



**Submission to lifting the
professional, ethical and
educational standards in
the financial services
industry.**

May 2015

National Seniors

Australia

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with more than 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

Contact

Head Office

National Seniors Public Affairs, Level 18, 215 Adelaide Street Brisbane QLD 4001

P: 1300 765 050 F: (07) 3211 9339

E: policy@nationalseniors.com.au

W: www.nationalseniors.com.au

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Introduction

Many older Australians seek financial advice on how to invest their life savings to ensure they have enough money to provide for themselves in retirement. Approximately 70 per cent of National Seniors members with superannuation have obtained professional financial advice.¹ Unfortunately, those providing the advice vary considerably in their levels of education and expertise. Further, prospective clients have little opportunity to easily compare the qualifications of advisors and often rely on generic titles of financial advisor/planner as an indicator of qualifications, expertise, level professional standards and ethical behavior.

A number of National Seniors members have reported negative experiences with financial service providers, including financial advisors and planners. These experiences range from incorrect technical advice to unsubstantiated predictions of returns and lack of disclosure of the underlying risk of investments.

Research indicates that consumers hold a low view of financial advisers, with only 25 per cent regarding them as ethical and honest.²

“Australians get creamed by the financial advice and wealth management industry while they are saving for retirement and then get scalped when they get there.”

National Seniors member (2014)

National Seniors believes that the high degree of vertical integration within the financial advisory industry is contributing to the high levels of mistrust and increases the potential to significantly lessen competition and choice.³ The reality that the large banks and financial service companies control more than 80 per cent of financial advisors significantly limits consumers’ ability to receive independent advice.

National Seniors supports the principles behind the recommendations from the recent Parliamentary Joint Committee (PJC) report on Corporations and Financial Services inquiry into the proposal to lift the professional, ethical and education standards in the financial services industry. However, many of the PJC recommendations require amendments and adjustments to be able to increase standards sufficiently to provide the level of consumer protection required to rebuild public confidence in the industry.

National Seniors believes that the objectives of the proposed reforms to the financial advice industry should aim to achieve, in the short term, higher educational, professional and ethical standards; and, in the longer term, the development of a profession of financial advisors similar to the legal and accounting professions. These two objectives are mutually exclusive, the higher standards achieved under the short term objective would act as a basis from which a profession can be established.

There is a well published history of failed self-regulation of the financial advice industry, with a continuing growing list of financial advisors who do not act professionally. The most recent example

¹ Productive Ageing Centre (2012) *Financial Wellbeing: Concerns and choices among older Australians* National Seniors Australia.

² Roy Morgan Research (2014) *Do finance professionals need an image overhaul?* Roy Morgan.

³ National Seniors Australia (2014) *National Seniors Australia Submission in Response to Financial System Inquiry Interim Report.*

of this was financial advisors who charged consumers for advice which was never provided.⁴ Direct governmental oversight and involvement is clearly required to establish, implement and monitor improvements in standards over a number of years providing time for the profession to be established and to earn public trust and confidence.

National Seniors has provided comment on all sections of the discussion paper, highlighting issues and responding to key questions which are of greatest importance to our members.

Section 1: Key Components of the PJC Model

Question 1.1 What impact would the introduction of the PJC model have on the structure of the financial advice industry.

National Seniors does not support the direct implementation of the PJC recommendations and model. National Seniors believes that a number of amendments are required to the model before it can ensure adequate levels of consumer protection and rebuild public confidence. However, National Seniors believes that increasing the standards of the financial advisory industry is essential and will have a positive impact on the structure of the financial advisory industry and consumer outcomes.

Question 1.2 What are the practical implications of the PJC model applying to advisors from all sizes and types of firms.

National Seniors believes regardless of the size of and type of financial advisory firm all advisors must be captured under the same model and be obligated to achieve the same level of improved standards ensuring that all customers are provided with the same level of certainty of advice and consumer protections.

National Seniors is supportive of limiting the increased standards to only those who provide advice on Tier 1 financial products (Personal Advice) conditional that all those who provide this level of advice including stockbrokers, accountants and insurance brokers (who may not be currently defined as financial advisors) are capture by the increased requirements. In addition, to offset the new standards not applying to those that provide advice on Tier 2 products (General Advice), the terminology used to define Tier 2 advice should be changed from General Advice to Sales Advice.

Amongst seniors there is currently no distinction between Personal and General Advice, many seniors have indicated they rely and act on General Advice, applying it directly to their personal specific situation with no future consideration. Renaming General Advice as Sales Advice would ensure seniors understand the increase risk of acting solely on General Advice and will encourage them to seek additional advice which considers their unique individual financial situation.

⁴ The Sydney Morning Herald (April 17 2015) *ANZ \$30m financial advice compensation payment prompts calls for inquiry.*

Section 2: Key Aspects of the Current Regulatory Framework

Question 2.2 Should licensees maintain a legal obligation to ensure advisors meet relevant training and competency standards?

National Seniors believes that licensees and controlling entities must have the overarching legal obligations to ensure that advisers meet relevant training and competency standards. However, National Seniors supports extending responsibility for meeting and ensuring compliance with training and competency standards to include the individual advisor and any professional associations of which the individual advisor is a member.

Staged Approach to Lifting the Standards

National Seniors believes that there is a risk of not achieving the required level of increased standards and consumer protections if the scope of work is not prioritized. An effective approach to ensure that the objectives are achieved would be to separate the development of the education standards from increasing the professional and ethical standards of the industry through a professional code or regulation.

The two stages of work are equally important, however, logically, the development and implementation of the educational standards should be address first.

Section 3: Education and Training Standards of Financial Advisers

National Seniors believes that the provision of financial advice has the potential to have life altering outcomes for clients on the same level as legal or accounting advice and therefore requires an equivalent level of education and experience.

Questions 3.2 Is holding a relevant Bachelor Degree the appropriate minimum education requirement? What is a relevant Bachelor Degree? Would this requirement limit the ability of other degree-qualified individuals from becoming financial advisors?

National Seniors believes a bachelor degree is an appropriate minimum education requirement. National Seniors has previously indicated that an undergraduate degree in economics, law, finance or a related field would be an appropriate standard for the minimum education requirement.

National Seniors believes that defining a list of acceptable bachelor degrees would appropriately limit the ability of other degree-qualified individuals from becoming financial advisors. National Seniors believes that this limitation is necessary to provide an increase in educational standards and also is a key component of the framework required to enable a profession to be established similar to the legal and accounting professions which strictly regulate minimum education and degree requirements.⁵

⁵ Queensland Law Society (2015) *Recognized Law Degree* http://www.qls.com.au/For_the_profession/Your_legal_career/Studying_law.

Question 3.4 What are the practical implications of requiring new advisers to undertake a structured professional year at the outset of their careers as financial advisers.

National Seniors continues to support the requirement that new advisers undertake a structured professional development year. An appropriate approach may be to allow final year students to begin their one year professional development whilst completing their degree rather than a full professional year completely independent of the formal education process.

The professional year requirement will allow students to gain practical skills essential to providing high quality financial advice. A structured supervision, assessment and reporting framework is also required to be developed to ensure the high quality outcomes are achieved.

Section 4: Structure and Role of A Standard–Setting Body

National Seniors supports the establishment of an Financial Planning Education Council (FPEC). However, National Seniors objects to some significant components of the proposed PJC model for a FPEC.

National Seniors would prefer a shared funding model that would ensure FPEC’s independence while seeing industry contribute financially to improving its own standards, which have slipped with devastating results to clients.

“We lost most of \$200,000 invested by our Financial Adviser and have no way of recouping it.” National Seniors Member 11/04/2014

At this stage National Seniors does not believe that a FPEC controlled by the industry would be able to increase standards to the level required to rebuild consumer and public confidence in the sector.

Question 4.1

a.) Would the FPEC need to be supported by legislation in order to perform its role?

Regardless of its final structure the FPEC needs to be established (as a statutory entity) and supported by legislation, similar to the overarching framework for the legal profession which includes a number of Acts and regulations (including the New South Wales *Legal Profession Act 2004*⁶ and the Queensland *Legal Profession Act 2007*⁷), aimed at protecting the interests of clients of law practices and the public generally.

In the short term (3-5 years) the Government must provide support and credibility to the FPEC. A Minister must be responsible for oversight of the FPEC and provide the final approval on critical decisions, such as, the list of acceptable bachelor degrees and level of ongoing professional development which an advisor must complete to practice.

⁶ Legal Profession Act 2004 No 112 (2014) <http://www.legislation.nsw.gov.au/>.

⁷ Queensland Law Society (2015) Legislation and Rules http://www.qls.com.au/Knowledge_centre/Legislation_rules .

b.) Is the recommended FPEC membership appropriate?

National Seniors does not believe the membership and structure of the recommended FPEC is appropriate. Specifically, the recommended FPEC membership does not deliver sufficient consumer representation and independence.

Question 4.2 Are there alternative that would be more appropriate or effective?

National Seniors recommends that a more appropriate model for the FPEC is one which establishes the FPEC by legislation including a clear role for the Minister/Assistant Treasurer, includes an Independent Chair and an equal number of industry, consumer and academic representatives. A balanced representation of members and Governmental oversight is required to ensure that an independent and unbiased outcome is achieved.

National Seniors suggests that the FPEC should be supported by the Australian Securities & Investments Commission (ASIC). ASIC would take an advisory and working secretariat role. It is envisioned that in the longer term (three to five years) the Government and Minister will be able to withdraw from involvement in the FPEC once a true profession is developed and credibility in the financial advisory industry is re-established.

The FPEC's role should include:

- Assist ASIC and the Government to develop the overarching legislation and list of critical issues that the Minister is responsible for providing final approval.
- Developing the requirements to be an approved professional body, and registering approved financial advisory professional bodies.
- Determining the education requirements including appropriate bachelor degree.
- Details of supervised professional year for new advisors, continuing professional development and national exam.
- Investigate options for recognition of prior learning.

Section 5: Registration

National Seniors agrees that new advisors should only be registered on the Adviser Register (Register) after they have met all the education and professional development requirements. However, National Seniors believes that all existing advisors must be registered on the Register, with clear reference to any outstanding professional requirements to ensure consumers can make an informed decision.

Question 5.2 Should it be the role of professional associations to notify ASIC that all requirements have been met for an adviser's registration, and of factors which affect their subsequent fitness for registration.

National Seniors believes that licensees/ controlling entities not professional associations should be ultimately responsible to notify ASIC that all requirements have been met for an adviser's registration, and of factors which affect their subsequent fitness for registration.

At this stage the professional associations are not sufficiently developed and consistent in their approach to be solely responsible for this critical role; the obligations must rest with the entity which ultimately controls the individual financial advisor.

Question 5.4 Are there alternative or additional criteria that should be listed on the Register?

Additional criteria is required to strengthen the Register in the eyes of consumers.

National Seniors recommends the inclusion of the following additional information in the Register:

- **Payment Arrangements:** A percentage breakdown indicating how an advisor was remunerated last financial year i.e. 30% from client fees and charges, 40% from trailing commissions and 30% from sale target bonuses.

“All financial advisors need to disclose commissions they receive for promoting a financial product. Furthermore, if found to be favoring a fund/product they have a financial interest in, that should also be disclosed”.

- National Seniors Member (2014)

- **Advisor Experience:** The advisor's experience record should also include the number of years/months an advisor has been providing advice in each product area. Advisors should not be allowed to list specific fields of expertise, for example, “Superannuation” without this term being defined somewhere in the Register and without a reference to how much experience the individual advisor has within this field. For example, an advisor may have 10 years' experience as a financial advisor but only have one year experience advising in the field of “Superannuation”.
- **Complaints and Claims:** Any substantiated current complaints or claims against an advisor including those to the controlled entity/ licensee should be recorded within the Register, not just those that result in extreme outcomes such as ASIC bans or disqualifications. Further, where possible, when an advisor is fired from their role for inappropriate unprofessional behavior or poor advice this should also be recorded in the Register.
- **Profession:** Details of the Code of Ethics and any membership to a professional association each financial advisor subscribes to.
- **Insurance:** Details of the level of Professional Indemnity insurance which an advisor holds including any limited liability.
- **Accessibility:** Investors who do not have access to the internet must not be excluded from the benefits of the Register. To ensure no client lacks access to the register, the register must be accessible by phone and hard copies of the advisor's details as displayed on the register should be available to clients on request.

In addition, the Register should provide information on how a client can make a complaint against an advisor and any dispute resolution options which are available. It would also be beneficial to provide a link to the Financial Ombudsman Service within the Register to assist consumers to exercise their rights. This information should be provided on the search results page of the Register and not hidden in the fine print in another section of the web site.

Question 5.6 Are legislative protections of the titles ‘financial advisor’ and ‘financial planner’ necessary.

National Seniors believes that the titles of financial advisor and financial planner must be defined and linked back to the new education and professional standards. Defining and restricting the use of these titles is necessary to provide the level of certainty required to provide consumers and the public with confidence that they are dealing with a member of a profession rather than just a sales man with an impressive title.

The titles of lawyer⁸ and qualified accountant⁹ are both defined under legislation, the title of financial adviser and planner should also be defined under legislation if a profession is to develop credibility.

Section 6: Exam

Question 6.1 Do you consider a registration exam should be a component of a framework to improve professional standards? Should the exam apply to both existing and new advisers?

National Seniors believes that all financial advisors including existing advisors should be assessed on their ability and knowledge of key areas which would impact the outcomes of clients. The exam component is essential to improve professional standards.

Question 6.3 What content should be covered in the exam?

The Exam must include testing on:

- financial and technical knowledge;
- the taxation and welfare systems;
- communication skills; and
- key retirement issues and their implications for personal and estate financial planning, including expenses related to health and aged care needs.

The exam must go beyond simple multiple choice testing and include work samples and case studies to test the skills and abilities required to provide financial advice in real world situations.

Question 6.3 Is the FPEC the appropriate body to set the exam? Who should be responsible for invigilating the exam? Who should be responsible for marking the exam?

The FPEC with the oversight with the final approval of the Minister is an appropriate body to set the exam? The administration of the exam marking and invigilating must be performed by an

⁸ Legal Profession Act 2007 <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegalProA07.pdf>

⁹ Section 88B of the Corporations act 2001

independent body potentially with linkages to the university system. As a minimum the exam must be timed and supervised in a secure venue to ensure standardisation of the testing environment.

Section 7: Ongoing Professional Development

Question 7.2 Are professional associations well-placed to administer ongoing professional development requirements.

National Seniors believes that at this stage professional associations are not well placed and are not sufficiently developed to administer the ongoing professional development requirements independent of Government. In the short term the Government, in cooperation with the FPEC, must take a lead and oversight role of the development and implementation of the ongoing professional requirements for financial advisors.

Section 8: Professional and Ethical Standards

National Seniors believes that all financial advisors should comply with and be held accountable under a code of ethics. However National Seniors does not agree that each professional body should be able to produce its own code. At most one code should be permitted for each sector which provides Tier 1 financial products (Personal Advice) for example one for accountants, one for financial advisors and one for stock brokers.

Multiple codes developed by each currently self-appointed professional body would create confusion for clients and result in varying degrees of behaviour, consumer protections, monitoring processes and disciplinary outcomes. The FPEC and Government (ASIC) with final approval of the Minister (at least in the short term) is required to oversee and approve the development of a standardised code of ethics for the industry.

National Seniors is concerned that the limited liability associated with Professional Standards Schemes as suggested by the PJC is not appropriate for the scale and impact of losses which have been sustained as a result of poor advice and in some cases unethical behavior, information imbalances and exploitation of consumers combined have affected more than 80,000 consumers, with losses totaling more than \$5 billion.¹⁰

National Seniors believes there is a key role for professional associations long term within the financial advice industry, however, more critical, is the ability of individual advisors to remain independent as much as practical. National Seniors does not believe that membership to a professional body or association should be mandatory, however compliance with all standards including a code of ethics must be mandatory.

To attract members, professional bodies should have to develop and offer a service that is beneficial to individual advisors and improves clients outcomes, rather than being automatically provided with members by default, before they have developed an attractive product /service offering.

Section 9: Other Issues for Consideration

¹⁰ Financial System Inquiry — Final report (2014) Commonwealth Government.

National Seniors believes the timeframes set by the PJC are achievable and the achievement of these timeframes, specifically the establishment of the FPEC, must be a priority for government.

National Seniors believes there is a need to have some form of recognition of prior learning however existing advisors must still have to pass the exam and comply with professional development activities and the code of ethics.