. A credit level pass mark is inconsistent with the requirement to conduct the exam at an AQF 7 level. In reality we think that FASEA has two choices, being to run it at an AQF 7 level with a 50% pass mark, or run it at a credit pass level, but conduct it at a level below AQF 7. We assume that a credit level requirement would apply at an overall level, rather than for each knowledge and skills area. Again, we also make the point that ACER provide feedback to students for their other tests.
- It was our previous thinking that the exam result should be on a pass or fail basis, with no higher level assessments (i.e. credit or distinction), and without further information, however we have now reconsidered this position. We now suggest that any completion certificate should only show a pass outcome, however the exam results should show the number of questions answered correctly and the marks spilt across each of the question types and knowledge areas.
- In terms of the review of the results (Section 10 (17)), we accept what is proposed, although noting that we have already suggested that the exam should be multiple-choice only and that the unsuccessful candidates should get access to information on where they have failed to achieve the required standard.
- We recommend that candidates only need to re-sit the section(s) of the exam that they did not pass. We do not support the need for them to re-sit all sections of the exam if they have already passed that section. This will allow them to focus upon the section that they had trouble with in the previous attempt. We also recommend that candidates doing partial re-sits, should be subject to a reduced fee.
- With reference to Section 10 (18), we believe that the terms for exceptional circumstances are unnecessarily restrictive. We make the point that many financial advisers will need to travel to attend an exam and they therefore will be exposed to the risks of cancelled flights and other transport delays. Where the cause of missing the exam is outside the control of the financial adviser, then we would suggest that there should be room for discretion. We would argue that these special consideration provisions, do not reflect the practices at Australian universities. It would seem to us that the requirements with respect to acute illness may be more demanding than is reasonable. Someone suffering a case of Gastro or a severe migraine should qualify for special consideration, despite not requiring hospital admission. It is also important that these provisions adequately allow for people with mental health conditions, including anxiety and depression. We suggest that acute illness may be an excessive threshold, particularly where travel is required. If someone is unwell, even if not to the extent of requiring hospital admission, then they should be able to defer sitting the exam with a doctor’s certificate. As an example, if someone is based in Broome and needs to fly to Perth or Darwin to sit the exam and has a bad cold or the flu that impacts their ability to successfully sit the exam, then there should be greater discretion. There are other scenarios involving personal circumstances that should allow the delay in sitting the exam without the requirement to pay for another attempt. With respect to Note 2 under Section 10 (18), we suggest that there will be some circumstances where more than 14 days might be required to make an application. This could involve delays in getting access to supporting documentation or a requirement to travel overseas for family emergencies. We recommend that this is increased to 30 days. There should also be a service standard for responses.
- We support arrangements for additional needs and make the suggestion that where a

candidate applies for special needs, and that application is approved, then this should apply for both the first time that they sit the exam and any re-sit they may need to undertake.

- We also propose that there should be an ability to cancel an exam attempt and be eligible to receive a refund, provided sufficient notice is given.
- We support the inclusion of alternative arrangements under Section 10 (19), however we believe that more guidance needs to be provided on where this might apply. There is no definition of remote location or eligibility criteria around ‘not able to travel’. We believe that this should be assessed in terms of both regional and remote locations and recommend that no candidate should need to travel more than 100 kilometres to sit the exam. There are significant additional costs involved in travelling to do an exam, which could include airfares, accommodation and transfers. We do not believe that it is fair to discriminate against advisers based upon their location. There are a range of factors that might make it difficult for certain advisers to travel to complete an exam. Forcing regional and remote advisers to travel long distances is unfair and unreasonable. We would like to see this changed and much greater clarity provided in the guidance, so that advisers in this situation can plan in advance for the completion of their exam.
- We accept that all examinations need to be invigilated (i.e. supervised), however we note that solutions are available to invigilate on-line exams. Given that on-line exams will be easier to administer, less costly and quicker to mark, we believe that more consideration should be given to this option for a broader range of candidates as opposed to a reliance on examination centres. The cost of physically attending an exam centre, when travel, accommodation and time out of the office is considered, would be significant. The substantial disruption will also magnify the challenge and anxiety. An on-line solution will be a much more equitable outcome for people outside of the capital cities.

3. Further Feedback on FPS006 – Examination Policy Statement

Our additional feedback on the Policy Statement is as follows:

- In terms of the curriculum, we have already made the point that there are material differences between what is set out in the Policy Statement and what is in the draft Legislative Instrument. Our further points of feedback include:
 - The reference to the TPB, should be a reference to the TASA, being the legislation and not the regulator. This is consistent with the other references to legislation.
 - We question the meaning of “Articulate the consequences of breaching their financial disclosure obligations”. We believe that this should explain financial disclosure obligations and also set out why this is the subject of special mention.
 - Whilst we believe that it is important for advisers to understand the significant breach requirements under Section 912D of the Corporations Act, it is important to note that this obligation applies at the licensee level and not at the individual adviser level, unless they are individually licensed.
 - What does “understand the legal requirements for individual and licensee’ mean? Other than what appears to be poor grammar, this lacks the required level of specificity.
 - We note the reference under ‘Applied ethical and professional reasoning and communication’ to ‘Exemplifying the need for due diligence’. We have previously questioned the meaning of due diligence in this context, however we further question the meaning of exemplifying. How might this be addressed in an exam?
 - As previously stated, we are confused by the content of the financial advice construction area. We have particular concerns about the reference to alignment to different consumer groups, which we believe poses a serious risk of being inconsistent with the Best Interest Duty. Personal financial advice needs to be tailored to the needs, objectives and personal circumstances of each individual client and should not be defined by different consumer groups, populations or communities.

- The Marking section indicates that the marking will be moderated by an expert panel. It is not clear what this moderation process involves or who the expert panel will be. We note that there is no reference to moderation in either the draft Legislative Instrument or the Explanatory Statement. Does this statement imply some level of scaling and expectations on pass and fail rates?
- In the Sitting the Exam section, we note that the definition of an existing adviser in the first bullet point under (a) in this case is consistent with the definition in Section 1546A, whereas in the Legislative Instrument, it is not consistent. We have previously addressed a number of additional concerns with respect to eligibility in our feedback on the draft Legislative Instrument.
- Under Delivery Mode the point is made that the exam will be delivered in all capital cities and major regional areas, yet the only non-capital city that is mentioned is Townsville. Western Australia is a huge state geographically, and yet the only available location will be Perth. For some financial advisers the cost of travel to undertake the exam will significantly exceed the cost of sitting the exam and this needs to be taken into consideration. For others with responsibility for children, or with carer responsibilities, travel may be significantly more problematic. We assume that ACER has access to exam facilities in a broader range of locations than what has been proposed, and we suggest that FASEA both reconsider this but also make other options on-line more widely available.
- There is no mention of whether the exam will be held at multiple locations in the one city on the same day. We anticipate that the volume of candidates in the second half of 2020, would require multiple venues to be used.
- With respect to the Examination Timetable, we note that three months between exams in 2019 and then potentially again in later years might place an unreasonable constraint upon a new adviser being able to attempt the exam and commence their career as a financial adviser. If they fail at their first attempt, it may be another six months before they can attempt it again, based upon the proposed rule on eligibility to sit the exam.
- If the exam is run 6 times in 2020 and held in only one location in each of the nine cities, then this would be a total of 54 exams in 2020. If 20,000 advisers sat the exam (including re-sits) in 2020, then this would amount to an average of 370 candidates per exam. In reality it would be larger numbers in the largest cities and smaller numbers in the smaller cities. If more re-sits are required, then this average number would increase further. We wonder whether FASEA have modeled the number of advisers sitting the exam in the largest cities and considered the logistics. We recommend that the exam be held every second month from mid 2019 and every month in 2020. We also recommend that it be held in multiple locations in each of the east coast capitals. It would not be a satisfactory outcome if advisers were forced to sit the exam in other locations, because their home location was booked out.
- We note that the section on Additional Needs provides greater explanation than what was included in the draft Legislative Instrument, however we believe that this does not go far enough in terms of the grounds for special needs.
- Under the Special Consideration section, in addition to exceptional circumstances already outlined in the Policy Statement, consideration needs to be extended to pregnant advisers who may need to pass the exam before giving birth. It is well known that pregnancy can be a stressful time for many, so the compounded stress of an exam is something that should be avoided and managed for the health of the adviser and the unborn baby.
- Given our previously expressed concerns about the lack of clarity with respect to some of the curriculum, we request that when the Study Material is released that the announcement sets out in some level of detail what a candidate needs to undertake to prepare for the exam, and suggest that this be very detailed rather than high level references to particular documents. It is important for candidates to adequately prepare for a multiple-choice exam. There are certain skills and approaches that needs to be developed as part of preparing for the exam and this should be recognised as an important part of the preparation process. FASEA are requested to consider providing support in this area. The study materials and practice exams

need to be made available at least three months before the first exam is scheduled.

4. Further Feedback on the Explanatory Statement

Our additional feedback on the Explanatory Statement is as follows:

- Paragraph 18 states that candidates must achieve AQF 7 level, however it is not clear what this is a reference to.
- We repeat our point above that in our view despite the statement made in paragraph 23, Section 9 in the draft Legislative Instrument does not adequately address marking the exam.
- Paragraph 30 discusses the fact that the computers will enable access to statutory material and materials published by ASIC and other relevant regulators. It does not describe whether this will be via an internet search capability or through the use of PDF documents preloaded onto each computer desktop. This is important information, particularly for financial advisers who may be less technologically literate.
- We are concerned that the requirement to apply for special needs at least 30 days in advance of the exam (paragraph 33) may be unreasonable for people who do not understand that they may be eligible for this provision. We recommend reducing this to 14 days.
- In terms of paragraph 38, we once again express our concern about the lack of transparency on the pass mark and also the importance of providing unsuccessful candidates with feedback on where they need to improve as part of the provision of exam results.
- We repeat our previous point about the need for clarity on what would be considered a remote (and preferably including regional) location and what might constitute not being able to travel, which is not adequately addressed in paragraph 41.

5. Appointment of the Exam Administrator

We note that FASEA have said very little with respect to the appointment of The Australian Council for Educational Research Ltd as the Exam Administrator, other than to make the point that they are a service provider with comprehensive experience in large scale national exams and that they will develop and deliver the exam. We are not aware of the basis for their appointment or why they were selected in preference to any other potential candidates for this role. Neither are we aware that they have any expertise in financial advice or running exams in financial services. We are therefore unsure where they will leverage the expertise to develop and mark a financial advice exam that will impact so many financial advisers. It is important that where FASEA outsources the entire conduct of the exam to an external party, that the financial advice profession has reason to have confidence in the appointed body. At this point we have very limited awareness of how this outsourced model will work.

Our concerns are increased by the obvious high pricing for candidates to sit the exam and the existence of a conflict of interest in a monopoly provider setting the exam, administering the exam and marking the exam. The more people who fail the exam and the more people who are forced to re-sit the exam, then the higher the revenue for the Exam Administrator. If 20,000 existing advisers chose to sit the exam at a cost of \$540 (excluding GST) per attempt, and they all pass on their first attempt, then the total revenue would be \$10.8m (plus GST). However, if each existing adviser needed to sit the exam on average twice, then the total revenue would be \$21.6m (plus GST). The rate of re-sits is going to be a big driver of revenue.

We note that Section 921U(9) of the Corporations Act allows for FASEA to charge fees for things done in performing its functions. Paragraph 5.16 of the Explanatory Statement further states 'For example, it may choose to charge a fee for individuals to sit the exam. The body is not required, or expected, to recover all of its costs by charging a fee for service'. We question whether the law allows FASEA to require financial advisers to pay a fee to a third party, such as an appointed exam administrator.

It is our view that FASEA should still remain responsible for the exam and that there needs to be some separation of responsibilities between the party setting and marking the exam and the party who will generate income from the delivery of the exam. Candidates for the exam should pay a sensible cost-recover based fee to FASEA, in order to sit the exam, not a fee that seems excessive.

6. Exam Timelines and Implications

The process to finalise the FASEA Education Pathway, Code of Ethics and Exam Standards has been very drawn out. The exam deadline is now less than 2 years away and courses are not yet available for much of what will form the foundations of the exam. In our view, it will be some time before these courses are ready. Financial Advisers will need to study material on the financial advice regulatory and legal obligations, applied ethical and professional reasoning and communication, and financial advice construction. It seems to us that what has been proposed in the exam will not be identical to what is included in the proposed legal obligations and Code of Ethics subjects, however they will be very beneficial in assisting a financial adviser to prepare. It seems that the Financial Advice Construction material will need to be separately developed. All of this is going to take some time. From our perspective, most of this material is not likely to be available until much later this year at the earliest. We therefore think that this is placing unreasonable complications in financial advisers completing the study as part of achieving the requirements for degree equivalence and also in preparing for the exam.

This means that existing advisers will not have enough time to complete the required courses by the time that they need to first sit the exam. This is extremely unfortunate as it will mean that they are at increased risk of failing and will be forced to undertake other study to assist them to pass the exam and that this will result in duplication of both effort and cost. We are also concerned that the study materials and practice exams will not be available soon enough for advisers to start to prepare for sitting the exam. In the previous Minister's announcement on Thursday 9 February 2017, she stated that existing financial advisers will have two years until 1 January 2021 to pass the exam. The reality is that the exam will not be available for at least another six months and existing advisers will not have the chance to be prepared for the exam for a much longer time. The previous Minister's statement that existing advisers will have two years to pass the exam is not the reality of where we now stand. We believe that the only way to address this issue is for the Government to delay the deadline for completion of the national exam for at least 12 months.

7. Other Feedback

In addition to the points raised above, our additional feedback on issues that have not been addressed by FASEA is as follows:

- We believe that financial advisers who fail an attempt at the exam, should only be required to re-sit the sections or knowledge areas that they did not pass at the previous attempt. This has not been addressed in the draft Legislative Instrument or any of the other documents, however we believe that this is an important change and have repeated it in this section. A reduced fee should apply for a partial re-sit.
- We believe that FASEA needs to clearly set out their intentions of publicly reporting the status of progress on existing advisers sitting the exam including the provision of regular status updates on the number of candidates who have sat the exam and the number who have passed.
- We expect that it will be inevitable that a material number of financial advisers will eventually not pass the exam and as a result they will be excluded from the profession. To support them and their clients and staff in this process, we request that the Government or ASIC give consideration to a minimum of a six month transition phase to enable them to exit the profession with some dignity and to sell their businesses and find an alternative provider to assist their clients. As discussed above, if there are a substantial number of practices on the market at that same time, then a longer period would be required.

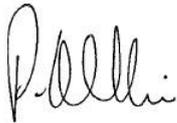
8. Concluding Remarks

We thank you for the opportunity to provide feedback on the draft Relevant Provider Examination Legislative Instrument and related documents. We have raised a number of points above with respect to the appropriateness of the exam and the level of clarity of content.

While we are committed to professionalism, raising standards and building trust in financial advice, we remain concerned about the expectations with this exam and in the context of the recently finalised Education Pathways Standard, suspect that we will inevitably see a significant exodus of good quality financial advisers from the profession. This will actually erode trust in financial advice, leave their clients without access to affordable advice and leave the new advisers without access to mentors.

The AFA welcomes further consultation with FASEA should you require clarification of anything in this submission. If required, please contact us on (02) 9267 4003.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Kewin', written in a cursive style.

Philip Kewin
Chief Executive Officer
Association of Financial Advisers Ltd