
CORPORATIONS AMENDMENT (PROFESSIONAL STANDARDS OF
FINANCIAL ADVISERS) BILL 2015

EXPOSURE DRAFT EXPLANATORY MATERIAL

Table of contents

Glossary	1
General outline and financial impact.....	3
Chapter 1 Education and training standards.....	7
Chapter 2 Code of Ethics.....	14
Chapter 3 Register of Relevant Providers.....	23
Chapter 4 The Standards Body	29
Chapter 5 Transitional provisions for existing providers	35
Chapter 6 Regulation impact statement.....	40

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
AFSL	Australian Financial Services License
Licensee	Australian Financial Services Licensee
Body	Standards body nominated under section 921MA
Corporations Act	<i>Corporations Act 2001</i>
Code	Code of Ethics developed by the standards body
Criminal Code	<i>Criminal Code</i> contained in the <i>Criminal Code Act 1995</i>
CPD	Continuous professional development
Education standards	Education and training standards
Existing provider	A person who is a relevant provider immediately before 1 July 2017
FOFA reforms	Future of Financial Advice reforms
FSI	Financial System Inquiry
Register	Register of Relevant Providers established under section 922Q of the Corporations Act
Register Regulations	Provisions relating to the Register of Relevant Providers in Schedule 8D of the <i>Corporations Regulations 2001</i> , inserted by the <i>Corporations Amendment (Register of Relevant Providers) Regulation 2015</i>
Relevant financial product	A financial product other than a basic banking product, general insurance product, consumer credit insurance, or a combination of these products

Relevant provider	A natural person who is authorized to provide personal advice to retail clients in relation to relevant financial products.
Scheme	Monitoring and enforcement scheme

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General outline and financial impact

Overview

The Bill makes amendments to the *Corporations Act 2001* (Corporations Act) to raise the education, training and ethical standards of financial advisers by requiring relevant providers to hold a degree, undertake a professional year, pass an exam, undertake continuous professional development and comply with a Code of Ethics (Code).

In recent years, numerous cases of inappropriate financial advice have decreased consumers' confidence in the financial advice industry. This lack of trust has become a barrier to consumers seeking financial advice.

The financial services industry, consumer groups, the Government, and the Australian Securities and Investments Commission (ASIC) have raised concerns with the existing education and training requirements applicable to financial advisers.

Currently, the Corporations Act imposes a general obligation on a licensee to ensure that its representatives are adequately trained and competent to provide financial services.

ASIC's Regulatory Guide 146: *Licensing: Training of financial product advisers* (RG 146) sets out the minimum knowledge, skill and education level standards for financial advisers and provides information on how advisers can meet these standards.

The minimum standards required to provide personal advice on more complex (Tier 1) financial products are:

- Australian Qualifications Framework level 5 ('Diploma' level) course units;
- Specialist knowledge about the specific products an adviser provides advice on, and the markets in which they operate; and
- Generic knowledge requirements, including training on the economic environment, the operation of financial markets and financial products.

Concerns have been raised that the current standards in RG 146 are not commensurate to the level required to ensure appropriate technical and

professional competence. Further, in some instances, the existing minimum education and training standards have not been applied consistently across the industry, and that the rigour and quality of some training courses is questionable.

In addition, the current educational framework for financial advisers does not include specific requirements for:

- monitoring and supervising a new adviser (or an adviser new to a particular specialisation) to enable the adviser to develop the requisite minimum skills to provide sound financial advice;
- continuous professional development; or
- ethical and conduct standards.

Two reports have recently been completed that examined the professional standards of the financial advice industry:

- on 19 December 2014, the Parliamentary Joint Committee (PJC) on Corporations and Financial Services reported on ways to lift the professional, ethical and education standards in the financial services industry; and
- the Financial System Inquiry (FSI) made recommendations on lifting the competency of financial advisers to improve the quality of financial advice.

These reports all found issues with the current educational, ethical and professional standards of financial advisers, and recommended improvements.

On 25 March 2015, the Government released a consultation paper and called for submissions on ways to lift professional standards of financial advisers. In releasing the paper, the then Assistant Treasurer noted that the PJC and FSI reports ‘make clear that the current regulatory arrangements are no longer sufficient to ensure high quality consumer outcomes and to maintain public confidence in the industry. It is now time to put in place an enduring framework that raises the professional, ethical and education standards of advisers.’

Submissions closed on 7 May, with the Government receiving over 50 submissions.

In its response to the Financial System Inquiry, the Government agreed that the education, training and ethical standards for financial advisers

needed to be raised in order to increase consumer outcomes and public confidence in the sector.

The Bill includes the following amendments to the Corporations Act:

- new education and training standards (education standards) that must be met by individuals who provide personal advice on relevant financial products to retail clients (relevant providers);
- transitional arrangements which apply to ‘existing advisers’ (that is, those advisers who were relevant providers immediately before 1 July 2017);
- a new requirement that relevant providers comply with a Code and are covered by a monitoring and enforcement scheme (a scheme);
- an obligation on an Australian financial services licensee (licensee) to ensure that its relevant providers comply with the new education standards, and are covered by a scheme;
- a restriction on the use of the titles ‘financial adviser’ and ‘financial planner’;
- amendments to the content requirements for the register of relevant providers (the Register);
- the provision of relevant sanctions where a relevant provider or licensee fails to comply with the new obligations; and
- recognition of a new industry funded standard setting body (the body) which will set the details of the new education standards and develop the Code.

Date of effect: The amendments relating to the new education standards, which will apply to new advisers entering the industry, take effect from 1 July 2017. The provisions relating to the Code take effect from 1 July 2019.

Proposal announced: The proposal was announced by the Treasurer as part of the Government’s response to the FSI on 20 October 2015.

Compliance cost impact: \$165,890,027.

Summary of regulation impact statement

Regulation impact on business

Impact: The reforms to raise professional, ethical and educational standards of financial advisers will have regulatory impacts on both licensees, financial advisers and consumers.

Main points:

- Treasury will certify that the independent reviews including the Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into proposals to lift the professional, ethical and education standards of financial advisers and the Financial System Inquiry Final Report and consultation constitute a process and analysis equivalent to a Regulation Impact Statement (RIS).
- Recent examples of unethical behaviour and inappropriate financial advice have contributed to decreased trust and confidence in the financial advice sector.
- A range of options for raising professional standards in the financial advice industry were raised through the independent reviews and consultation in relation to the relevant standards, establishment of the standard setting body, and transitional arrangements for existing advisers.
- A review of the professional standards reforms will be conducted in 2019 to consider whether the new industry arrangements have provided better outcomes for consumers.

Chapter 1

Education and training standards

Outline of chapter

1.1 Schedule 1 to the Bill amends the Corporations Act to require all relevant providers to comply with the education standards.

Context of amendments

1.2 See General Outline.

Summary of new law

1.3 An individual is prohibited from being authorised to provide personal advice to retail clients on relevant financial products if they do not satisfy the three preconditions, namely, complete a bachelor degree or equivalent; undertake a professional year; and pass an exam.

1.4 Relevant providers also have an ongoing obligation to complete continuous professional development (CPD). Licensees also have an ongoing obligation to ensure that their relevant providers comply with the CPD requirement.

1.5 The requirements for the degree, professional year, exam and CPD requirements are determined by the body.

1.6 Only an individual who is a relevant provider can use the terms 'financial adviser' and 'financial planner'.

Detailed explanation of new law

The concept of a relevant provider

1.7 The new standards apply to *relevant providers*. Relevant providers are natural persons who are authorised to provide personal advice to retail clients on relevant financial products. [Schedule 1, item 1, section 910A]

- 1.8 A relevant provider may be:
- a financial service licensee;
 - an authorised representative of a financial services licensee;
 - an employee of a financial service licensee
 - a director of a financial services licensee; or
 - an employee or a director of a related body corporate of a financial services licensee.

[Schedule 1, item 1, section 910A]

1.9 Relevant providers are the group of financial advisers who are listed on the Register.

1.10 A **relevant financial product** is a financial product other than a basic banking product, general insurance product, consumer credit insurance, or a combination of any of these products. Relevant financial products are more complex financial products. *[Schedule 1, item 1, section 910A]*

1.11 The definition of relevant financial product in the new law replicates the definition in the Register Regulations. The scope of relevant financial products is consistent with the Future of Financial Advice (FOFA) reforms in Part 7.7A of the Corporations Act, as the references to general insurance products in the FOFA reforms do not make any distinction between different types of general insurance products (such as accident and personal sickness insurance).

1.12 The concept of a relevant financial product is broadly similar to ASIC's concept of a Tier 1 product. The main difference between the two concepts is that personal sickness and accident insurance are not relevant financial products (whereas ASIC considers them to be Tier 1 products).

Example 1.1: Persons who are not relevant providers

Dylan provides personal advice to wholesale clients on relevant financial products. He is not authorised to give advice to retail clients.

Effie is authorised to provide general advice to retail clients. She is not permitted to give personal advice which takes into account the client's objectives, financial situation or needs.

George works in a bank. He is only permitted to give advice on basic banking products.

Dylan, Effie and George are not relevant providers and they do not need to comply with the new standards.

Example 1.2: Persons who are relevant providers

Lucy is authorised to provide personal advice to retail clients on relevant financial products.

Lucy is a relevant provider and must comply with the new education standards and the Code requirements.

The new education standards

1.13 The new law provides that all relevant providers must comply with four **education and training standards**. [Schedule 1, item 7, subsection 921B(1)]

1.14 The first three education standards are preconditions which must be satisfied before an individual can be authorised to provide personal advice to retail clients on relevant financial products. The preconditions are that the person must:

- complete a bachelor degree, or equivalent qualification, approved by the body;
- undertake a year of either or both work and training that meets the requirements set by the body; and
- must pass an exam approved by the body.

[Schedule 1, item 7, subsections 921B(2) to (4)]

1.15 If an individual has not satisfied these preconditions, ASIC must not grant the individual a licence that covers the provision of personal advice to retail clients in relation to relevant financial products. [Schedule 1, items 3,4 and 7, subsections 921C(1) and note 2 in subsection 913B(1)]

1.16 A financial service licensee is also prohibited from authorising a person to provide personal advice to retail clients in relation to relevant financial products if the applicant has not satisfied the preconditions. This means that the financial service licensee must not authorise the individual as an authorised representative or hire them as an employee or a director to provide financial advice. This does not prohibit an employee undertaking

the activities associated with their professional year. [Schedule 1, items 5 and 7, subsections 921C(2), 921C(3) and the note in subsection 916A(1)]

1.17 ASIC has the power to ban a person if it has reason to believe that the person was authorised when they had not met the three preconditions [Schedule 1, item 6, paragraph 920A(1)(db)]. ASIC's existing powers allow it to ban a person who has not complied with the law and this will extend to the power to ban a person who authorises relevant providers when they have not met the preconditions.

Example 1.3: Preconditions for authorisation

Ben completes a degree and the professional year, but does not sit the exam. Ben asks his licensee to authorise him to provide personal advice to retail clients.

The licensee must not authorise Ben to provide advice on a relevant financial product as Ben has not met the third precondition.

Example 1.4: Qualifications removed for academic misconduct

Millie is awarded a degree, completes the professional year and passes the exam. Millie's licensee authorises her to provide personal advice to retail clients on relevant financial products.

The university subsequently finds Millie guilty of academic misconduct and takes away her degree.

As Millie never satisfied the three preconditions, her authorisation to provide personal advice on relevant financial products to retail clients was never valid.

1.18 The fourth education standard is an ongoing obligation to meet the requirements for CPD set by the body. [Schedule 1, item 7, subsection 921B(5)]

1.19 Relevant providers must ensure that they meet the CPD requirement. [Schedule 1, item 7, subsection 921D(1)]

1.20 Licensees are also required to ensure that their relevant providers meet the new CPD requirement. The new law achieves this by amending licensees' obligation to ensure that their financial advisers are 'adequately trained and competent' so that it includes an obligation to ensure that their relevant providers comply with their CPD requirements [Schedule 1, item 2, paragraph 912A(1)(f)].

1.21 ASIC's existing power allows it to ban a person if the person has not complied with the law by failing to complete their CPD requirements.

Exemption for timeshare schemes

1.22 The new law exempts relevant providers who provide advice on timeshare schemes from the education standards. These persons only need to meet the education standards that apply to non-relevant financial products. [*Schedule 1, item 7, subsections 921C(4) and 921D(2)*]

1.23 The exemption reflects the fact that timeshare arrangements are inherently different from other relevant financial products. Timeshare interests are not sold as financial investments that generate a return, but as lifestyle products or prepayments for holidays.

1.24 The exemption does not apply to the ethical requirements in new subdivision 8B. This means that persons who are authorised to provide personal advice on timeshare schemes to retail clients must comply with the Code developed by the body and subscribe to a scheme.

Example 1.5: Exemption for timeshare schemes

A, B and C sell interests in timeshare schemes. B and C also have second jobs. B works in a bank and provides advice on basic banking products. C works for a financial advice firm and provides advice on relevant financial products.

A and B are not required to meet the new education standards because the only relevant financial product that they give advice on is interests in timeshare schemes and timeshare schemes are exempted from the new standards.

C must meet the new education standards because he also provides advice on relevant financial products other than timeshare.

A, B and C must all comply with the Code developed by the body and subscribe to a monitoring and enforcement scheme.

Restriction on use of terms 'financial adviser' and 'financial planner'

1.25 The new law restricts the use of the titles 'financial adviser' and 'financial planner', terms of like import and combinations of words which include these terms, to individuals who are relevant providers. [*Schedule 1, item 10, subsections 923C(1), (2) and (8)*]

1.26 Individuals who are relevant providers may choose to use either the title 'financial adviser' or 'financial planner', or both.

1.27 The new law exempts from this restriction, persons who provide advice to wholesale clients or provide in-house advice to their employer. These persons will be permitted to use a restricted term in the ordinary course of activities associated with providing such advice. *[Schedule 1, item 11, subsections 923C(3) to (6)]*

1.28 Protecting the titles ‘financial adviser’ and ‘financial planner’, and like terms, will allow consumers to quickly distinguish the individuals who satisfy the new standards and are authorised to provide personal advice on relevant financial products to retail clients.

1.29 The penalty for contravention of this section is 10 penalty units for each day a restricted term is unlawfully used. *[Schedule 1, items 11 and 13, subsections 923C(7) and 923C(9) and items 269AAA and 269AAB of table in Schedule 3]*

Example 1.6: Restrictions on the use of the terms ‘financial adviser’ and ‘financial planner’

Raj is only authorised to give advice on basic banking products.

Raj calls himself a ‘financial advice expert’. He prints business cards with this title.

Raj has used a term of like import to ‘financial adviser’ when he is not authorised to provide personal advice to retail clients on relevant financial products. He has committed an offence and is liable to pay a penalty of 10 penalty units per day that he uses the restricted title.

Example 1.7: Exemption for persons providing advice to wholesale clients

Charlie is authorised to provide advice to wholesale clients. He is not authorised to provide personal advice to retail clients on relevant financial products.

Charlie may use the titles ‘financial adviser’ and/or ‘financial planner’ in relation to providing advice to wholesale clients.

1.30 The restrictions on the use of the terms ‘financial adviser’ and ‘financial planner’ do not affect a licensee’s obligation to have compensation arrangements in place in section 912B. Section 912B states that the licensee will only be required to compensate a customer if the customer suffers loss or damage because of the breach of the law. *[Schedule 1, item 10, subsection 923C(9)]*

Example 1.8: Compensation arrangements not affected by restriction of title

Raj calls himself a ‘financial advice expert’ when he is not authorised to give advice on relevant financial products. This is a breach of the new law.

Mandy sees that Raj is a ‘financial advice expert’ and decides to obtain financial advice from him.

Mandy later becomes aware that Raj improperly used a restricted title and seeks compensation from Raj’s licensee.

Raj’s licensee is not required to pay any compensation because Mandy did not suffer any loss or damage because of Raj’s improper use of a restricted title.

Application and transitional provisions

1.31 The amendments in this Chapter will apply from 1 July 2017.
[Schedule 1, item 13, sections 1546C, 1546D, 1546R]

Chapter 2

Code of Ethics

Outline of chapter

2.1 Schedule 1 to the Bill will amend the Corporations Act to require that all relevant providers are covered by a Code developed by the body.

Context of amendments

2.2 See General Outline.

Summary of new law

2.3 The body will develop a Code.

2.4 From 1 July 2019, all financial advisers will be required to comply with the Code and must be covered by a monitoring and enforcement scheme developed by their licensee or professional association.

2.5 As such, all relevant providers providing advice on relevant products will be covered by and subject to the same Code and ethical standards. However, relevant providers will fall under different schemes.

2.6 There will be two pathways for relevant providers to subscribe to a scheme:

- Pathway 1: a professional association's scheme approved by ASIC; or
- Pathway 2: a licensee (or a group of licensee's) scheme approved by ASIC.

Detailed explanation of new law

The Code

2.7 The body is required to develop a *Code of Ethics*. [Schedule 1, item 7, subsection 921L(2)]

2.8 The Code will set out the ethical obligations that apply to relevant providers. These ethical obligations will go above the legal requirements in the law and are designed to encourage the professionalism of the financial services industry.

2.9 All relevant providers are required to comply with the ethical obligations in the Code from the point in time when they are covered by a scheme. [Schedule 1, item 7, section 921E]

Compliance schemes

2.10 Compliance with the Code is monitored and enforced by a monitoring body pursuant to a scheme approved by ASIC.

2.11 The *compliance scheme* sets out how compliance with the Code will be monitored and enforced. It includes information about the monitoring body, the process for customers to make complaints, and the process for resolving disputes between the monitoring body and the relevant provider. [Schedule 1, item 7, subsection 921FA(1), 921FA(6) and 921FA(7)]

2.12 There are two different kinds of schemes:

- a professional association's scheme approved by ASIC; or
- a licensee (or a group of licensee's) scheme approved by ASIC.

[Schedule 1, item 7, section 921FA(2)]

2.13 A *monitoring body* for the compliance scheme means the person that monitors compliance with the Code of Ethics. This will be the professional association under pathway 1, or the third party under pathway 2. The licensee or an associate of the licensee is not permitted to act as the monitoring body for its own scheme. [Schedule 1, items 1 and 7, section 910A, paragraph 921FA(4)(a) and section 921FA(5)]

Pathway 1 - Professional association's scheme

2.14 The first kind of scheme is a scheme of a professional association.

2.15 The professional association monitors for possible breaches of the Code by relevant providers covered by the scheme and take enforcement action where necessary. *[Schedule 1, item 7, subsection 921FA(3)]*

2.16 A professional association's scheme can only **cover** a relevant provider if:

- the scheme has been approved by ASIC;
- the relevant provider is a member of the professional association; and
- ASIC has been notified that the relevant provider is a member of the professional association and covered by the professional association's scheme.

[Schedule 1, item 7, subsection 921G(1)]

2.17 ASIC is ordinarily notified that a scheme covers the relevant provider by the licensee. *[Schedule 1, item 9, section 922D and 1546T]*

2.18 If a relevant provider becomes aware that the information about their scheme is incorrect, the relevant provider may give a notice to ASIC with the correct details. This is a permissive power, rather than an obligation. The relevant provider may also revoke a notice that they have previously given. *[Schedule 1, item 7, subsection 921G(4)-(5)]*

Pathway 2 – Licensee (or group of licensee's) scheme

2.19 The second kind of scheme is a scheme of a licensee (or a group of licensees).

2.20 The licensee or group of licensee will generally develop a scheme and seek ASIC's approval. The licensee (or group of licensees) then enters into a contractual arrangement with a third party, for the third party to monitor adherence to the Code. *[Schedule 1, item 7, subsection 921FA(4)]*

2.21 A licensee's scheme can only **cover** a relevant provider if:

- the scheme has been approved by ASIC

- the relevant provider is the licensee (or group of licensees) who sought ASIC's approval of the scheme or the relevant provider is authorised by the licensee (or group of licensees) who sought ASIC's approval; and
- ASIC has been notified that the relevant provider is covered by the licensee's scheme.

[Schedule 1, item 7, subsection 921G(2)]

2.22 ASIC is ordinarily notified that a scheme covers the relevant provider by the licensee, but the relevant provider also has the power to notify ASIC. *[Schedule 1, items 7 and 9, subsections 921G(4)-(5) and section 922D]*

Example 2.1: Use of pathway 1

Remote Australia Financial Advice is a small licensee with 20 employees. It knows that all of its employees are members of the Ethical Financial Advisers Association. It also knows that the Ethical Financial Advisers Association has a scheme approved by ASIC.

Remote Australia Financial Advice notifies ASIC that its financial advisers are covered by the Ethical Financial Advisers Association's scheme.

Remote Australia Financial Advice has complied with its obligation to ensure that all of its financial advisers are covered by a scheme. It does not need to develop its own scheme or do anything further.

Example 2.2: Use of pathway 1

Wendy is a sole person licensee operating in regional Australia. Wendy does not wish to develop her own scheme.

Wendy is a member of QGT Professional Association, but QGT Professional Association does not have a scheme.

Wendy knows that the Ethical Financial Advisers Association has a monitoring and enforcement scheme approved by ASIC.

Wendy decides to join the Ethical Financial Advisers Association and advises ASIC that she is covered by that scheme. Wendy has now complied with her obligation to subscribe to a scheme.

Example 2.3: Use of pathway 1

The Amazing Fin Advice company has 50 financial advisers. 20 are members of 123 Professional Association. 30 are members of MYW

Professional Association. Both these associations have schemes approved by ASIC, and offer pathway 1 to their members.

The Amazing Fin Advice notifies ASIC that its financial advisers are covered by 123 Professional Association and MYW Professional Association's schemes.

The Amazing Fin Advice has complied with its obligation to subscribe its financial advisers to a scheme.

Example 2.4: Use of pathway 2

DQT has 10 financial advisers. These financial advisers do not want to join a professional association or be covered by a professional association's scheme.

DQT decides to develop its own scheme. DQT contracts Code Compliance Pty Ltd to provide their scheme, draws up a monitoring and compliance plan, and applies to ASIC for approval. ASIC approves the scheme. DQT advises ASIC that all of its financial advisers will be covered by its scheme.

DQT has complied with its obligation to subscribe its financial advisers to a scheme.

Example 2.5: Use of both pathways 1 and 2

TEQ is a licensee with 200 financial advisers acting under its license.

TEQ has 80 employees and director.

TEQ has authorised one entity MXZ to provide advice under its license. MXZ has 120 advisers. MXZ requires all of its advisers to join the Ethical Financial Advisers Association. This is a standard condition in all of its employment contracts. Ethical Financial Advisers Association has a scheme approved by ASIC.

TEQ is required to ensure that all of its 200 financial advisers are covered by a scheme.

The 120 advisers who work for MXZ are already covered by a scheme and they are happy with this arrangement.

TEQ decides to develop its own scheme to cover the remaining 80 advisers. TEQ contracts Code Compliance Pty Ltd to provide their scheme and applies to ASIC for approval. ASIC approves the scheme.

TEQ lodges the relevant notice with ASIC.

TEQ has now complied with its obligation to ensure that its advisers are covered by a scheme. 120 of its advisers are covered by Ethical Financial Advisers Association's scheme and the remaining 80 advisers are covered directly by TEQ's scheme.

ASIC approval process

2.23 The licensee or professional association must have its scheme approved by ASIC. *[Schedule 1, item 7, subsection 921G(1) and 921G(2)]*

2.24 A professional association or licensee may apply to ASIC for approval of its scheme *[Schedule 1, item 7, subsection 921H(1)]*. The application to ASIC must set out:

- the arrangements for monitoring compliance with the Code by relevant providers covered by the scheme;
- the sanctions for non-compliance;
- the dispute resolution procedures;
- the arrangements for making a complaint to the monitoring body for the scheme; and
- if the scheme is a licensee's scheme, the name of the third party who will monitor compliance with the scheme.

[Schedule 1, item 7, subsection 921H(2)]

2.25 ASIC may only approve a scheme if it is satisfied that compliance with the Code will be 'appropriately monitored and enforced'. *[Schedule 1, item #, subsection 921H(3)]*

2.26 If ASIC approves the scheme, ASIC must provide the applicant with a written notice stating that it approves the scheme and setting out the matters listed at paragraph 2.18. *[Schedule 1, item 7, subsection 921H(4)-(5)]*

2.27 ASIC may withdraw its approval if it is no longer satisfied that the scheme ensures that compliance with the Code is 'appropriately monitored and enforced'. This is because an approval is an 'instrument of an administrative character' and the power to make an instrument of an administrative character includes the power to revoke it under subsection 33(3) of the *Acts Interpretation Act 1901*.

2.28 ASIC may also revoke its approval of the scheme if the monitoring body does not comply with its obligations to report breaches or alleged breaches of the Code to the relevant provider's licensee. *[Schedule 1, item 7, subsection 921H(6)]*

Licensee's obligation to ensure their relevant providers are covered by a scheme

2.29 Licensees have an obligation to ensure that their relevant providers are covered by a scheme. *[Schedule 1, item 7, subsection 921F(1)]*

2.30 The licensee has a grace period of 60 business days from the date of authorisation to ensure that a new relevant provider is covered by a scheme. *[Schedule 1, item 7, subsection 921F(2)(a)]*

2.31 If a relevant provider ceases to be covered by a scheme, the licensee also has a grace period of 60 business days before they are in breach of their obligation to ensure that the relevant provider subscribes to a scheme *[Schedule 1, item 7, subsection 921F(2)(b)]*. A relevant provider may cease to be covered by a scheme because:

- a relevant provider who is covered by a professional association's scheme does not renew their membership of the professional association; or
- ASIC revokes its approval of the scheme.

Publication of the code and scheme

2.32 The monitoring body must ensure that the scheme is publicly available. This requirement ensures that relevant providers covered by the scheme are aware of the monitoring and enforcement procedures and consumers can access information about the process for lodging complaints. *[Schedule 1, item 7, subsection 921J(1)]*

2.33 The penalty for failing to publish a scheme is 10 penalty units. *[Schedule 1, item 7, subsection 921J(2)]*

2.34 It is intended that a monitoring body or licensee would also be able to publish the Code. The monitoring body or licensee would be able to brand the Code with its logo, but it must not amend any of the provisions in the Code.

Breaches of the code

2.35 Soft sanctions will be imposed for breaches of the Code. These sanctions will be set out in the Code, and/or the scheme. They may include a warning, additional training requirements, or additional supervision. The sanctions for more serious breaches may include a professional association revoking the relevant provider's membership of

the professional association, or a licensee terminating the relevant provider's employment.

2.36 A breach of a provision of a Code will not itself be a breach of the obligations in the Corporations Act. However ASIC may choose to investigate a breach further if it believes that the conduct also amounted to a breach of the obligations in the Corporations Act.

2.37 The monitoring body has an obligation to notify the relevant provider's licensee of the breach or alleged breach within 30 business days of the employee or officer of the professional association becoming aware of the breach or alleged breach of the Code [*Schedule 1, item 7, section 921JA*]. If a monitoring body fails to notify the licensee, ASIC may choose to revoke its approval of the Code. [*Schedule 1, item 7, subsection 921H(6)*]

2.38 Licensees must notify ASIC of details of breaches of the code and the sanctions imposed within 30 business days of becoming aware of the breach or sanction. These details would include the time of the breach and a description of the breach. [*Schedule 1, item 9, section 922HB*]

2.39 The obligation to notify ASIC of the breach applies to all relevant providers, irrespective of whether they are covered by a scheme of the first kind (pathway 1) or a scheme of the second kind (pathway 2).

2.40 Information about breaches of the Code and the sanctions imposed will be noted on the Register. [*Schedule 1, item 9, subsection 922Q(1) and paragraph 922(Q)(2)(q)*]

Example 2.6: Breach of the Code

Bob is a financial adviser at Remote Australia Financial Advice. Bob is a member of Ethical Financial Advisers Association and covered by its scheme.

Ethical Financial Advisers Association becomes aware that Bob has breached the Code. While the breach is concerning, Ethical Financial Advisers Association is confident that Bob has not breached his legal obligations.

Ethical Financial Advisers Association decides that Bob's breach is not sufficiently serious to remove him from the association. Instead it issues Bob with a formal warning.

Ethical Financial Advisers Association is required to notify Remote Australia Financial Advice of Bob's breach within 30 business days of the breach.

As part of its obligation to notify ASIC of changes to a matter recorded on the Register, Remote Australia Financial Advice must notify ASIC of the breach and the sanction within 30 business days of becoming aware of the breach.

Updates to the Code

2.41 The Code will be reviewed periodically by the body and revised where necessary. *[Schedule 1, item 7, section 921L]*

2.42 If the body changes the Code, the body may determine the appropriate transition period that would apply to the changes. It is envisaged that the body would not make a change to the substance of the Code without first undertaking a proper consultation process and ensuring that affected parties had sufficient time to amend their practices. *[Schedule 1, item 7, subsection 921L(1)(b)]*

2.43 If the body changes the Code, monitoring bodies are not required to resubmit their scheme to ASIC for approval. If ASIC is concerned that a scheme is no longer capable of enforcing the amended Code, ASIC may revoke its approval.

Application and transitional provisions

2.44 Relevant providers must subscribe to a scheme by 2 April 2019. Once the 60 day grace period is taken into account, this means that all relevant providers will be complying with the code and covered by a scheme from 1 July 2019. *[Schedule 1, item 13, section 1546DB].*

2.45 Relevant providers must comply with the Code of Ethics and the obligation to report breaches and sanctions from 1 July 2019. *[Schedule 1, item 13, section 1546DA]*

Chapter 3

Register of Relevant Providers

Outline of chapter

3.1 Schedule 1 to the Bill moves the provisions, inserted by the Corporations Amendment (Register of Relevant Providers) Regulation 2015, from Schedule 8D of the *Corporations Regulations 2001* (Register Regulations) to the Corporations Act. It also makes several amendments to ensure that the Register displays information about relevant providers' compliance with the new standards.

Context of amendments

3.2 See General Outline.

Summary of new law

3.3 The Bill moves the provisions from the Register Regulations to the Corporations Act.

3.4 It also amends the provisions that were in the Register Regulations so that the Register displays information about whether a relevant provider has complied with the new standards, including their CPD requirements, or breached the Code of Ethics.

3.5 Information about a relevant provider's principal place of business will also be included on the Register from 1 July 2019.

Detailed explanation of new law

3.6 The Bill moves the notice requirements for the Register from the Register Regulations to new subdivision 9B of the Corporations Act. These requirements set out licensees' obligation to notify ASIC about a person who becomes a relevant provider and about changes in the details of persons who already are relevant providers. [Schedule 1, items 1, 8 and 9, sections 910A, 922D, 922E, 922F, 922G, 922H, 922J, 922K, 922L, 922M, 922N and 922P]

3.7 The Bill also moves the provisions relating to ASIC updating and amending the Register to new subdivision 9C of the Corporations Act. *[Schedule 1, items 1, 8 and 9, sections 910A, 922Q, 922R and 922S]*

3.8 Several amendments to the requirements for the Register have been made to ensure that the Register displays whether a relevant provider has complied with the new education standards.

3.9 Licensees must notify ASIC about a relevant provider's education qualifications within 30 business days of the person becoming authorised or obtaining the new education qualification. *[Schedule 1, item 9, section 922D, subparagraph 922E(1)(h)(i), subsection 922F(1)(k)(i), section 922H and section 922L]*

3.10 Licensees must also notify ASIC whether their relevant providers have completed their CPD hours. The notice must be provided within 30 business days of the end of the each financial year. The notice does not need to include information about the CPD courses undertaken by the relevant provider, but only needs to state whether or not the CPD requirements have been satisfied. *[Schedule 1, item 9, subsections 922HA(1) and 922HA(2), section 922L]*

3.11 The penalty for failing to notify ASIC is 50 penalty units *[Schedule 1, item 10, subsection 922HA(5)]*. A licence may also commit an offence under section 1308 of the Corporations Act and section 137.1 of the Criminal Code if they knowingly give false or misleading information to ASIC.

3.12 The licensee must retain evidence of the CPD undertaken for a year after the relevant financial year ends *[Schedule 1, item 10, subsections 922HA(3) and 922HA(4)]*. The penalty for failing to retain evidence is 50 penalty units *[Schedule 1, item 10, subsections 922HA(5)]*. The licensee does not need to provide the evidence to ASIC, unless ASIC uses its existing power to seek it.

Example 3.1: Notification requirements for CPD

Assume that the body determines that all relevant providers must complete 20 hours of CPD per year.

Margot works at the ABC Financial Planning Corporation.

In March, Margot attends a training course at a professional association which counts for 10 hours of CPD. The professional association sends a document to ABC Financial Planning Corporation certifying that Margot has attended and completed 10 hours of CPD.

In May, ABC Financial Planning Corporation runs internal training for all their advisers, allowed under the CPD requirements as 5 hours, which Margot attends. ABC Financial Planning Corporation document which advisers attend this training.

In September, Margot completes an ethical training course, covering another 5 hours. The provider sends a document to ABC Financial Planning Corporation certifying that Margot has completed 5 hours.

Within 30 business days of the end of the financial year, ABC Financial Planning Corporation must notify ASIC that Margot has completed her required CPD hours.

ABC Financial Planning Corporation does not need to send the records of relevant CPD courses attended to ASIC. However, ABC Financial Planning Corporation must keep the records in case it is audited by ASIC.

3.13 On an ongoing basis, a licensee is not required to provide any information to ASIC about whether its relevant provider has passed the exam or completed the professional year. This is because a person cannot be authorised as a relevant provider unless they have passed the exam and completed the professional year. It therefore follows that every relevant provider on the Register will have passed the exam and completed the professional year.

3.14 Licensees must also notify ASIC of the compliance scheme that covers the relevant provider. *[Schedule 1, item 9, subsections 922E(i) and 922F(l)]*

3.15 If a relevant provider breaches the Code or is sanctioned for breaching the Code, the relevant provider's licensee must notify ASIC. The notice must include the name of the relevant provider, details of the breach and details of the sanction imposed. *[Schedule 1, item 9, section 922HB]*

3.16 The notice must be provided within 30 business days of the licensee becoming aware of the breach or the sanction being imposed *[Schedule 1, item 9, sections 922HB and 922L]*. This is not necessarily the same day as the day that the monitoring body becomes aware of the breach because the monitoring body has 30 business days to notify the licensee after its employee or officer becomes aware of the breach. *[Schedule 1, item 7, section 922JA]*

Example 3.2: Notification requirements for breaches of the Code

Margot is a member of the Financial Advisers Professional Association (FAPA) and subscribes to FAPA's monitoring and compliance scheme.

Margot breaches the Code on 7 August 2020. FAPA becomes aware that Margot may have breached the Code on 11 August 2020. FAPA commences an investigation into Margot's conduct and concludes that Margot was in breach. It advises Margot's licensee of the breach on 13 August 2020.

Margot's licensee has 30 business days from the time that it was notified of the breach to lodge a notice with ASIC, that is, it must lodge a notice by 24 September 2020.

3.17 From 1 July 2019, the Register will only display professional associations with a monitoring and compliance scheme that has been approved by ASIC. [*Schedule 1, item 9, subparagraphs 922E(1)(h)(ii) and 922F(1)(k)(ii)*]

3.18 Licensees will also be required to notify ASIC of their relevant provider's principle place of business [*Schedule 1, item 9, subparagraphs 922E(1)(b)) and 922F(1)(b)*]. This will make it easier for customers to identify all of the relevant providers within a specific area.

3.19 Licensees may ask their relevant providers for information so that the licensee can comply with its notice requirements. The relevant provider is required to provide the information to the licensee within a period that will allow the licensee to comply with its notice obligations [*Schedule 1, item 9, section 922N*].

3.20 ASIC is required to update the Register so that it includes information about a relevant provider's education qualifications, compliance with the CPD requirements and breaches of the Code. [*Schedule 1, item 9, section 922F*]

3.21 A new obligation is also placed on ASIC to ensure that the Register remains up to date. Formerly, in the Register Regulations, ASIC had the power to correct the Register, but not an obligation to do so. This requirement will ensure that, on 1 July 2019, ASIC updates the status of all existing relevant providers who have failed to comply with the new standards and are no longer authorised to provide personal advice on relevant financial products. [*Schedule 1, item 9, subsection 922Q(3)*]

Application and transitional provisions

3.22 The application provisions for the Register ensure the continuation of the Register maintained under the Register Regulations [*Schedule 1, item 13, section 1546QA*]. Any relevant provider numbers given before commencement under the Register Regulations are also taken to have been given under the new law [*Schedule 1, item 13, section 1546Q*]. This

ensures that licensees do not need to re-lodge information that is already recorded on the Register and ASIC does not need to reissue relevant provider numbers.

3.23 The notice obligations in the new law generally apply to:

- authorisation or changes that occurred after commencement [*Schedule 1, item 13, subsection 1546E(a), 1546K(a), 1546L(a) and 1546M(a)*]; and
- authorisation or changes that occurred before commencement, where a notice had not been lodged before commencement [*Schedule 1, item 13, subsection 1546E(b), 1546K(b), 1546L(b) and 1546M(b)*].

3.24 Similarly, relevant providers' obligation to comply with their licensee's request for information under new section 922N applies to requests made after commencement; and requests made before commencement where the information had not been provided immediately before commencement. [*Schedule 1, item 13, section 1546N*]

3.25 The retrospective operation of the new law to authorisation, changes and requests for information made before commencement does not have an adverse effect on the rights or liabilities of any person. This is because there was already a similar obligation to provide information under the Register Regulations.

3.26 The new law also enhances the Register by inserting additional notice obligations that did not exist under the Register Regulations. These have different application changes.

3.27 The obligation to notify ASIC of the relevant provider's principle place of business applies from 17 May 2019, which is 30 business days before 30 June 2019. [*Schedule 1, item 13, section 1546T*]

3.28 The notice obligations relating to the relevant provider's compliance scheme, breaches of the Code and sanctions imposed apply from 1 July 2019. [*Schedule 1, item 13, sections 1546DA*]

3.29 The Register will only record professional associations that have a scheme approved by ASIC from 1 July 2019. Prior to this date, the Register will continue to list any professional association that is relevant to the provision of financial advice. [*Schedule 1, item 13, section 1546H and 1546P*]

3.30 For existing advisers, licensees will need to lodge information about whether they have passed the exam with ASIC within 30 business

days of the licensee becoming aware that the adviser has passed the exam.
*[Schedule 1, item 13, section 1546U]*Context of amendments

Chapter 4

The Standards Body

Outline of chapter

4.1 Schedule 1 to the Bill amends the Corporations Act to allow the Minister to nominate a company as the standards body (the body) in relation to the education, training and ethical standards for relevant providers.

Context of amendments

4.2 See General Outline.

Summary of new law

4.3 The Bill provides that the body's role is to develop and set the education standards described in Chapter 1 as well as the Code set out in Chapter 2.

4.4 The Bill provides for the Minister to nominate in writing a body corporate as the body in relation to the education standards and the Code. The Minister may only nominate a body if a number of prerequisites are met. The main prerequisites include:

- The body is a proprietary company limited by guarantee;
- The company's constitution contains the following provisions:
 - the company is operated as a not-for-profit company and members do not have the right to collect dividends; and
 - there are appropriate restrictions on the composition of the board of directors, including a right for the Minister to appoint the Chair, a requirement that half of the directors (other than the Chair) must be appointed for their experience in the financial services industry, a requirement that two of the directors (other than the Chair) must be appointed for their experience in consumer affairs pertaining to the

financial services industry and one of the directors (other than the Chair) must have experience in the field of ethics.

4.5 The Minister must be notified of any changes to the body's constitution. The Minister can disallow any modifications of the body's constitution.

4.6 If the Minister considers that the body is not complying with its obligations the Minister may give the body a written direction.

4.7 The Minister may declare in writing that the nominated company ceases to be the body.

4.8 There is a statutory review of the framework which must be commenced by 31 December 2019.

Detailed explanation of new law

Functions of the body

4.9 The Bill provides that the body must develop and set the education standards described in Chapter 1 by making a legislative instrument. This includes:

- determining the requirements for the degree or degree equivalent,
- determining the requirements for the professional year;
- determining the CPD requirements;
- approving the exam; and
- determining the bridging course requirements for existing adviser.

[Schedule 1, items 7 and 13, section 921L and subsection 921B(5)]

4.10 The body must also review the standards regularly, and in doing so must consult with a range of key stakeholders, including financial services licensees and practitioners, consumer organisations, ASIC and the Treasury. *[Schedule 1, item 7, paragraph 921L(1)(b)]*

4.11 The body must further administer or arrange an appropriately credentialed entity to administer any exam it approves as part of the

standards. Finally, the body must develop the Code of Ethics described in Chapter 2. *[Schedule 1, item 7, section 921L]*

4.12 The body may charge fees for its services in setting and administering the standards and the Code. *[Schedule 1, item 7, subsection 921L(3)]*

4.13 The Code of Ethics must commence at least 30 days after it is registered on the Federal Register of Legislation established under the *Legislation Act 2003*. A similar rule applies to any future amendment to the Code. The *Legislation Act 2003* amends the *Legislative Instruments Act 2003* and will commence at the latest in March 2016. *[Schedule 1, item 7, section 921M]*

Nomination of the body by the Minister

4.14 The Bill provides for the Minister to nominate in writing a body corporate as the body. The nomination must specify the date from which the nominated company is to act as the body. The Minister may only nominate a body if the following prerequisites are met:

- The body is a proprietary company limited by guarantee;
- The Minister is satisfied that the body will comply with its obligations under the Corporations Act and other relevant laws;
- The nominated company's constitution contains the following provisions:
 - the company must be operated as a not-for-profit company and members do not have the right to collect dividends;
 - there must be seven members of the board: the chair; three financial services industry representatives; two consumer affairs experts and an ethicist;
 - the three financial services industry representatives must have experience in operating a financial services business or providing a financial service;
 - two directors must be appointed for their experience in representing consumers in relation to financial services;
 - one director must have experience in the field of ethics;

- directors cannot hold an executive position in an industry or consumer association at the time they are serving on the board of the standards body. Directors may be members of such associations, however, they will sit on the board in a personal capacity and not represent the associations; and
- the chair of the board of directors is to be appointed by the Minister. The other directors are to be appointed by the existing directors. There must be appropriate conflict of interest provisions in relation to the appointment of potential directors. *[Schedule 1, item 7, section 921MA]*

4.15 The Minister may at any time declare that the nominated company ceases to be the body. The declaration must state the date from which it takes effect. The Minister may specify in the declaration whether the standards and the Code issued by the body will continue to have effect, or whether they will be replaced by other standards or another Code specified by the Minister. The standards and Code declared by Minister remain in force until they are replaced by a new standards body nominated by the Minister. *[Schedule 1, item 7, section 921MB]*

4.16 A body nominated by the Minister must notify the Minister of significant changes to its constitution. The notice must set out the text of the change, specify the date on which it is to take effect, and explain the purpose of the change. If no notice is provided within 21 days after the change is made the change ceases to have effect. *[Schedule 1, item 7, section 921S]*

4.17 The Minister may within 28 days disallow all or part of the change. The Minister must notify the body as soon as practicable of the Minister's disallowance. The change ceases to have effect from the day the body receives the Minister's notification. *[Schedule 1, item 7, section 921T]*

4.18 If the Minister considers that the body is not complying with its obligations under the Corporations Act or an arrangement it has with the Government (for example a funding contract), the Minister may give the body a written direction. The Minister may at any time revoke such a direction.

- The Minister's power to issue a direction is limited to the extent that it does not include a power to remove or appoint directors, apart from the chair.
- A provision is added clarifying that the Minister is not a director of the body under the Corporations Act merely because of this power. *[Schedule 1, item 7, section 921U]*

4.19 The body must prepare every year an annual report prepared in accordance with Chapter 2M of the Corporations Act. The report must be given to the Minister and published on the body's website as soon as practicable after the end of each financial year. *[Schedule 1, item 7, section 921V]*

Statutory review

4.20 A review of the new framework as set out in new Divisions 8A, 8B and 8C of Part 7.6 inserted by the Bill must be commenced before the end of 2019. By this time, all elements of the new framework should have been in place for at least six months and the transitional arrangements for existing advisers will have concluded. *[Schedule 1, item 13, section 1546V]*

4.21 The legislation does not specify the length of the review or the person who will conduct the review. However, the reviewer and the length of the review should be appropriate to ensure that the review is able to consider the appropriateness of the new framework.

Application and transitional provisions

4.22 The amendments in this Chapter commence on the day after the Bill receives royal assent.

Chapter 5

Transitional provisions for existing providers

Outline of chapter

5.1 Part 2 of Schedule 1 amends the Corporations Act to insert a new Part 10.23A which includes transitional provisions in relation to persons who were relevant providers immediately before 1 July 2017.

Context of amendments

5.2 See General Outline.

Summary of new law

5.3 Transitional arrangements apply to a person who is a relevant provider immediately before 1 July 2017 ('an existing provider').

5.4 By 1 July 2019, existing providers are required to have:

- passed an exam approved by the body; and
- completed an appropriate bridging course or courses, to raise their qualifications to a bachelor degree level, or equivalent qualification, approved by the body.

5.5 ASIC has a limited power to exempt an existing provider from the requirement to meet the transitional education and training standards by 1 July 2019.

Detailed explanation of new law

5.6 An *existing provider* is a person who is a relevant provider immediately before 1 July 2017. [*Schedule 1, item 13, section 1546A*]

5.7 Existing providers have a 24 month transitional period from 1 July 2017 to 1 July 2019 to meet the new standards. This transition

period is designed to give existing providers sufficient time to comply, and ensure that prompt action is taken to raise the minimum standards and improve consumer confidence. [Schedule 1, item 13, section 1546B]

5.8 It is envisaged that the exam and bridging courses approved by the body will be available from 1 July 2017.

5.9 An existing provider is required to have completed one or more bridging courses, as determined by the body, to increase his or her qualification equivalent to a relevant bachelor degree by 1 July 2019. The amount of further education required will depend on the provider's existing education level and will be determined by the body. Where a provider already holds a relevant bachelor degree (as approved by the body), no further education is required. [Schedule 1, item 13, subsections 1546B(1) and 1546B(5)]

5.10 The provision is designed to allow flexibility for existing providers, ensuring that they only need to undertake adequate study to bring their qualifications in line with the new standard.

5.11 Existing providers are required to have passed an exam approved by the body before 1 July 2019. [Schedule 1, item 13, subsection 1546B(2)]

5.12 If an existing provider has not passed an approved exam or completed the required bridging courses by 1 July 2019, then he or she will cease to be a relevant provider after that time and will be shown on the Register of Relevant Providers as not compliant [Schedule 1, item 13, subsection 1546B(3)]. This will result in the provider being unable to practice as a financial adviser until he or she has satisfied these requirements.

5.13 An existing adviser who does not meet the transitional arrangement and ceases to be a relevant provider on 1 July 2019 may become authorised as a relevant provider at a later point time [Schedule 1, item 13, subsection 1546B(4)]. Before becoming authorised, the existing adviser would need to satisfy the degree, exam and professional year requirements in new section 921C. It will not be sufficient for the existing adviser to merely meet the transitional arrangements. [Schedule 1, item 13, subsection 1546C(2)]

5.14 An existing provider will be able to attempt the exam at any time during the transition period and may attempt the exam multiple times if required.

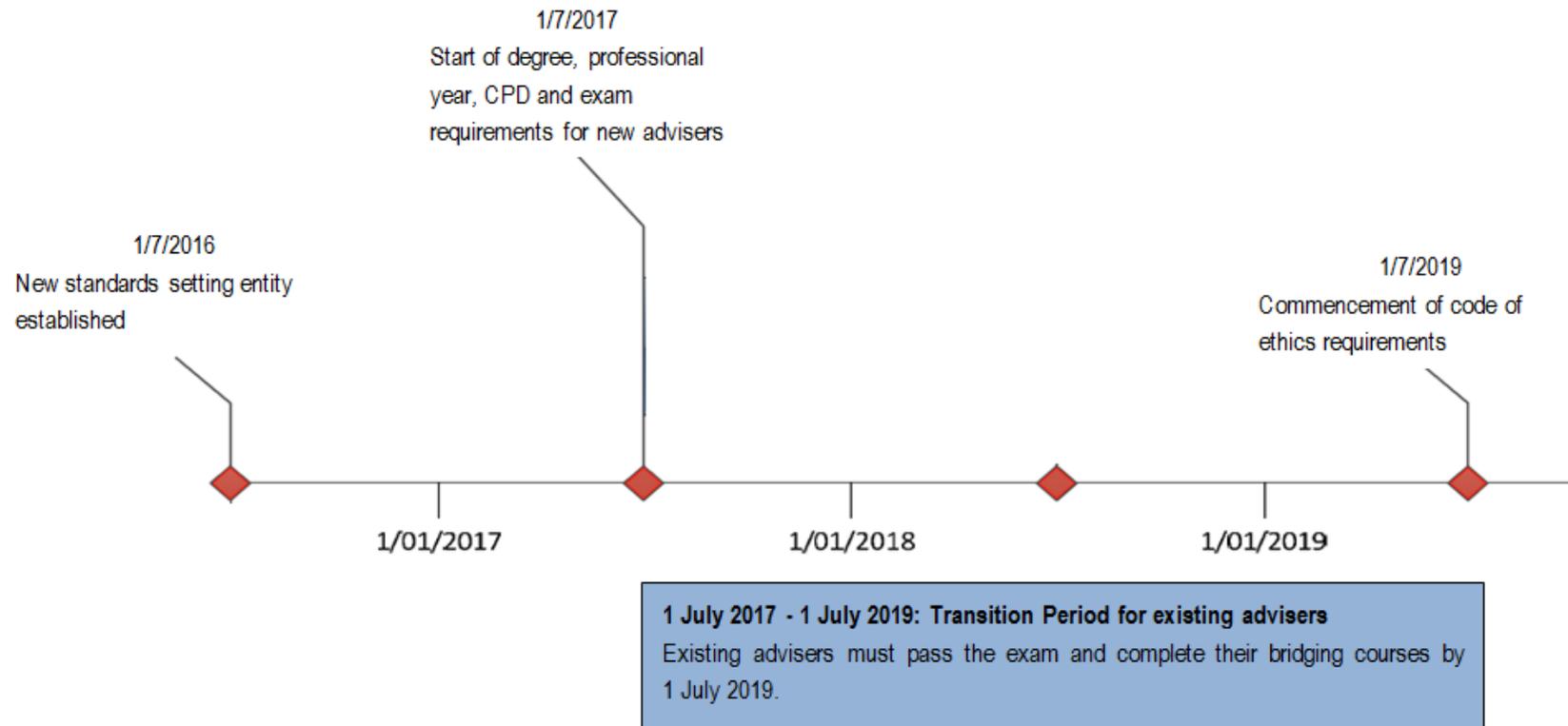
5.15 The Register will show when an adviser has passed the exam. The Register will not show failed attempts during the transition period.

5.16 Existing providers are subject to the same requirements in relation to continuing professional development and the Code as new providers. That is, an existing provider will be required to:

- meet the requirements for continuing professional development set by the body from 1 July 2017 [*Schedule 1, item 13, section 1546D*]
- comply with the Code of Ethics from 1 July 2019 [*Schedule 1, item 13, section 1546DA*]

5.17 However, existing providers are not required to undertake a professional year as it is considered that such persons have already accrued practical experience working in the financial services industry. [*Schedule 1, item 13, note 3 for subsection 1546B(2)*]

5.18 ASIC has a power under section 926A of the Corporations Act to exempt a person who is an existing provider from meeting the transitional education and training standards by 1 July 2019 in particular circumstances. Such an exemption may be subject to specified conditions. [*Schedule 1, items 12 and 13, subsection 926A(1) and section 1546S*]



Example 5.1: Relevant providers with a diploma

John, Laura and Mitch are existing financial advisers who only have a diploma.

John, Laura and Mitch can continue to give financial advice on relevant financial products to retail clients until 1 July 2019.

If John, Laura and Mitch wish to continue to give advice after 1 July 2019, they will need to complete the necessary bridging requirements determined by the body and pass the exam. They do not need to undertake a professional year.

John wants to remain in the industry post 1 July 2019. He sits the exam and passes. He also completes a bridging course approved by the body which increases his education level to a degree equivalent.

John's licensee advises ASIC that he has passed the exam and completed the bridging course. ASIC updates the Register.

John can continue to give personal advice to retail clients on relevant financial products after 1 July 2019.

Laura plans to retire soon. Laura does not sit the exam or complete a bridging course. On 1 July 2019, Laura retires and the Register is updated to indicate that Laura is no longer authorised to give personal advice to retail clients on relevant financial products.

Mitch wants to remain in the industry. He completes a bridging course but he does not pass the exam. After 1 July 2019, he cannot give personal advice to retail clients on relevant financial products. Mitch chooses to remain in the industry and only gives advice on basic banking products, general insurance products and consumer credit insurance.

Example 5.2: Relevant providers with a degree

Hamish is an existing financial adviser with a relevant degree. Hamish wants to continue to give personal advice on relevant financial products to retail clients after 1 July 2019.

Hamish sits the exam in December 2018 but does not pass. His failed attempt to pass the exam is not displayed on the Register.

Hamish reattempts the exam in March 2019 and passes. His licensee advises ASIC.

Hamish may now continue to give personal advice to retail clients on relevant financial products after 1 July 2019. Do not remove section break.

Chapter 6

Regulation impact statement

6.1 On 20 October 2015, the Government announced as part of its response to the Murray Inquiry that it would develop legislative amendments to raise the professional, ethical and educational standards of financial advisers. In committing to this objective and subsequent decisions on the details of the legislative amendment package, the Government was informed of the regulatory impacts of various reform options by the findings of two independent reviews and targeted consultations with industry stakeholders.

6.2 The independent reviews of the arrangements around professional, ethical and education standards of financial advisers are the:

- Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry (PJC Report); and
- Financial System Inquiry Final Report, November 2014 (Murray Inquiry).

6.3 The reform package is being constructed in close consultation with industry and consumer groups. In particular, a co-regulatory approach is being taken with key industry stakeholders including the Association of Financial Advisers (AFA), Australian Bankers' Association (ABA), Choice, Financial Planning Association (FPA), Financial Services Council (FSC), Industry Super Australia (ISA), SMSF Association (SMSF), Stockbrokers' Association of Australia (SAA) and Chartered Accountants Australia and New Zealand (CA). Targeted consultation continued up until the Government's roundtable on 30 October 2015.

6.4 Treasury will certify that the independent reviews and consultation constitutes a process and analysis equivalent to a Regulation Impact Statement (RIS).

6.5 The Australian Government Guide to Regulation identifies seven questions that a RIS should address. Following is a summary of the analysis of these questions that occurred as part of the independent reviews and stakeholder consultation process.

Problem

6.6 In recent years, numerous cases of inappropriate financial advice have decreased consumers' confidence in the financial advice industry. This lack of trust has become a barrier to consumers seeking financial advice.

6.7 The recent examples of unethical behaviour and inappropriate financial advice have contributed to the decreased trust and confidence in the financial advice sector.

6.8 The Corporations Act 2001 (the Act) imposes a general obligation on Australian Financial Services (AFS) licensees to ensure that their financial advisers are 'adequately, trained and competent' and the Australian Securities and Investments Commission (ASIC) has issued guidance on the minimum training standards. However these standards are low, insufficiently comprehensive and out-of-date. They do not specify the duration or standard of training that advisers must undertake and advisers are currently able to satisfy the requirements by completing a short course with only a few hours of study.

6.9 Various inquiries, including the Murray Inquiry and the PJC Report have identified that the existing standards for financial advisers (which are set by Government) are too low and do not ensure that all financial advisers have the necessary skills to provide high quality advice to consumers. These reviews recognised that the current regulatory framework has acted as a barrier, has discouraged professionalisation and has not encouraged industry to take a greater lead in setting standards.

6.10 In June 2014, the Senate Economics References Committee tabled a report on its inquiry into the performance of ASIC. The inquiry recommended that the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) look into the various proposals calling for the lifting of professional, ethical and educational standards in the financial services industry.

6.11 In December 2014, the Committee reported on the inquiry into proposals to lift the professional, ethical and education standards in the financial services industry. The Committee considered the interim report of the Financial System Inquiry which noted that there were significant issues with the quality of financial advice, due in part to varying standards of adviser competence.

6.12 The Murray Inquiry highlighted consumer outcomes as an important area for reform and focused on fair treatment of consumers. The report noted that the issues related to the competence of financial advisers are unresolved with the most significant problems relating to

shortcomings in disclosure and financial advice, and an over-reliance on financial literacy.

6.13 The Committee's recommended approach included:

- clarifying who can provide financial advice by protecting the title and function;
- improving the qualifications and competence of financial advisers;
- enhancing professional standards and ethics; and
- implementing transitional arrangements.

Need for government action

6.14 There have been many regulatory interventions by the Australian government in recent years to help improve trust and confidence in the financial services industry and the quality of information for which consumers of financial services have access. Government intervention is justified because of the significant costs to individuals, the community and/or taxpayers that can result from poor information on the benefits and risks of financial services, including complex financial advice provided to retail clients.

6.15 There are a few main sources of market failure which explain why government involvement may be required. These sources of market failure are:

- Licensees underinvest in education and training as the benefits only accrue in the long-term.
- It is difficult for industry to agree on minimum standards and coordinate action.
- Consumers lack information about skills and competency of their financial adviser.

6.16 The Murray Inquiry and PJC report highlighted five main deficiencies in the current education and training requirements which include:

- the current education and training requirements prescribed in the Corporations Act are low;

- the standards are vague;
- the standards are not holistic – they do not require all financial advisers to undertake ethical courses and there is only a cursory reference to continuous professional development;
- stakeholders have raised concerns that the training requirements are not in keeping with changing market conditions; and
- there is no central database with information about the quality of the various education and training courses.

6.17 Furthermore, currently financial advisers are not required to adopt or comply with an overarching ethical code. The PJC Report outlines ASIC and industry concerns about the undesirable subcultures developing in many financial advice firms.

Policy options and net benefits

6.18 The current system of professional standards for financial advisers, as outlined in the PJC Report, provides minimum standards for financial advisers to meet. However, licensees and professional associations retain discretion to set higher education standards for their advisers.

6.19 The Murray Inquiry recommended raising the competency of financial advice providers and the introduction of an enhanced register of advisers. It also noted that a national exam for advisers could be considered if issues with adviser competency persist.

6.20 In assessing the current system of professional standards, the PJC Report recommended that industry establish an independent, professional standard-setting entity that will be controlled and funded by professional associations. The PJC Report recommended a model consisting of six core elements:

- financial advisers would be required to complete a degree at Australian Qualification (AQF) Level 7 and a structured professional year;
- financial advisers would be required to pass an exam before they are authorised to provide advice;

- financial advisers would be required to complete ongoing professional development;
- financial advisers would be required to become a member of a professional association approved by the Professional Standards Council (PSC) and subscribe to a comprehensive code of ethics;
- a new standards setting entity would be established to set the education and training standards for financial advisers; and
- enhancements would be made to the Register of Financial Advice (the Register), established by the Government in March 2015, including that the Register would list the sanctions imposed by a licensee on or a professional association.

6.21 Stakeholders unanimously agreed that the professional standards of financial advisers needed to be lifted and supported the core elements of the PJC's model. However, concerns were raised during consultation about the PJC's recommendation that all financial advisers would be required to be a member of a professional association as it guarantees professional associations an inflow of members and has the potential to restrict competition by creating a barrier to entry for new financial advisers. Further, the government has an established policy of not mandating membership of unions or industry associations.

6.22 The PJC recommendation of the establishment and role of an independent body has been adopted with slight modifications. The Government's response to the Murray Inquiry indicated that the independent body will also be responsible for developing a model code of ethics. The independent body will provide a role for professional associations through founding membership, and comprise of an independent chair, an ethicist and members who represent licensees and consumers.

6.23 During consultation, industry supported the PJC recommendation for the establishment of the independent body, indicating that the Independent Council should be responsible for setting curriculum guidelines and requirements for new advisers at AQF level 7 for new advisers post the transition period, developing a registration exam, developing a standardised framework for the supervised professional year including ethics competencies, establishing criteria and maintaining the recognised prior learning pathway for all existing financial advisers, and developing minimum standardised framework criteria for ongoing continuing professional development requirements.

6.24 Options for industry to provide initial seed funding for the Independent Council, with ongoing funding to be provided through a sustainable funding model were also raised during the consultation period.

6.25 In the Government's response to the Murray Inquiry on 20 October 2015, the Government announced that it was committed to ensuring that consumers receive professional and fair treatment from advisers and financial product and service providers. The Government committed to, subject to transitional arrangements:

- requiring new advisers, from the 1 July 2017, to hold a degree (at AQF level 7), undertake a professional year and pass an exam;
- requiring existing advisers, from 1 July 2019 to have completed an appropriate AQF level 7 bridging course (or have completed a recognised transitional pathway determined by the standard setting body) and have passed an exam;
- requiring all advisers, both new and existing, from 1 July 2019 to subscribe to either a professional association or licensee code of ethics; and
- requiring industry to establish a new standards setting entity to set the curriculum and training requirements, and approve the exam.

Consultation

6.26 The Financial System Inquiry took initial submissions on the issues set out in the inquiry's terms of reference and a second round of submission in response to its Interim Report. In developing the Government's response, Treasury took submissions on the recommendations in the Murray Inquiry Final Report.

6.27 The Parliamentary Joint Committee on Corporations and Financial Services (the Committee) received 39 submissions from a range of relevant stakeholders. Public hearings were held on three occasions at which stakeholders appeared before the Committee.

6.28 The Government and Treasury consulted on a regular basis with industry stakeholders throughout the policy development process. This included two industry roundtables involving ABA, FSC, Australian Financial Markets' Association, ISA, FPA, AFA, CHOICE, SMSF, Professional Standards Council, Association of Independently Owned

Financial Professionals, CPA Australia, SAA, National Insurance Brokers Association, Association of Superannuation Funds of Australia, Australian Institute of Superannuation Trustees, CA, Customer Owned Banking Association, Financial Planning Education Council, Australian Business Deans Council, Superannuation Consumers' Centre, BT Financial Group, CBA, ANZ, NAB Wealth, AMP, AustralianSuper, Macquarie, IOOF, Sunsuper, and Loan Market.

6.29 During consultation, stakeholders presented views on the educational qualifications and code of ethics standards that were integrated into the Government's framework to raise professional, ethical and education standards in the financial advice industry (as indicated in the Government's response to the Murray Inquiry).

Agreed Option

6.30 On 20 October 2015, as part of its response to the Murray Inquiry, the Government announced it would commit to reforms to raise the professional, ethical and education standards of financial advisers.

6.31 A draft regulatory costing for the reform package has been prepared, consistent with the Government's Regulatory Burden Measurement Framework. These costs are summarised in Table 1.

6.32 For licensees, implementation and ongoing costs are associated with developing policies and procedures to ensure their advisers are complying with the new professional standards and ethical codes. This will include updating their IT systems to track adviser education and ongoing professional development and ethical training.

6.33 New financial advisers will incur costs associated with gaining the relevant educational and ethical qualifications. These educational qualifications, in requiring a three to four year Bachelor degree which many individuals seek to gain of their own volition, may impose significant costs from both the course fees and the hours of study accumulated. The fees for a university education may be offset in the short term by HECS-HELP.

6.34 Individual existing financial advisers will incur costs associated with updating their educational and ethical qualifications.

6.35 It is estimated that the increase in annual compliance costs for the industry as a whole will amount to \$165,089,720.

Table 1: Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$77.3	\$0	\$87.8	\$165.1
Cost offset (\$ million)				
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Treasury	-\$77.3	\$0	-\$87.8	-\$165.1
Are all new costs offset?				
Yes, costs are offset				
Total (Change in costs – Cost offset) (\$ million) = \$0				

Note: A regulatory offset has been identified from within the Treasury portfolio.

Please provide feedback on these cost estimates as part of your submission on the draft Bill and other explanatory material.

Implementation and Evaluation

6.36 Implementing these reforms, which will commence on 1 July 2016, will be a joint effort between industry, ASIC and the Government.

6.37 The Government will amend the Corporations Act to give the Minister the power to nominate an industry established standard setting entity who will be responsible for implementing and monitoring the educational standards for financial advisers.

6.38 The industry established standard setting entity will outline a model code of ethics. Professional associations and licensees will have joint responsibility for taking on this model code and monitoring their advisers' adherence to the code.

6.39 Existing advisers will have until 1 July 2019 to have met the required standards to continue to practice as a financial adviser giving complex advice to retail clients.

6.40 A review of the professional standards reforms will be conducted in 2019 to consider whether the new industry arrangements for raising professional standards of financial advisers have provided better outcomes for consumers.

DRAFT