

3 May 2015

Financial Services Unit  
Financial System and Services Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**RE: LIFTING THE PROFESSIONAL, ETHICAL AND EDUCATION STANDARDS IN THE  
FINANCIAL SERVICES INDUSTRY**

The experience I have gained as a lawyer engaged in delivering private client services in conjunction with financial planners for over 20 years, and as an educator and author teaching estate planning at universities for over 10 years, informs these comments to the consultation paper issued on this subject in March 2015 (the Consultation paper).

These comments are given in my personal capacity and therefore do not reflect the position of any organization with which I also work or are otherwise engaged. I attach a brief statement of my background to explain the perspective from which these comments are drawn.

I have been a member of the Conduct Review Commission of the Financial Planning Association since 2007, an author of that organization's syllabus for its Accredited Estate Planning Strategist designation and since September 2014, a member of the Education Steering Group of the Society of Trust and Estate Practitioners (STEP<sup>1</sup>) for Australia.

Whilst broadly agreeing with the conclusions of the PJC report, I make the following comments adopting the section referencing of the Consultation paper.

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<sup>1</sup> [www.step.org](http://www.step.org)

Section 1. Introduction – para 7

To talk of the professionalization of an industry remains an oxymoron.

The Financial Services Industry engages financial markets, a key element of the Australian economy. This industry creates and markets a range of financial products and services that provide access to elements of the financial markets to the general public and the retail investor.

The job roles in the financial sector range from client or customer responding staff such as those operating in Bank branches as tellers or call centre staff to sales staff and those involved in client advice and consulting. Education in the financial services industry must be scoped and scaled to the realities of the job roles in the industry that includes both vocational occupations as well as professions. The Australian Qualification Framework provides a normative framework to discern the cognitive differences between these job roles. Education must be aligned to both underlying workplace competencies as well as doctrinal knowledge and the development of the skills to apply that knowledge in appropriate academic and workplace settings. This can only be achieved through effective co-operation between:

1. Employers
2. Educators
3. Professional Societies

The current FPEC proposals provide no framework for delivering this level of necessary co-operation in the development of innovative change in the financial services industry.

Treasury already distinguishes its responsibilities to consumers of financial services from its engagement with the providers of financial products and services. It is this distinction I believe that must be deepened as a result of the current consultation.

Financial products and services are sold or consumed. It is an oxymoron to talk of financial product or service sales by an adviser. The client always remains the decision maker in the advisory relationship.

The role and purpose of an adviser is to provide evaluable choices that a consumer can use to decide a course of action they believe is in their best interests. In this the adviser is acting as an agent or advocate of the consumer, not the vendor of the financial product. This duty is implicit in s.961B of the Corporations Act 2001 (best interest duty).

As a result, for the desired consumer outcomes to be realised, the occupational role of a financial adviser has to be as part of an advice led, fee-for-service business, not as a sales agent for the vendor of financial products and services such as the sales representative of a life office or financial product manufacturer.

Section 1. Introduction – para 8

It is commonly accepted in the literature that in the order of 80% of the “advisers” employed in the financial services sector are employees of financial product and service manufacturers. There can be no argument that sales require skills that are necessary for the effective provision of products and services to markets and remuneration can be either commission or fee driven.

Such sales oriented job functions are however built of ideas such as “buyer beware – caveat emptor” and the expectations that consumers can look after themselves, subject to the protections only of consumer law, ethical practices and market demand.

It is the incompetence of consumers in dealing with choices provided to them by vendors of financial product and services that has agitated government policy and the PJC enquiry. A higher duty of care needs to be established between providers, advisers and clients who need to interact with financial products and services. While a signal for this revised duty of care is given by the legislation of best interest duty, this standard needs also to be embedded in the business models for the advisers, consultants and sales agents operating in the financial services and wealth advisory sectors.

There needs to be distinction made by regulators and those businesses operating within the financial product and services market between the business models used for provisioning ethically sound consumer access to financial products and services and those used for the provisioning of advisory services that are focused on delivering results sought by clients for the administration of the various financial and non-financial elements of their wealth. Conflating these business models is a moral hazard equal, in my opinion, to the conflicted remuneration problems already identified in the financial services industry.

The various failures in the use of financial products and services that has so agitated government policy in recent years is as much a failure to implement this distinction between product sale and advice provision as it is a failure to prevent conflicts of interest and conflicted decision making by the adviser occurring when making recommendations about the use of particular financial products and services.

## Section 1. Introduction - Recommendations

1. **I recommend** that the specification of courses adviser education should implement the Core Skills for Work Framework already implemented by Government<sup>2</sup> and the competency standards advocated by the Financial Planning Standards Board and its licencees.<sup>3</sup>
2. **I recommend** that the current specification of the occupational role of an “adviser” be split into two elements, an investment consultant role that is sales skills based and a wealth adviser role that is advisory and consulting skills based.
3. **I recommend** that excellence of technical knowledge and sound ethical practice remain key competencies of each role that are explained, educated and regulated in the context of each role.
4. **I recommend** that vocational sales skills roles be managed as an affiliate, technician or associate level membership of the professional societies that are engaged to the PJC model.

### Section 1.1 The PJC model – para 12

The statement in this paragraph ignores the fact that the enquiry that is needed by the Best Interest Duty signalled by s.961B of the Corporations Act inevitably results in a set of client requirements that are beyond the scope of merely provisioning access to Tier 1 and Tier 2 financial products and services.

Education of advisers must be contextualized to their occupational function, the underlying duty of loyalty implicit in their job role and the business model to which they are engaged.

The moral hazard of consumers being misled by the delivery of inappropriate services through business models that do not have clear contexts for the delivery of sales as opposed to advice must, in my opinion be avoided through the adoption of appropriate business models that establish advisers in an employment context in which their duty of loyalty is owed to the client first. This is consistent with Best Interest Duty..

Financial advice must be contextualised to be a subset of estates practice, wealth advice and private client services.

For an example of a professional society with this broader private client and wealth focus see the Society of Trust and Estate Practitioners (STEP) which has been operating in Australia for the last decade and which is known within Government by at least the Attorney General.

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<sup>2</sup>

<http://industry.gov.au/skills/ForTrainingProviders/CoreSkillsForWorkDevelopmentalFramework/Pages/default.aspx> .

<sup>3</sup> <https://www.fpsb.org>

For an explanation of these occupational and professional distinctions please refer to the textbook I write with Robert Monahan *"Estate Planning - A Practical Guide for Estate and Financial Service Professionals"* (4<sup>th</sup> edition March 2015, LexisNexis ISBN 9780409339482).<sup>4</sup>

Section 1.1 The PJC model – para 12 - Recommendations

1. **I recommend** that the PJC model be recognised as a single disciplinary model of professional regulation within the broader multi disciplinary fields of estates practice and wealth advice.
2. **I recommend** that the remit of the Financial Professionals Education Council (FPEC) be extended to include the cross disciplinary responsibility of financial advisers to deal with the wealth advisory outcomes of their clients. This is consistent with the normal result of application of best interest duty to the initial interaction between financial advisers and their clients.
3. **I recommend** the Society of Trust and Estate Practitioners be engaged to assist single disciplinary bodies such as FPEC in the estate services sector to engage in appropriate collaborative practices that ensure client estate and wealth advisory issues are ethically and responsibly dealt with once identified by any estates practice connected adviser, including financial advisers.

Section 1 Feedback

Question 1.1

As currently expressed , this proposal will create confusion between the advice and sales led roles that exist as a practical reality in the financial services market. The concept of a financial adviser is not a single occupational role; it needs to be split into investment consultant and wealth advisory roles for the reasons previously explained.

Question 1.2

The model will create confusion because it does not distinguish between the requirements for sales and advice based roles and the transactional, consulting and advisory business models alive in the financial services market place. The model is intellectually sound but out of step with the commercial context of this marketplace.

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<sup>4</sup> See <https://store.lexisnexis.com.au/product?product=estate-planning-a-practical-guide-for-estate-and-financial-services-professionals-4th-edition&meta F and=9780409339482>

Question 1.3

Yes, insofar as you are talking about a confined single disciplinary application of the model to a single job role and business model within the financial services market.

This application however ignores broader issues in the market as outlined above.

Section 2 Feedback

Question 2.1

A realignment of regulation to the supply chain realities of the financial service market is needed.

The current regulatory model for advisers is broken.

Product provision needs to be separately regulated to client advice.

The inconsistency between the operation of best interest duty and adviser licencing and management needs to be resolved.

Question 2.2

Employers of advisers simply must be legally required to employ appropriately licenced advisers. This is no different to the employer of say lawyers, tax practitioners or accountants.

The maintenance of personal licencing can be the responsibility of the individual and their professional society.

The education of advisers and the maintenance of their competence is a joint endeavour between employer, professional society and educator as well as the practitioner.

Section 3 Feedback

Question 3.2

The requirement of a Bachelors degree is an appropriate baseline standard for a financial or wealth adviser.

The lower cognitive requirements of sales led roles means a lower educational level is appropriate for those roles.

The Tax Practitioners Board has Australian Qualification Framework (AQF) Level 5 as its entry level for tax agents. A similar entry level for the financial service market should also be struck.

A close correlation should be made between the actual job roles being recognised and licenced and the educational level appropriate for that role.

The idea that a financial adviser is a single role in the market is fallacious. Not recognising that fact has been a major contributor to the problems that have agitated the PJC's activities.

Given the evident skill deficit in the sector, there should be clear teaching and learning outcomes defined for all elements of financial adviser and investment consultant education.

The role and purpose of unassessed components of continuing professional development (CPD) education needs to be clearly specified.

The alignment of professional and employment progression between professional society and workplace needs to be deepened through appropriate engagement between employer and professional society.

#### Section 4 Feedback

##### Question 4.2

I support the proposed role for FPEC, subject to its single disciplinary focus being acknowledged and it being responsible for establishing in consultation with other professional bodies the cross-disciplinary boundary points between financial advisers, investment consultants and other estates and wealth advisory practitioners.

#### Section 5 Feedback

##### Question 5.6

What is necessary is the role and responsibility of sales and advice led roles in the financial services market need to be separately recognized. As said initially, the statement "to professionalize the industry" is an oxymoron.

I think the term financial adviser is too similar to the term financial planner.

I think it is necessary to clearly distinguish the sales, advice and consulting led roles within the financial services market. For this reason I recommend the terms investment consultant and financial planner be adopted by the PJC.

I think the role of these jobs in the financial product and services market place needs to be clearly distinguished from those engaged in the banking and finance industry.

The supply chain context of manufacturer, market place, sales and adviser/consultant needs to be clear in the operation of policy settings by Government in relation to the financial services sector.

#### Section 9 Feedback

##### Question 9.1

The regulation of Tier 2 advice can simply be dealt with as vocational education at AQF level 5-6.

Similar education level and responsibilities are already taken on by bodies such as STEP and the Tax Practitioners Board.

There seems no reason, other than resources and policy optics, for FPEC not to have a similar role for these lower cognitive order occupations.

There are no doubt tight linkages between consumer law rights, employer operational models and standards and product provision in the financial services sector. The key issue I believe is not to conflate the roles and responsibilities of sales led as opposed to advice or results led jobs in the financial services sector. Given the importance of the distinction, it is possibly wise for there to be a separate regulatory response to the governance of product and service provisioning from the financial product and service manufacturing sector to the establishment of new business models and professional designations for financial and wealth advice provision. Such a separation of response would be consistent with the conclusions of the Financial Services Inquiry<sup>5</sup>.

I am happy to speak further to these comments if required.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Perkins', with a stylized flourish at the end.

MICHAEL PERKINS TEP

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<sup>5</sup> See <http://fsi.gov.au/publications/final-report/>.



## **Michael Perkins background**

Michael Perkins TEP  
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Michael is a practicing lawyer with over 30 years experience in trusts, estates and private client practice.

As the complexities of clients and their families increase, he believes it is time to shake up the status quo that results in most professionals just focussing on the transactional service needs of their clients.

Michael and the law firm of which he is a partner, Perkins Fahey also focuses on helping their clients deal with family, relationship and commercial complexities in managing their affairs. In Estate Planning that means we focus on the wealth preservation and transfer intentions of our clients.

We bring our knowledge of the law and deep knowledge of families and their business connections born out of 3 generations of practice to our day to day work of helping our clients.

Michael brings a multi-disciplinary approach to the challenges of corporate growth, asset protection, estate administration and succession for globalizing business as well as families seeking to manage their property for the benefit of subsequent generations and their broader community connections.

Perkins Fahey has substantial experience in dealing with the commercial issues of the agribusiness, film and media production, hospitality, building services, digital media production and digital media distribution sectors.

Michael is a:

- TEP member of the Society of Trust and Estate Practitioners (STEP)
- Member of the Business Family Special Interest Group of STEP South Australia Branch
- Member of the Business Family Steering Group , Professional Development Committee and Education Steering Group for Australia of STEP World Wide
- Co-author of the text "Estate Planning a practical guide for estate and financial services professionals" (LexisNexis 2005, 2008 , 2011 and 2015) in addition to authoring and co-authoring many publications in the field of trust and estates law and practice.

