

3 May 2023

Assistant Secretary
Advice and Investment branch
Retirement, Advice and Investment Division
Treasury
Langton Crescent
PARKES ACT 2600

By E-mail transmission to FinancialAdvice@treasury.gov.au

Dear Sir/Madam,

Re: Education Standards for Experienced Financial Advisers and technical fixes for New Entrants

We refer to the *Treasury Laws Amendment (Measures for Consultation) Bill 2023: Financial Adviser Professional Standards* and the Exposure Draft Explanatory Materials.

It is recognised that the Bill covers the following;

- the Government's election commitment to recognise the experience of existing financial advisers as equivalent to tertiary study (the experience pathway),
- the flexibility to correct technical limitations in satisfying the existing Approved Qualifications Framework (flexibility to adjust the Approved Qualifications Framework),
- exempting registered tax agents from the requirement to meet the additional education requirements to be a relevant provider.

We have no issues with any of the detail in relation to the above initiatives and fully support their adoption, namely, in relation to

- the experience pathway,
 - the completion of 10 years full time experience as a financial adviser, which is not necessarily consecutive, over the 15 years, 1 January 2007 to 31 December 2021.

- having a clean disciplinary record as at 21 December 2021 by virtue of not being banned or disqualified under Div.6, Pt.7.6 of the Corporations Act and not having given an undertaking under s.93AA or s.171E of the ASIC Act.
- the financial adviser's self-declaration that all the criteria to be an experienced adviser has been met and
 - the provision of the self-declaration to the Australian Financial Services Licensee, which the financial adviser is authorised to represent.
 - the lodgment of a Notice with ASIC confirming the identifiable details of the relevant provider and the fact that the education and training standard has been met by being an experienced provider.
- ASIC updating the Register of Relevant Providers on the basis of the aforesaid Notice.
- We, as an Australian Financial Services Licensee, are accountable for authorising an *experienced provider* providing financial advice as a representative of our Company and the individual financial adviser is accountable for claiming they meet the *experienced provider* criteria.
- The experienced provider has to meet the requirements of the Exam standard and the ongoing requirements of the continuing professional development standard.

We would add that many have relied on the Minister's pre-election undertaking and with only 2 ½ years to the 1 January 2026 deadline for attainment of the first standard under s.921B (2) of the Corporations Act it would not have been possible to obtain an approved Bachelor Degree if the adviser was prepared to undertake the tertiary educational commitment. So the recognition of experience has avoided a further significant departure from the financial service industry

- the flexibility to adjust the Approved Qualifications framework
 - the Explanatory Memorandum to the Corporations Amendment (Professional Standards of Financial Adviser) Bill 2016 expressly states at 6.8 that the Parliament intended that there be some **flexibility** in relation to existing providers complying with the obligation to hold a relevant Bachelor Degree.

- the aforementioned Bill and its Explanatory Memorandum did not specify what a relevant bachelor degree was and its single mention of “relevant bachelor degree”, which appeared in paragraph 6.7 as follows;

“6.7 Existing providers can comply with the first education standard in subsection 921B (2) (that is, completing bachelor or higher degree or equivalent) in two ways:

- *If the existing adviser holds a relevant bachelor degree or higher or equivalent qualification (as approved by the body) the adviser does not need to undertake any further education;*
- *If the existing adviser does not have an approved bachelor degree or higher degree or equivalent qualification then the adviser can complete bridging courses approved by the body.*

*6.8 These provisions are designed to allow **flexibility** for existing providers, ensuring that they only need to undertake study to bring their qualifications in line with the new standard. It is not expected that existing providers will be required to complete a three year degree.”*

- The Professional Standards for Relevant Providers legislation sought to implement the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services of 2014 (PJC) and the Financial Services Inquiry of 2015 (FSI) to lift the professional, ethical and education standards in the financial services industry.

As the Explanatory Memorandum to the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 recounts it was the legislation that created a standards body to make legislative instruments which set out the education standards and in so doing to approve degrees by identifying which courses were relevant to the provision of financial advice.

Without any guidance from any of the PJC, the FSI or the Parliament when enacting the aforementioned Bill, the standards body designated 70 Bachelor Degrees from 21 Universities in an exceedingly prescriptive manner, the majority of which required either majors in Financial Planning or a number of Financial Planning courses. Also approximately two thirds of the originally designated degrees are no longer approved Bachelor Degrees.

Although both the Coalition and Labor voted in December 2021 to disband FASEA, its 2021 designation of approved Bachelor Degrees still stands with only minor amendment by the Minister.

In summary, having an exceedingly limited and prescriptive designation of Bachelor Degrees, flexibility is certainly needed in administering what is currently in place before the relevant Providers Degrees, Qualifications and Course Standard is placed on a footing which caters for all sectors of the financial services industry and not just financial planning.

We would add that where there are compelling statutory obligations on Licensees (with very significant penalties for non-compliance) flexibility is a fundamental component of any education regime which is as prescriptive (and non-inclusive) as the FASEA regime.

- exempting registered tax-agents from the requirement to meet the additional education requirements to be a relevant provider.

Registered tax-agents are a sector of the financial services industry, like the stockbroking sector, which needs to be treated separately as far as Degrees, Qualifications and Courses are concerned and in the case of registered tax agents should not be required to comply with the education and training standards of s.921B of the Corporations Act as they meet the qualification and experience requirements of the Tax Agents Services Act.

To comply with the Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021 with its financial planning bias would provide an overlay which would have the effect of removing the provision of tax (financial advice) services which would not be in the best interest of the economy.

We would add that any education regulatory regime needs to be tailored to separate sectors of the industry to which it applies that are clearly identifiable and have their own unique circumstances.

Thank you for the opportunity to provide feed-back on a further step in correcting the mess of the previous government in implementing new education standards for financial advisers, the first step of which was the disbanding of FASEA.

Yours faithfully



Lewis Bell
Director