

7 December 2018

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

By email: consultation@fasea.gov.au

Dear Mr Glenfield,

AFA Submission: Continuing Professional Development (CPD)

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 their wealth.

1. Introduction

The AFA supports a stringent Continuing Professional Development (CPD) regime that works to ensure that financial advisers remain up-to-date. This proposed CPD regime impacts thousands of licensees and many more financial advisers. The delivery of CPD to so many people is a complex matter and there is already an effective model in place for the delivery of CPD based upon the obligations within ASIC Regulatory Guide 146. There has been no discussion by FASEA of the issues in the current regime that FASEA is seeking to address. This debate should sensibly start with an assessment of the current state.

As we sit here on 7 December 2018, one of our primary points of feedback is that a commencement date of 1 January 2019 is absolutely unreasonable and the current draft Legislative Instrument lacks the required level of clarity and specificity in order for it to be implemented. Put bluntly, this is an impossible proposition for over 2,200 advice licensees to implement, at this time of the year with

only three weeks left before it is due to commence. The best outcome is always achieved on the back of sensible, considered, and pragmatic reform with time to plan, prepare and implement. In this context, the cost will be unnecessarily excessive, with a lot of wasted (or inefficient) activity and the overall outcome being sub-optimal. We can only ponder the reasons for an independent regulator, such as FASEA, to push such an unachievable timeframe and proposal in the current environment.

We further note in Part C of the Policy Statement the comment that FASEA may provide as a guide only the resources and templates to support the CPD policy. We would consider these guides and templates essential for the implementation of this policy, which further highlights the impossible timeframe. The first-round consultation included specific questions on the provision of further guidance and templates. We strongly support the provision of further guidance and templates, however, note that nothing has eventuated at this stage.

We assume that the FASEA Board has undertaken a benchmarking exercise to consider the CPD requirements for other Australian professions. It is in this context that we ask the question of why FASEA have chosen to set a nine hour requirement for ethics and professionalism, yet has limited the number of hours of professional and technical reading to just four hours? This compares with CPA Australia and Chartered Accountants ANZ who both have no mandated ethics training requirement and a cap of 10 hours for professional and technical reading. The Law Society of NSW, imposes a CPD requirement of 10 hours CPD per year, of which 50% can be professional reading and a requirement of 1 ethics hour per year (10%).

We remind the FASEA board that these standards will apply in the long term and whatever the Board might think about the current level of ethics and professionalism in the financial advice sector, this does not reflect the conduct of the majority of advisers and should not be the basis for overloading the profession with ethics and professionalism CPD on top of the other ethics education that is otherwise required to pass the exam and to achieve degree equivalency. There are very few providers of dedicated ethics training (i.e. The Ethics Centre) and such a requirement will put unreasonable pressure on this market, making it extremely difficult for financial advisers to meet this obligation. Has FASEA assessed whether these courses exist right now? Whilst we are supportive of a mandated minimum level of ethics and professionalism CPD, we do not agree that this should be nine hours per year.

We equally ponder the lack of focus upon technical knowledge. To require nine hours of ethics and only five hours of technical competence suggests a lack of understanding of the financial advice profession and the greatest risk to consumers, which is with respect to incorrect advice, more so than unethical advice. In our view the balance between technical and ethics CPD hours is totally disproportionate.

Whilst we acknowledge the sensible reduction of the CPD requirement from 50 hours to 40 hours, we still feel that this is excessive. We continue to advocate for a 30 hour target. We are particularly concerned that much of our feedback in our 31 August 2018 submission has not been incorporated in the draft Legislative Instrument. In particular, it is our view that the current proposal fails to address the following recommendations:

- Take into account the requirements of the TPB.
- Consider the treatment of new financial advisers starting part way through a CPD year or advisers changing licensees with a different CPD year (i.e. pro-rata requirements).
- Addressing applicability to 'limited-service time-sharing advisers'.
- Keeping CPD records for a period of time which is consistent with Section 922HC of the Corporations Act (i.e. 12 months).

- Addressing the ability to outsource the development of a CPD policy and CPD accreditation obligations to either a recognised accreditation provider or training provider (i.e. education providers, professional associations or dealer services companies).
- Questioning the value of publishing the CPD policy on a website.
- Providing clarity over the definitions of ‘client care and practice’ and ‘consumer protection’ within the types of CPD activities.
- Providing further explanation on the requirement for ‘outcomes’ of qualifying CPD activities within the CPD policy and in respect to documentation of ‘outcomes’ obtained for record keeping requirements.
- Removing the need for a cap of 25 CPD hours on formal education (whilst it is not in the legislative Instrument it was included in the FASEA Blueprint and the CPD Policy Statement).
- Consistency of standards or process for CPD assessors and how they accredit CPD. We proposed formal training for CPD assessors.
- The suggested CPD categories and weighting of hours for categories (we had proposed 10 hours for Technical and 5 hours for Professionalism and ethics).
- Templates or guidance to assist licensees with understanding what is to be included in each nominated CPD category and a mapping guide to compare to the current RG 146 knowledge areas.

Our concerns with respect to the lack of change to this policy from the first version are compounded by the fact that there is no explanation of the consultation process and the response to the feedback that has been received. When ASIC has consulted and received feedback, they will normally set out the key feedback and their response to that feedback.

There were also, in addition to the issues raised above, a significant number of questions that we raised in our 31 August 2018 submission, which have not been answered. These questions were either direct or implied and include examples such as those set out below:

- Purpose or policy objective for publishing a CPD policy on a licensee’s website. No consideration or concessions for smaller licensees have been provided regarding publishing on their website.
- Does FASEA have the power to mandate requirements with respect to licensees in regard to CPD activity and requirements (refer S921U(2)(iv) and Sections 921B(5) and 921D).
- Uncertainty around whether certain regulatory developments would fit in the ‘Regulatory Compliance and Consumer Protection’ category or under ‘Technical Competence’.

We also highlight that there is no evidence of a Regulatory Impact Statement, which we understood was a mandatory part of the regulatory change process and was designed to ensure that the impact of any change has been appropriately considered.

Insufficient Clarity

The CPD package includes three documents, being the draft Legislative Instrument, the Explanatory Statement and the Policy Statement (FPS004). It is unclear to us why there are three documents. We would have expected that there would be a Legislative Instrument and a document that explains the Legislative Instrument. We do not feel that there is adequate explanation of the Legislative Instrument. There are key differences between each of these documents. As an example of this inconsistency, the Policy Statement refers to formal education and includes a requirement that a maximum of 25 hours of formal education will be included each year in the overall CPD outcome. Surprisingly, this discussion and the requirement is not reflected in either the Legislative Instrument or the Explanatory Statement. We question how this 25 hour cap can be binding if it is not in the Legislative Instrument.

As an example of a lack of clarity, Section 7(1)(d) states “the activity is led or conducted by 1 or more persons who...”. When we go looking for an explanation of what ‘led or conducted’ means, and we look at the Explanatory Statement we see the following statement: “a requirement that the activity be conducted or led by appropriate persons...”. Other than changing the order from ‘led or conducted’ to ‘conducted or led’, there is no further explanation. The requirement is not even addressed in the Policy Statement. This appears to us to be an important requirement that might determine what form of delivery of CPD is approved and what is not, yet we cannot find an explanation across the three documents of exactly what ‘led or conducted’ actually means. We believe that this highlights the lack of clarity and the complications in having three separate documents.

Delivery Method

Neither of the three documents appear to address the various existing delivery models for CPD and any requirement for assessment. The current CPD model works on the basis of the following different types of CPD activity:

- Face to Face delivery via conferences and Professional Development days where attendance is physically confirmed.
- Webinars, where attendance can be confirmed by participants logging in.
- On-line delivery via systems such as Kaplan Ontrack, where reading of material or watching multi-media content is required and is subject to a short assessment to confirm understanding. Confirmation is via personal log-in.

On-line delivery is an important element, particularly for financial advisers who are based in regional and rural locations. As discussed above and below, we are concerned about the requirement in Section 7(1) (d) for a person to have ‘led or conducted’ the CPD activity. This could be read as implying that CPD, other than professional and technical reading, needs to be delivered in a face to face manner or via webinar. In our view this would be particularly problematic for advisers who are either regional/rurally based or who work part-time (such as those who are mothers).

Consideration of Implications for Small Licensees

All the licensee obligations will need to apply to both large institutionally owned licensees with training teams and also to very small licensees. There will inevitably be a high fixed cost in running a CPD regime at the licensee level. According to the 1 November 2018 version of the Financial Adviser Register, there are 1,754 licensees (79%) with five or less advisers, representing a total of 3,377 advisers. There are a total of 918 single adviser licensees (41%). It is impractical to place an obligation on each of these licensees to have an approval/accreditation program for CPD. This invites inefficiency and a lack of consistent standards. We believe that the CPD requirement needs to have greater flexibility to take into account the different circumstances of smaller licensees.

For a licensee with four advisers, each of who belong to different professional associations and have chosen to do degree equivalent study at different higher education institutions, how practical is it for a licensee to actually know the content that might be available at the professional association conference or within each of the subjects offered by these different higher education providers. Most education providers do not make their content available without actually paying to participate. How can they possibly undertake this assessment process?

In our view, there needs to be a sensible provision for all licensees, but particularly smaller licensees to outsource the CPD approval/accreditation requirements to specialist providers (i.e. education providers, professional associations and dealer services companies). There are potentially a range of parties who could undertake this activity. In our view, it would be important to ensure that there are

clear standards and requirements for people approved to undertake CPD approval/accreditation activity.

We believe that all the CPD that is undertaken should be approved or accredited by either the licensee or a recognised accreditation provider or training provider (i.e. education providers, professional associations and dealer services companies). We discuss this further below in our response to Section 9 of the Legislative Instrument.

2. Feedback on the Legislative Instrument

The following sets out our response to each of the key sections in the Legislative Instrument.

A. – 4. Definitions

The inclusion of the terms ‘licensee’ and ‘responsible licensee’ is somewhat confusing, particularly in the context of the two terms being used throughout the Legislative Instrument. We question the need and purpose for this distinction, and if required, it needs to be clearly explained. The clarification provided in Section 4(2) does not provide any additional value from our perspective.

B. – 5. CPD Policies

Section 5(1) states that licensees/responsible licensees must ‘develop and adopt’ a CPD policy. This infers that a licensee does not have the opportunity to outsource this function to a recognised training provider or other service provider (i.e. education provider, professional association or a dealer service group). For smaller licensees, it is impractical and unrealistic to expect them to have the capability to develop their own CPD policy, without external input and support. These practices do not have the resources to achieve this, particularly given the timeframe, cost and manpower constraints. The option to outsource this function should be specifically included in the Legislative Instrument.

We note the point that this new policy must be adopted before the start of the licensee’s first CPD year. Given it is the end of the first week of December at the time of writing this submission, for those licensees whose CPD year starts on 1 January, it is near impossible for a 1 January 2019 commencement and is therefore unfair to them. Greater explanation of and guidance for a practical transition into operating the first CPD year is required.

Section 6(3)(c)(iii) relates to licensees assessing and approving activities and attributing hours to them. The option of outsourcing the CPD assessment function to an accredited CPD assessor, dealer service company or a professional association should be made available to licensees.

Section 6(3)(c)(vi) talks about recording and maintaining evidence of completion of, and the outcomes of qualifying CPD activities. We question the requirement for ‘outcomes’ to be included at this level. The reality is that outcomes (especially qualitative outcomes) cannot be defined or measured at a policy level, as there would be different outcomes for different advisers based on their training needs analysis or knowledge gaps.

Whilst we recognise the merit of having a CPD policy, we see no value (especially to consumers) in the necessity for licensees to publish their CPD policy on their website, as per section 6(4). This may be an unnecessary administrative burden for licensees to adopt this requirement, particularly whenever the CPD policy is updated or amended. Furthermore, there would be many small practices that would not even have a website set up, posing a further problem, given the unrealistic commencement date of 1 January 2019. FASEA needs to take into account the time and cost to build and maintain a website for a small licensee that doesn’t already have one in place. Publishing the

CPD policy on a website may also have commercial-in-confidence implications for the licensee as it may contain information that they believe is proprietary.

It is unclear what the policy objective is in terms of publishing a CPD policy. Is it proposed that this would be something that clients could check to ensure that they were satisfied with the training their adviser was required to undertake, or is it something that Code Monitoring Bodies would assess? Alternatively, is the requirement to publish, simply to ensure that financial advisers are aware of their obligations? Given that FASEA will define specific CPD requirements, we do not believe that there would be a great deal of benefit for consumers to inspect a licensee's CPD policy. Clients simply expect their financial adviser to have the required level of competency. The policy objective of publishing these documents needs to be set out.

We note that the Legislative Instrument did not address the consequences for non-compliance or non-completion of the required CPD activity by a financial adviser within the CPD policy. We suggest it would be good governance to include this in the document.

C. – 6. Relevant Provider's CPD plans

Section 912A(f) of the Corporations Act already requires a licensee to 'ensure that its representatives are adequately trained (including by complying with section 921D), and are competent, to provide those financial services'.

Section 6(1) stipulates that the relevant provider must prepare a CPD plan. However, as set out above, the obligation under the Corporations Act, rests with the Licensee. We accept that this inevitably needs to be a joint responsibility, however we recommend that the primary obligation rests with licensees to set the training plans. It makes sense for them to develop specific CPD plans for cohorts of relevant providers (i.e. a separate plan for each cohort), and then allow the individual adviser to tailor the plan depending on their authorisations and limitations as set by the licensee.

We also make the point that it is totally unrealistic to expect all financial advisers who are authorised by a licensee with a 1 January CPD date to have built their CPD plans by 1 January 2019. This would immediately put them in breach of Section 6(1) of the FASEA determination.

The CPD consultation paper proposed by FASEA in July 2018 made reference to a Professional Development Plan (PDP), however this has been excluded in this version. We are of the view that the PDP should not be confused with a CPD plan and instead be a separate document. Furthermore, the requirements addressed within Section 6(3) rest more appropriately within the PDP, rather than the CPD plan. Information such as 'areas identified for improvement' and 'describe the qualifying CPD activities the provider will complete' makes more sense to be outlined in an employed adviser's PDP. We object to the focus upon 'areas of improvement' which implies a judgement of performance rather than opportunities for development. Particularly when we refer to older experienced advisers, the emphasis should be on maintaining rather than improvement. We felt that the previous consultation paper used a more appropriate choice of words – 'maintain and extend their professional capabilities, knowledge and skills'.

The use of the term 'area of improvement' may cause confusion with respect to whether it relates to education improvement or performance/compliance improvement. In reality, an area for improvement may be identified during a compliance audit exercise, however this is likely to be addressed in other ways than just CPD activity.

The AFA believes that CPD should be considered in the context of a financial adviser's longer-term plan to develop and maintain knowledge and skills in the area that they have selected to operate

within. We therefore believe that it is appropriate that their CPD Plan reflect their plans for business development.

We also note that financial advisers operate within very different business models. A CPD Plan for a salaried adviser might look very different to one for an experienced self employed adviser. Accordingly, we suggest that there might need to be alternative templates for different business models.

Section 6(4) sets out some obligations for an employer who is a licensee. In our view Section 912A(f) of the Corporations Act clearly sets out that similar obligations apply to licensees responsible for self-employed advisers, and this should also be addressed.

D. – 7. Qualifying CPD activities

We strongly believe that there are numerous cases of important terminology used in Section 7 that lacks adequate explanation and may have a material impact upon the implementation of the overall CPD regime. In particular, we believe that the following terms require much greater clarification:

- 7(1)(b) – ‘sufficient intellectual or practical content’.
- 7(1)(d) – ‘led or conducted’.
- 7(1)(d) – ‘sufficient standing, expertise, academic qualifications and practical experience’.
- 7(2) – ‘professional or technical reading’.
- Item 2 – ‘act as a client-centric practitioner’ and ‘client care and practice’.
- Item 3 – ‘consumer protection’
- Item 4 – ‘enhance participants’ capacity to act as an ethical professional’
- Item 5 – ‘including keeping up to date with regulatory, technical and other developments’, some of which we expect is already covered in Items 1 to 4

We have serious concerns around the limitation of CPD to activity related to the ‘provision of financial product advice’ in Section 7(1)(c) and (e). There is a broad range of areas and financial services (including but not limited to:) strategic advice, aged care advice, estate planning advice, budgeting and cashflow advice, investment strategy, compliance, practice management etc that potentially fall outside the ‘financial product advice’ definition but are very relevant and applicable to the adviser and their ongoing education within these areas. This needs to be addressed, as running a financial advice business is more than the ‘provision of financial product advice’ and eligible CPD activity should be broader than just that which is specific to the provision of financial product advice.

On this point we believe that it is relevant to go back and look at the introduction of the FoFA legislation and the exemption for non-monetary benefits for training and education. When the legislation was initially passed in 2012 it referred to ‘the benefit is relevant to the provision of financial product advice to persons as retail clients’. This was subject to significant debate due to the restrictive nature of the eligible activity and the legislation was ultimately changed to ‘the benefit is relevant to the carrying on of a financial services business’ in the Corporations Amendment (Financial Advice Measures) Bill 2016, that was ultimately passed in March of 2016. We believe that this highlights the Parliament’s consideration of the scope of education and training by financial advisers and supports a broader definition being utilised by FASEA. We recommend that the ‘provision of financial product advice’ in Section 7(1)(c) and 7(1)(e) be changed to ‘the carrying on of a financial services business’.

The wording ‘activity is led or conducted by 1 or more persons...’ in Section 7(1)(c) requires clarification, as it currently may be interpreted as only applying to an activity that is presented by someone face to face. This section requires attention to **ensure that technology-based training** (that

meets the ‘sufficient standing, expertise, academic qualifications and practical experience’ requirement) is included as qualifying CPD within the Legislative Instrument. It is a clear interpretation of the wider financial services community, as well as the AFA, that accredited and structured (assessable) training which is delivered electronically (i.e. on-line) is **not** included as ‘professional or technical reading’ but deemed as **qualifying CPD activity**. We further believe that ‘sufficient standing, expertise, academic qualifications and practical experience’ needs to be explained. As a starting question does it require all four elements to be present, or just one and how are each of them defined? How would a licensee decide that someone did not comply with section 7(1)(d)?

In light of the preceding paragraph, ‘professional or technical reading’ needs to be defined for the purposes of Section 7(2). Furthermore, if the minimum number of hours of qualifying CPD activities that a relevant provider is required to complete during a CPD year is 40, then should this proposal stand (we discuss an alternative below in our response to Section 9), we suggest the allowance of four hours (for professional or technical reading) be raised to (no more than) 10 hours, as long as **online accredited and structured reading (training) is included as qualifying CPD**, (i.e. the recommendation in the preceding paragraph prevails). Section 7(2) states that Section 7(1)(d) does not apply to professional or technical reading. Does this mean that the provider of the content for professional reading does not need to pass the ‘sufficient standing, expertise, academic qualifications and practical experience’ test?

Section 7(3) states that CPD activity can only be counted against one CPD area, being the one that it predominantly relates to. We believe that this is highly problematic. If we use the example of a Graduate Diploma subject that an existing adviser might complete, it will account for at least 120 hours of potentially eligible CPD activity. In a Graduate Diploma course, it is most likely that it will cover more than one of the CPD areas. The majority of these courses are likely to be predominantly classified as Technical Competence. The outcome of Section 7(3) when considered in the context of the proposed requirement for Technical Competence and the other CPD activity that a financial adviser would otherwise take, is that this would almost remove any CPD credit for doing such a course. Such a requirement will also serve to preclude training providers from including ethics content in training programs, other than specific ethic courses, as it simply won’t count. Training program providers will be more inclined to provide single purpose CPD activities. CPD activity has traditionally been split across knowledge areas. It is not double counted. This practice should be allowed to continue. Section 7(3) should be removed.

Despite our feedback in our 31 August 2018 submission, we still remain particularly uncertain in terms of exactly what will fit into each of the five CPD areas. There is a need for much greater detail to support an allocation approach. We question the fifth CPD area as this refers to ‘keeping up to date with regulatory and technical...’, which is surely covered in the previous CPD areas. Examples should be provided to assist with this allocation. In addition, we recommend that FASEA provide a mapping from the current RG 146 knowledge areas to their proposed five CPD areas. Incidentally, the Policy Statement only includes four CPD areas, whereas the Legislative Instrument includes five. Such inconsistencies should not exist.

With respect to ‘Client Care and Practice’, we recommend that this is expanded to include client relationship skills, emotional intelligence skills and client education. These are critical skills that a good financial adviser develops over time and should be an integral part of an adviser’s Professional Development and CPD Plans. We assume that Client Care is focused upon delivering to the needs of the client.

With respect to ‘Regulatory Compliance and Consumer Protection’ we are uncertain as to what ‘Consumer Protection’ relates to. Is this training on the complaints process, or alternatively does it relate to the provision of quality advice?

E. – 8. Approval of CPD Activities by Responsible Licensees

We ask the question as to whether the approval of CPD activity is the same as the assessment (or accreditation) of this activity? Also, is approved CPD activity the same as qualifying CPD activity? Can a licensee rely upon the assessment undertaken by a third party as part of their approval process? Would this present a problem with respect to compliance with Section 8(2)? Would it be possible for a licensee to approve a batch of CPD activity that has been assessed by a third party or do they need to do a detailed review of each individual CPD activity. Without access to the course material or the presentation prior to the event, how can a licensee complete the assessment and allocate CPD hours?

We wonder how a small licensee would get access to the information required to undertake this assessment and whether they would need to complete the activity before they could undertake the assessment. This individual activity approval process seems entirely impractical for a small licensee. There absolutely needs to be an outsourcing option available.

With Section 8(1) we necessarily need to ask the question whether the approval of CPD activity needs to occur before it has been undertaken by a financial adviser, or whether this can be done afterwards?

We are confused by Section 8(3). It is obvious that the number of hours that are to be counted towards a financial adviser's CPD target cannot exceed the amount approved for that activity. Thus, what is the meaning and purpose of Section 8(3).

F. – 9. Requirements for CPD

We note that FASEA has reduced the total hours requirement for CPD from 50 hours to 40 hours and has also reduced the professional and technical reading dis-proportionately from 7.5 to 4 hours. We note that the concept of minimum approved hours has been removed, which we support. We also note that the minimum hours for 'Regulatory Compliance and Consumer Protection' has been reduced from 10 hours to 5 hours which we support. Professionalism and ethics has been reduced from 10 hours to 9 hours which is proportionately much less than the reduction in the total hours. This seems to highlight the excess focus that FASEA has in this area. We believe that 9 hours of 'Professionalism and ethics' is excessive and that it will be very difficult to get sufficient new material available every year. For many reasons as separately discussed we believe that the allocation to Technical is significantly inadequate. From our perspective it should be at least 10 hours, and probably as much as 15. We don't want a CPD model that results in ethical but technically incorrect advice. Getting the technical part right, must be a high priority. Five hours is simply inadequate and mis-guided.

We question again the inclusion of a 70% minimum requirement for licensee approved CPD activity. This does not achieve any objective, other than to add unnecessary complexity. We are unsure as to how a financial adviser might fulfil the additional 12 hours of unapproved CPD activity if they are limited to four hours of professional or technical reading. Where does the unapproved content come from and why would they chose to do this instead of approved activity?

In our view, there is a simpler and more practical model based upon the following:

- A total requirement of 30 hours all of which must be approved.
- Rather than allow four hours for unrestricted professional or technical reading, exclude this, but allow reading or viewing content that is delivered on-line in a structured and assessed manner (i.e. Kaplan Ontrack).

We support the inclusion of the ability to get recognition for leading or conducting activity in section 9(5), which is supportive of advisers who also do presentations. We question though why it is limited to the time leading or conducting as it would seem reasonable to also allow an allocation of time for preparing the presentation material.

On the basis of the feedback from a number of people who we have consulted, there is a high level of confusion with respect to Section 9(6) and the requirements of Section 1546E(5) of the Corporations Act. This is a complex piece of legislation, however the Explanatory Statement makes it clear to us that the intent of this is to have the FASEA CPD requirements apply to all licensees from 1 January 2019 (via a proportionate increase basis). We have already spoken about the totally unrealistic timeframe of starting on 1 January 2019, however it is totally impractical to have the new FASEA regime apply to licensees and their advisers before they are required to prepare a CPD policy and CPD plans and before they could reasonably be expected to approve any FASEA compliant CPD activity. There is no benefit of commencing the regime before anyone could possibly be ready. The start date needs to be delayed. This is not possible before 1 July 2019 at the earliest.

G. – 10. Other Requirements on Employers and Responsible Licensees

We support the requirement for employers and licensees to make resources and opportunities available to financial advisers to meet their CPD obligations, however we believe that this is only appropriate where they have a reasonable period of time to respond and put the resources in place. For all, but particularly those with a 1 January CPD date, the lead-time will be a matter of days and this is simply unreasonable.

We agree with the requirement for licensees to monitor the CPD activity of their financial advisers. In reality, this is already in place through Section 912A(f) of the Corporations Act and that this is simply reinforcing that existing obligation.

H. – 11. Career Breaks

We support what FASEA has proposed, however we note the following points:

- There is a need for more guidance on what the CPD plan would need to contain for an adviser returning to practice after an absence of more than 2 years.
- We recommend that there is a timeframe under which the licensee and the financial adviser have to finalise the CPD plan after a return to work. This might be one month. The point is that mothers returning from a maternity leave break are unlikely to be able to resolve their CPD plan on day one back in the office and should have a limited but reasonable time to prepare this.

I. – 12. Record-keeping

We note the requirement for record keeping by relevant providers has been increased from six years to seven years since the previous draft. As we indicated previously, this is inconsistent with Section 922HC of the Corporations Act, which states that evidence of CPD activity must be retained for 12 months by the licensee after the end of the CPD year. We would assume that the requirements of the legislation should prevail in this case. It is also important to note that it is the licensee who maintains the CPD tracking system and will have greater technical capacity.

Whilst a 12-month record keeping requirement is reasonable for both licensees and relevant providers, if the law was changed to increase the requirement to 7 years, then we would recommend that there was specific recognition for financial advisers to outsource this requirement to licensees. We do note that this presents particular challenges when an adviser changes licensee or where a

licensee closes down and would suggest that a standard protocol needs to be built around the provision of CPD records to advisers when they leave a licensee.

We recommend that this section clearly set out when the record keeping obligation commences.

We also make the point that we are uncertain what is expected with respect to documentation of outcomes obtained. Does this refer to specific learning outcomes or is it simply a reference to proof of completion of the training? With some training the outcome may be quantifiable, however in other cases it is very different. We recommend the removal of the requirement to document outcomes of the activity. This is not something that licensee CPD tracking systems are set up to capture.

We note that there is no reference to the record keeping obligations of licensees, which we would suggest is an important gap. What requirements do they have with respect to the retention of previous versions of the CPD policy and the approval of specific CPD activity?

3. Other Considerations

In the following section we have set out other issues that we have with respect to the FASEA proposals on CPD.

Cost of the Delivery of CPD

We are very conscious of the additional cost of CPD that would come from increasing the current benchmark of 30 hours for most advisers to 40 hours. CPD activity costs money to attend and it also costs money in terms of time out of the office and away from clients. This is an important factor for part-time financial advisers who are still required to do the CPD load of a full time financial adviser.

As discussed previously, on-line delivery is a cost effective means of delivering CPD activity. Any limitations on this, such as through the Section 7(1)(d) requirement for CPD activity to be led or conducted by a person, could potentially have a very significant impact upon the cost of the delivery of CPD. In the context of a range of other cost increases impacting the financial advice sector at present, we think that this is an important factor that should be taken into consideration. Any material increase in costs should be identified in a Regulation Impact Statement.

Compliance with the TPB and RG 146 Regime

Financial advisers will need to comply with both the FASEA CPD standard and also the Tax Practitioners Board's (TPB) CPE standard. The TPB effectively requires tax (financial) advisers to do 20 hours per year, although it is assessed over a three-year period. Under the TPB CPE Guidance, it is possible for CPD to count towards the AFSL requirements and also the TPB requirement, where it incorporates a tax element. It is important that the FASEA standard takes into account the requirements of the TPB and that the FASEA approach facilitates CPD activity that will count towards both the FASEA target and the TPB target. Otherwise the TPB requirements end up being in addition to the FASEA requirements, which would make the overall hours target even more extreme. We are also very conscious that TPB compliant activity is most likely to be in the 'Technical Competence' category, although potentially some could be in the 'Regulatory Compliance and Consumer Protection' category. Where the Technical requirement is limited to 5 hours, we anticipate that this will be particularly problematic. Inevitably this will mean that financial advisers will need to do significantly more CPD activity to meet both the TPB and FASEA requirements. We believe that more consideration needs to be given to the requirements that flow from both regulators.

There is no acknowledgement in either of the three documents of whether there is any ongoing obligation to comply with the requirements of RG 146, including addressing the knowledge areas

that apply for each of the advice areas that a financial adviser is authorised to provide advice in. The RG 146 knowledge areas are currently predominantly Technically focussed. We pose the question as to whether FASEA requires any action by licensees and financial advisers to continue to meet the requirements for CPD activity in each of the knowledge areas that they are authorised for? In our view this appears to be a material gap that needs to be considered and addressed.

It is noted that the CPD requirement does not apply to either Provisional Relevant Providers or “limited-service time-sharing advisers”. Provisional Relevant providers are covered by other training and education obligations. There is, however, no statement on what obligations apply to time share scheme advisers and whether RG 146 will continue to apply to them.

Consideration of the Treatment for Pro-rata Situations

There is also a potential issue with respect to the treatment of new financial advisers who commence part way through a CPD year. Example 2.4 in the Explanatory Memorandum refers to a specific example, where a pro-rata requirement may be set. There is no discussion on this and it should also be addressed.

Another situation that needs to be addressed is where an adviser moves licensee during the course of the CPD year. How is this treated, particularly where the new licensee may have a different CPD year to the previous licensee?

Treatment of Formal Education

We strongly support the ability to include the completion of formal education in the CPD requirement. Where an adviser makes the commitment to undertake additional formal education, then this should be recognised within the overall CPD regime. This might include study such as bridging courses and other study towards degree equivalence and we therefore believe that this study is particularly relevant and should be included within the CPD requirement. One issue to consider is that the study of a Graduate Diploma subject may extend over four or five months. How will this be counted in the context that it has been partially completed during the CPD year, but not yet finished? Given the time commitment to such subjects, there needs to be a basis for partial recognition.

We do not agree with the need for a cap of 25 CPD hours on formal education. Given the different minimums for each of the separate categories, it is clear that an adviser will not be able to meet their full CPD requirement from undertaking a single formal education course. We therefore see no benefit in putting a cap on formal education.

Consideration of AFA Whitepaper

In our 31 August submission, we highlighted the October 2017 AFA whitepaper called “Financial Advice Competency Framework – an Industry Consensus”, which set out a range of knowledge domains and competencies, which were identified by the broader industry as being key to the development of financial advisers. These knowledge domains included the following:

- **Technical Services** – Financial Advice Process, Insurance, Cashflow Management, Investment, Retirement and Estate Planning, and Taxation.
- **Professionalism** – Professional and Ethical Conduct, Regulations and Compliance, Professional Development, and Training & Expertise.
- **Client Focus** – Client Needs, Client Management, Contemporary Advice, Customised Service, and Client Education.
- **Self-Development** – Judgement, Personal Values, Adaptability, Systematic, and Resilience.

- **Connecting with People** – Trust, Effective Communication, Interpersonal Skills, Coaching, and Psychology.

We believe that this whitepaper provides a useful framework for the consideration of the most appropriate categories for CPD, and repeat our recommendation that FASEA review this document (www.afa.asn.au/afa-white-papers).

Provision of Guidelines and Templates

We recommend that further guidance is provided for licensees to assist them to understand what is included in each of the nominated CPD categories and to ensure that accreditation is undertaken on a consistent basis.

Another tool that we would recommend is a mapping guide to compare the current RG 146 knowledge area approach to the new FASEA CPD categories to assist both CPD providers and licensees to understand how well the current library of activity will meet the future requirements and whether there are any major gaps that need to be addressed. It is important that the financial advice sector has an awareness of the extent of preparation required for the new FASEA CPD regime.

We support the provision of guidelines and templates, which will be particularly beneficial for small licensees.

Powers of FASEA

One question that we do have is whether FASEA has the power to mandate requirements with respect to licensees in regard to CPD activity and requirements. Section 921U(2)(iv) refers to the powers for FASEA to create Legislative Instruments that include setting requirements for CPD. Sections 921B(5) and 921D apply to relevant providers and not licensees (unless they are individually licenced). We do not oppose setting requirements for licensees, however we believe that it is important to ensure that these powers exist.

Assessment of CPD

We are concerned about how consistency of CPD standards can be maintained if there is no process for the accreditation of CPD assessors, particularly where there are over 2,200 licensees who, under the proposed model, would all undertake their own assessment and accreditation of CPD. We believe that the assessment and accreditation of CPD is a specialist skill and that some formal training should be provided before someone is able to commence this activity. In practice, we do not believe that it makes sense for small licensees to do their own assessment and suggest that smaller licensee should be able to rely upon outsourcing this activity to specialist providers (i.e. education providers, professional associations or dealer services companies) who should be duly qualified to undertake this activity.

The training on CPD accreditation and the assessment of capacity could be delivered by an on-line course and testing module.

Concluding Remarks

We thank you for the opportunity to provide feedback on the proposed CPD requirements. We have very serious reservations about the proposal and the practicality of implementing this from 1 January 2019. From where we sit now, it seems that FASEA has no option other than to defer the start of the new CPD regime. Given the existing regime that is largely effective, we believe that this is an appropriate action to ensure that what is proposed is going to achieve the intended objective.

AFA Submission – Continuing Professional Development (CPD)

The AFA welcomes further consultation with FASEA. For any questions, please contact us on (02) 9267 4003.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Kewin'.

Philip Kewin
Chief Executive Officer
Association of Financial Advisers Ltd