



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

20 September 2022

Assistant Secretary  
Advice and Investment Branch  
Treasury  
Langton Cres  
Parkes ACT 2600

Email: [FinancialAdvice@treasury.gov.au](mailto:FinancialAdvice@treasury.gov.au)

Dear Ms Bray,

**Re: Financial Adviser Education Standards**

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback to Treasury on the proposal paper in relation to Financial adviser education standards.

We would welcome the opportunity to discuss with Treasury any matters raised in our submission. If you have any questions, [REDACTED].

Yours sincerely

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[REDACTED]

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<sup>1</sup> The Financial Planning Association (FPA) is a professional body with more than 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and 5,207 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy paper" sought to act in the public interest at a time.
- In 2009 we announced a remuneration policy banning a commissions and conflicted remuneration on investments and superannuation for our members years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a future of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired by Dame Boucher, dealing with investments and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC 'gifted' the financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.

## History of Supporting the Raising of Education Standards

The FPA first recommended to Government that education standards for financial advice provisions be increased to degree level in 1994, and the FPA has consistently been calling since then for financial planners to be tertiary qualified. We developed and required members to complete a Diploma of Financial Planning (DFP 1-8) (prior to the AQF framework redefining Diplomas to AQF5) prior to the introduction of the Financial Services Reforms (FSR) Act (2001), when no education requirements existed in the law and before the introduction of the Interim Policy Statement 146 and the subsequent introduction of the ASIC Training Register. Our first courses defined financial planning in Australia and strongly influenced the direction of financial planning education.

From 2006 all entrants into the CFP program were required to have a degree, and since 2010, the FPA announced a requirement that all new members must hold a degree and meet specific education requirements.

The FPA has been at the fore of setting appropriate and high standards and requirements specifically for the provision of financial advice to continuously raise the bar of professionalism and protect consumers. Our continuous drive to professionalism is strongly supported by our financial planning practitioner members.

Prior to the introduction of the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017 the FPA had for many years called for an increase to the minimum education standards required to become a financial planner, as the FPA and our members had been very concerned about the standard of training courses operating under the minimum education requirements set in Regulatory Guide RG146.

As the licensed provider of the Certified Financial Planner® (CFP®) designation in Australia, in 2011 the FPA established the Financial Planning Education Council (FPEC) for the purpose of addressing a gap in the availability of financial planning specific bachelor's degree courses in Australia as a pathway for entry into the CFP Program. For the purpose of ensuring entry qualifications for the CFP® program, FPEC developed a Curriculum and Accreditation Framework for financial planning degrees.

FPEC has worked tirelessly over the past ten years to improve the availability of financial planning bachelor's degrees and as such, set the foundation on which FASEA built the approved course list and eligibility criteria and assessment FASEA used for approving courses. The FPA was pleased that FASEA had adopted the well-established FPEC Curriculum and Accreditation Framework for approved degrees, particularly in relation to new financial advisers.

## Concerns with FASEA's Inflexible Approach

The original policy intent of the legislation as articulated by the Minister, was to raise the minimum education standards of advisers and in particular to put an end to the ability to become a financial adviser after doing a four-day course<sup>2</sup>. The FPA has always supported this intent. However, it is vital that education pathways for existing advisers recognise the credible education available at the time, which for approximately 66%<sup>3</sup> of the profession was prior to the establishment of FASEA.

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<sup>2</sup> [http://kmo.mnters.treasury.gov.au/media/release/119\\_2017/](http://kmo.mnters.treasury.gov.au/media/release/119_2017/)

<sup>3</sup> Executive Summary FPA Member Research On FASEA, CoreData Australia, June 2018, page 2.

The FPA stands behind its long-held position that education standards to provide financial advice needed to be increased from the minimum requirement set in ASIC Regulatory Guide RG 146, however as we have set out in prior submissions on the education standards set by FASEA, the implementation of the new requirements needed to be practical, workable, and take into account the impact on both the profession and the clients it serves.

From this perspective, we have been concerned over the last four years about the practicalities, complexity and cost (to Government, industry, and consumers) of implementing FASEA's education pathways for existing advisers, when in many cases there will be no benefit to consumers. This included education costs for advisers, but most importantly the availability and cost of advice for consumers. These were real and valid issues that have played out over the past four years to the detriment of the profession and the consumers it professionally supports.

To this point, the FPA undertook extensive member consultation in 2017 to assist us in developing our response to FASEA's proposed education pathways for existing advisers. Our research showed that the FASEA proposed education pathways would likely result in a large number of departures from the profession resulting in an advice gap that would be to the detriment of consumers, which has been borne out in the significant reductions we have seen. A key responsibility in setting the new requirements should have been to ensure the preservation of the financial planning profession for both those who have long served within it, and for the clients they serve.

The FPA has for the past four years strongly encouraged FASEA to simplify its education pathways and recognise the availability of valid, quality, advice-specific education of existing advisers, and future courses for new advisers. Additionally, the FPA encouraged FASEA to consider that experience is a very important factor in the competence and skill of a financial adviser to provide professional services to their clients.

For this reason, the FPA broadly supports and recommends that the Government adopt a framework that considers the competence obtained through advice-specific education, the competence obtained through experience and a framework to fill the gap only where required to achieve the Government's intent. It was a disappointment to the profession and the FPA that FASEA failed to place a value on the experience obtained through on-the-job experience and quality professional development.

## Turning to the latest proposal

In saying this, the proposals made by the former Government<sup>4</sup> and as proposed by the current Government<sup>5</sup> in this consultation risk the professionalism journey advice providers have been undertaking – not just over the most recent four years but stretching back to over 10 years. While experience is an important factor in competence to provide a professional service to a consumer, education is also universally identified as a key component of professional competence.

For this reason, the FPA does not support the proposed 10 years of experience over the 15 years between 2004 and 2019 pathway proposed. We believe unassessed experience alone is an insufficient foundation to meet the objectives of raising the minimum education requirements for professional financial advice providers and continuing to build consumer confidence in the profession. Nor do we support a framework for new entrants and existing advisers based on an ability for universities to self-declare financial planning degrees. This will take us back to the RG146 issues where substandard quality education is allowed to proliferate.

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<sup>4</sup> Morrison Government to make quality financial advice more affordable [https://ministers.treasury.gov.au/ministers/ane\\_hume/2020/media-releases/morrison-government-make-quality-financial-advice-more](https://ministers.treasury.gov.au/ministers/ane_hume/2020/media-releases/morrison-government-make-quality-financial-advice-more)

<sup>5</sup> Treasury Consultation: Financial advice education standards Consultation paper [https://treasury.gov.au/sites/default/files/2022/08/c2022\\_306020\\_consultation\\_paper.pdf](https://treasury.gov.au/sites/default/files/2022/08/c2022_306020_consultation_paper.pdf)

As part of preparing our response to this consultation, the FPA again surveyed members to understand their views on the proposed modifications<sup>6</sup>. Importantly, 55% of FPA members have already completed their required education (up from 40% in January 2022) and 35% are on track to meet the existing education standards<sup>7</sup>. While 71% of surveyed members meet the proposed experience pathway, 55% of surveyed members oppose the introduction of the proposed experience pathway. 73% of members would only support an experience pathway if there was a sunset introduced, and 80% believe an ethics unit should still be required. A majority of members oppose the proposal made by Treasury in this consultation, but broadly our membership supports an education framework which includes more recognition of prior learning and experience, which we believe FASEA failed to take into consideration sufficiently as part of their legislated framework.

While the FPA shares the Government's goal of making financial advice more affordable and accessible to Australian consumers, simply providing an experience pathway alone is not going to achieve a reduction in the cost to produce advice as it does not address the regulatory inefficiencies created by decades of adding regulatory duplication in the form of 8 regulators and overlapping regulatory obligations with little benefit for the end consumer. As identified in our survey from 2017 and as has been borne out, financial planners want to be recognised for the competence, education and experience they already possess as professionals, not work in a profession where some practitioners are given a free pathway indefinitely. The proposed pathway won't bring those who have exited back, and as noted in our current survey, this won't stop those who plan to retire over the next few years from retiring<sup>9</sup>.

Consideration of the impact of the education standards – successful or otherwise - must be assessed in the context of the broader regulatory environment financial planners operate in, not as an adhoc decision. As we consider what the components of quality advice should be, we believe it makes eminent sense to also consider the qualifications and competencies required by those who will be providing that advice. For this reason, the FPA recommends that the consideration of amendments to the education standards for financial planners be included in the context Quality of Advice Review recommendations, rather than as a separate decision-making process.

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<sup>6</sup> N = 376

<sup>7</sup> Q: How much education under the FASEA standards did you need to complete? 1 unit (35.6%); 4.5 units (29%); 2.3 units (15.4%); 7.8 units (13%); New entrant degrees (6.9%)

<sup>8</sup> Q: If you haven't yet completed the FASEA standard, how many units did you need to complete? 1 unit (23%); 2.3 units (18.6%); 4.5 units (40.6%); 7.8 units (12.8%); New entrant (4.7%)

<sup>9</sup> 46.5% of respondents are over age 51 of which 50% have already completed the required education with a further 27.5% on way required to complete between 1-3 subjects.

## FPA Recommendations

### Experience Pathway Proposal

The FPA is concerned that the profession has been facing uncertainty about potential future changes to education standards for a considerable length of time. A high proportion of current financial planners have already made commitments to further study based on the current standards. Ultimately the planners who will potentially benefit from the proposed 10-year pathway (79% of those who completed the survey) need certainty that their existing studies can be deemed competent to continue to practice.

If despite our concerns the Government chooses to make amendments to the education standards at this late stage of the transition framework, the FPA is concerned that simply basing an exemption on 10 years of experience over the 15 years between 2004 and 2019 doesn't consider the quality or amount of experience obtained over this period.

As noted in our previous submission (February 2022), from the survey conducted in relation to those proposals, the FPA and our members did not support the proposed 10 years of experience in the past 12 years exemption to the education framework proposed by this consultation. As noted at the time, 83% of FPA members, irrespective of age or experience have already met or are undertaking the study required to meet the existing education standards which the Government set through FASEA – at considerable cost to themselves in time, money and opportunity cost in their practices. These members have let us know in no uncertain terms that they feel the proposal undermines the commitment they have made to professionalism to win the trust of consumers, Government, regulators and the media and support their colleagues and the sector more broadly. As noted above, a further 10% of members have now completed their education requirements and an additional 7% have commenced (totalling 90%).

As noted in the Minister's announcement in relation to this proposal, the intention is to make advice more accessible and affordable to Australian consumers. Simply providing an exemption at this point, given the 43% drop in authorised financial planners to date and post the exam compliance cut off, will fail to attract exited financial advisers back, nor will it remove the regulatory burden, duplication and inefficiencies which have led to the significant increase in the cost to provide advice and therefore the affordability of advice for Australians. In fact our members are concerned the proposal will actually worsen adviser numbers over time, by making the profession less attractive to new entrants. If a tertiary qualification is perceived to be no longer a requirement to practice, and there is no date by which it will be, we can no longer tell young students they will be joining a trusted and respected true profession.

Specifically, when the practicalities of the 10 years of experience is considered (noting the experience of financial planners in dealing with the TPB's experience measures) members have raised the following concerns:

- Competency to provide professional advice is not purely based on duration of experience.
- Discrimination against professional advice providers who have had periods of leave due to maternity or paternity leave; illness; caring for family members; or periods of time overseas.
- Discrimination against part time workers, for example a planner working 3 days a week will not have completed the equivalent of 10 years of experience in the 15 year period.
- 10 years of experience could be achieved by a variety of age demographics which fall outside the intent or reasonableness of the proposal, for example it is foreseeable that a provider in their early 30s who commenced providing advice after completion of the 4 unit RG146 diploma may have 10 years of experience in the relevant period but practice for another 30 years without being required to undertake additional tertiary education, while a 55 year old career switcher with 9 years' experience in the relevant period is still required to complete a Graduate Diploma.
- Discrimination against advisers who have inconsistently provided advice over the timeframe. For example, while a financial adviser may have been authorised to provide advice for 10 years in the

relevant period, they may have only sporadically or occasionally provided advice if they had another profession they undertook (for example accounting).

- Given the FSCP has only just been established, there may be examples of financial advisers who have serious compliance concerns, other conduct issues, breach reports under previous legislation and complaints against them which have not yet resulted in ASIC action. This may give rise to adverse publicity and scandals that would damage the profession and call into question the decision to relax education standards.

Despite this, if the Government does progress with these proposals, the FPA believes to be eligible for the experience pathway, the following requirements must be met:

1. The 10-year experience pathway should be limited to financial planners who are able to demonstrate 10 years of relevant, licensed experience (personal advice to retail clients) over the period of 1 January 2004 to 1 January 2019; and
2. Be able to demonstrate a clean record, which should include:
  - a. No disciplinary actions recorded on the FAR;
  - b. Never been suspended or banned from being licensed from any period;
  - c. No material complaint resulting in a client suffering financial detriment found against the planner with AFCA or predecessor EDR schemes;
  - d. No disciplinary action taken by professional associations, if applicable; and
3. A statutory declaration must be signed confirming the above (with penalties for providing a false declaration);
4. Either:
  - a. Be a voting member of a non-profit professional association that has:
    - i. A code of ethics, professional standards and an independent disciplinary system;
    - ii. Mandatory CPD obligations;
    - iii. Complaints system; and
    - iv. Quality review program; OR
  - b. Complete an approved ethics subject by 1 January 2026; and
5. Pathway ends 1 January 2032. Any financial planner who wishes to continue to practice after this date would need to meet the education requirements for existing advisers.

**FPA Recommendation 1 - The FPA recommends that the Government should not implement an experience exemption to the education framework. However, if the Government does proceed with an experience pathway as proposed, the FPA supports a requirement to demonstrate 10 years of relevant licensed experience between 1 January 2004 and 1 January 2019; a clean record; a statutory declaration; either membership of a professional association or the completion of an approved ethics course; and a 10 year sunset period.**

### FPA's Proposed Framework

As noted in Recommendation 1, the FPA recommends the education standard is reviewed in the context of the Quality of Advice Review. However, should the Government decide to amend the education standards at this point, the FPA recommends enhancements to the education pathways FASEA developed, which are compliant with the provisions in the legislation, that also achieve the Government's stated original policy intent to improve the minimum entry standards for financial advisers (which were supported by the recommendations made in Royal Commission into Misconduct in the Banking,



Superannuation and Financial Services Industry<sup>10</sup>) and that acknowledges past education and experience of existing advisers that is relevant to the provision of financial advice as pointed to in the Ministers statement<sup>11</sup>.

In our view, the education standards should be designed on the basis of a fair, equitable and professional competence framework which does not undermine the professionalism journey of financial advice, the time, effort and money put into meeting the existing standards which have been and are being made by many in the profession (including 90% of FPA members).

Given the stated intent of the initial legislation, the recommendations of the Royal Commission supporting a professional education framework, and the Minister's recent statement introducing this consultation, the FPA has developed a framework designed to achieve the following:

1. A competence-based framework which includes core competencies which are shared by ALL advice providers:
  - a. which can be achieved through education; or
  - b. via demonstration of competency obtained through experience.
2. A competence-based framework for authorisation of specific license authorisations (i.e., specialisations) which are specific to each financial planner based on the advice they provide:
  - a. which can be achieved through education; or
  - b. via demonstration of competency obtained through experience.
3. The competency framework developed (or used) should be based on AQF7 or above so that the profession, government and regulators and consumers can have trust that financial planners are tertiary qualified and competent.

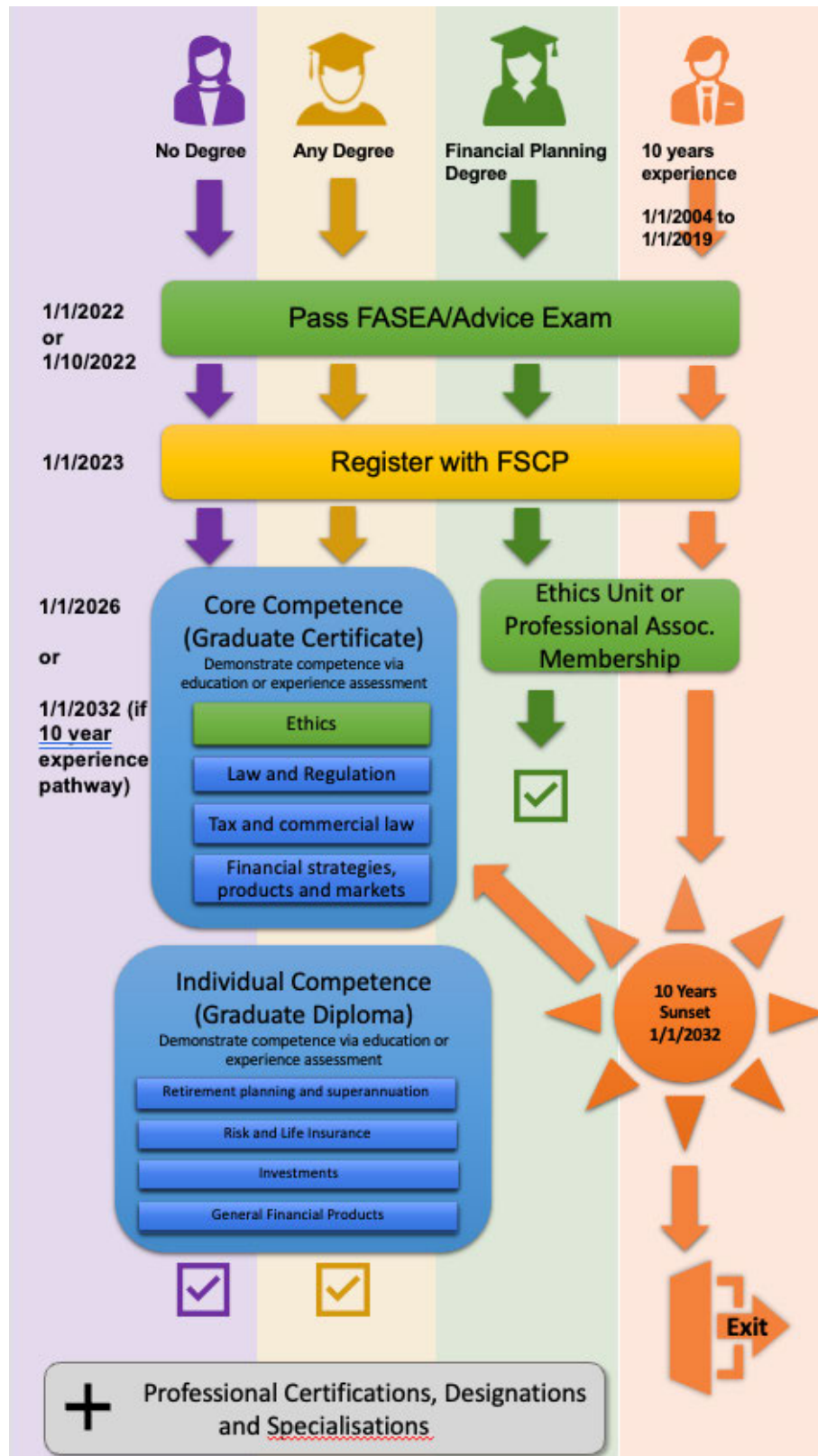
How this works in practice:

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<sup>10</sup> "I said in the Interim Report and remain of the view that prevention of poor advice begins with education and training. Those who know why steps are prescribed are more likely to follow them than those who know only that the relevant manual says 'do it'. I believe that as they come into effect the new education requirements will improve the quality of advice that is given and improve the way that financial advisers manage the conflicts of interests with which they are faced." Commissioner Hayne, Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

<sup>11</sup> Consultation on open financial adviser education standards <https://ministers.treasury.gov.au/ministers/stephen-jones/2022/media-releases/consultation-on-open-financial-adviser-education-standards>

## Recommended FPA Education Framework





## Pathways

The FPA proposes four pathways (assuming an experience pathway is adopted by Government). Under all four pathways, there is an assumption that the Exam has already been completed, registration with the FSCP will occur no later than 1 January 2023, and there will be no amendment of the current education time frame (except under the experience pathway sunset recommended by the FPA above).

The proposed pathways are therefore as follows:

1. No degree
  - a. For financial planners who have not completed a university degree at AQF 7 (Bachelor's degree); AQF 8 (Graduate Diploma or Masters); or AQF 9 (Doctoral Thesis).
2. Any degree
  - a. For financial planners who have completed a university degree at AQF 7 or higher which is not an approved (current) or specific (future degrees not included on an approved list) financial planning degree.
3. Financial Planning Degree
  - a. For financial planners who have completed a university degree at AQF 7 or higher which is an approved (current) or specific competence (future degrees not included on an approved list if it is not maintained by Treasury or an independent authority) financial planning degrees.
  - b. This pathway can be used for new entrants noting the opposite completion order and additional professional year obligations (i.e. education; professional year; exam; registration).
4. Experience Pathway
  - a. As per FPA Recommendation 1 above

## Core Competence

1. For the core areas, a competency framework covering 4 areas can be developed which covers:
  - a. an Ethics Unit (compulsory) (this would be consistent with the current unit, so if a planner has already completed it, there would be nothing further to do)
  - b. a legal and regulatory unit
  - c. a tax and commercial law unit
  - d. a financial strategies, products and markets unit.

## Individual Authorisation Competence

1. As licensees must ensure a financial adviser is competent to provide the advice they are authorised to provide, specific competence in the following knowledge areas is already required. A financial adviser will need to demonstrate competence (through experience or education) in the following areas at AQF7 (or higher):
  - a. Retirement Planning and Superannuation
  - b. Risk and Life Insurance
  - c. Investments (derivatives, foreign exchange contracts, bonds, stocks, debentures, MIS, Margin lending, carbon credits, MDAs)
  - d. General financial products (basic banking, general insurance)

For any of these units: experience and CPD can be used to demonstrate competence; or if the unit has been completed at AQF7+ as part of prior degrees, certifications or individual units of study (through universities, RTOs or approve professional associations); or the unit of education can be completed (through universities, RTOs or approve professional associations). To create an easy to understand

education option, they can be built into bachelor's degrees (they already are in financial planning specific degrees) or can be built into a Graduate Certificate for career changers, or can be undertaken as individual units for experienced planners who are in this transition phase.

The units and learning outcomes for each unit should be set and approved by a recognised independent authority which can assist universities to design units, approve units, and maintain a list of approved units. The approved independent authority should be a not for profit organisation that includes representatives from academia and professional associations which meet the criteria of point 5b. above, financial advisers and licensees. The authority should only charge on a cost recovery basis for the approval of courses and operate for the benefit of the profession, with all representatives providing their time on a voluntary basis.

It is important to note that many of the issues experienced by financial planners over the years were created by ASIC not maintaining the list of approved courses as part of RG 146 and moving to a self accreditation pathway for training providers. The experience of many FPA members was that as they changed licensees, many had a different interpretation of RG 146, which led to planners being required to undertake additional study. The ability for licensees to check education against a historical list or database of approved units of study is critical to the ability for planners to move around employers and licensees and is critical to the sustainability of the profession going forward.

Given many financial planners have come from alternate education or degree pathways (accounting, finance, economics, business, commerce etc.) where they have completed units in previous degrees, these should not be duplicated or completed again.

There are a number of benefits to this framework for the profession, for government and for consumers:

- Education or experience (as demonstrated through competence) is assessed at AQF7+ therefore all financial planners can be considered tertiary level competent to provide advice.
- Where an adviser is already competent (through education or experience) no further study is required.
- Licensees have a simple method to assess whether they can authorise an adviser in specific license authorisations.
- Where a planner or licensee wants to add an area of advice, it is clear what education or competence a planner needs to demonstrate to be authorised in this new area.
- Education and competence pathways can still be assessed against a framework which can be developed by or in consultation with the profession.
- No list of approved courses is required to be kept or maintained by Government as universities, RTOs and professional associations have a set of formal competencies to build units of study and competency assessments against under their existing TESQUA and ASQUA authorisations.
- FASEA has already developed the competence framework for each unit listed above, universities, RTOs and professional associations already have units of study designed against these requirements.
- Consumers can have trust that the profession of financial planning is one based on education and competence irrespective of years of experience.
- It is easy to understand for financial advice providers.
- Licensees will have a list of approved units to refer to when authorizing financial planners on an ongoing basis.

**FPA Recommendation 2. The FPA Recommends the Government adopt a competency framework for the financial planning profession which recognises both education and experience to demonstrate competence at AQF7+ to replace the existing education framework. This will benefit existing financial advisers, irrespective of years of experience in providing pathways to demonstrate competence with flexibility of completing study or demonstrating**

competence.

## New Entrant Framework

The FPA recommends the education component of the New Entrant Framework replicate the Existing Adviser framework with a combination of Core Units and Elective Units as follows:

### Core Competence

1. For the core areas, a competency framework covering 4 areas can be developed which covers:
  - a. an Ethics Unit;
  - b. a legal and regulatory unit;
  - c. a tax and commercial law unit; and
  - d. a financial strategies, products and markets unit.

### Individual Authorisation Competence

2. As licensees must ensure a financial adviser is competent to provide the advice they are authorised to provide, specific competence in the following knowledge areas is already required. A financial adviser will need to demonstrate competence (through experience or education) in the following types areas at AQF7 (or higher):
  - a. Retirement Planning and Superannuation;
  - b. Risk and Life Insurance;
  - c. Investments (derivatives, foreign exchange contracts, bonds, stocks, debentures, MIS, Margin lending, carbon credits, MDAs); and
  - d. General financial products (basic banking, general insurance).

The FPA also supports the Professional Year, but proposes the following modifications:

- Can be concurrently completed with study (integrated learning), but no unsupervised advice can be provided until core subjects completed;
- Improve flexibility of supervision through the introduction of online and group mentoring;
- Introduction of an optional mentoring supervisor who maybe a former existing adviser who is no longer practicing.

### Replacement of Exam

The FPA does not support the replacement of the exam with the introduction of a capstone unit at this time, however we support the exam format to be modified to create a better framework for assessing competence. This could include the use of assignments, case studies, in viva assessment, or other assessment form designed to assess the competence of a professional.

## Treasury Questions

### Questions – experienced pathway

#### 10 years' experience

1. Is the proposed window for determining 10 years' experience (between 1 January 2004 and 1 January 2019) appropriate? If not, what alternative period could be considered?

The FPA does not support the introduction of an experience pathway, however if one is to be introduced by Government, the FPA supports 10 years of full time equivalent experience between 1 January 2004 and 1 January 2019.

2. If required (for example, due to an audit of their eligibility), how can advisers prove they have 10 years' full-time equivalent experience?

As the financial adviser register was not in existence for the entire eligible time frame and additionally does not specify either the amount or quality of advice services provided during any period of registration, it is hard to simply rely on the FAR records. For this reason, there is not a ready made option which will objectively demonstrate a planners experience during this period. For this reason, the FPA recommends that a statutory declaration be required with penalties for providing false declarations.

#### Clean public record

3. Are the proposed sources for determining a clean record appropriate? Why/why not?

The FPA and our members support the proposal for a clean record to be considered in determining eligibility for the experience pathway, but note the following logistical issues for an objective test to be created in relation to a clean record:

1. ASIC has a limited track record of taking regulatory disciplinary action against individuals, particularly as until recent amendments following the Royal Commission, ASIC only had suspension or banning powers in very limited circumstances, and no ability to provide lesser reprimands or warnings. Therefore there may be disciplinary issues which ASIC may have been aware of but have been unable to progress.
2. The FSCP has only just commenced operations and no cases or determinations have been made to date. It is yet to be seen whether the FSCP is an efficient, reliable and appropriate mechanism for assessing misconduct by financial planners.
3. AFCA and predecessor EDR schemes membership is based on licensee level membership. Individual financial planners often aren't a party to compensation claims, and the name and details of individual financial planners aren't available from the public determinations register.
4. Additionally in relation to EDR determinations, in many instances, licensees will settle compensation cases with clients without the case going through a tribunal process. Based on this, two identical consumer complaints could lead to different outcomes in relation to the clean record pathway depending on whether the planners licensee chose to settle in one case, or progress the case through AFCA in another.
5. Additionally in relation to EDR determinations, compensation can be awarded by an EDR scheme where there has been a negative outcome for the client, but there is no evidence or determination of misconduct by the planner.

6. In relation to determinations made by professional associations, the FPA supports this, however notes many associations have either no public records of misconduct determinations, or have no disciplinary system in place. The FPA's concern therefore is that as there could be other members of the profession who would have received disciplinary action under the FPA's Code of Professional Standards and Disciplinary Regulations, but because they were members of an association without a disciplinary system, no action has been taken. The FPA also notes there are examples of FPA determinations which have been blinded and therefore the member may not be visible to a licensee for the purpose of determining a clean record.
7. In relation to CPD compliance, we note that due to the inflexibility in relation to both the CPD year framework developed by FASEA, and the reporting of failure to meet the CPD standard, there are instances of financial planners having CPD breaches noted on the FAR where serious ill-health or accidents have led to the failure rather than purposeful or negligence. These have also been rectified in the new CPD year to our understanding with no ability to rectify the record on the FAR. Blatant failure to meet the CPD obligations should not give access to the experience pathway, however where there are reasons and an effort has been made in the following CPD to rectify the incomplete CPD year, it seems unreasonable to deny an experience pathway to a planner.

#### **4. What other sources could advisers rely on to indicate that they have a clean record?**

The FPA recommends that section 3 of the ASIC reference checking protocols be used to indicate a clean record as an objective test of clean record.

#### **5. If required, what evidence can advisers rely on to prove they have a clean record?**

The FPA recommends that section 3 of the ASIC reference checking protocols be used to indicate a clean record as an objective test of clean record. Additional, a statutory declaration should be completed verifying the clean record and penalties applied for false declarations.

#### **6. What threshold should be adopted to identify whether conduct is minor, trivial, and isolated?**

As noted in question 3, this is difficult and can be subjective in all the proposed clean record metrics. The FPA recommends further consultation be conducted to set the right thresholds depending on the methodology selected by Government.

#### **7. Is the non-time limited clean record requirement appropriate? If not, for what period should an adviser be expected to maintain a clean record to access this pathway?**

The FPA supports the use of a non-time limited clean record which would require the clean record of a planner using the experience pathway to be maintained until the pathway sunsets. The FPA recommends however that the FSCP be used as a peer review mechanism to determine whether access to the experience pathway is withdrawn from the planner, and determines an appropriate time frame for completion of additional education where appropriate based on the level of misconduct.

### **Assessment of eligibility**

**8. What should self-declaration of eligibility require? For example, should an adviser have to make a statutory declaration?**

The FPA supports the use of statutory declarations as the methodology for self-declaration with a penalty regime applied for false declarations.

**Future misconduct**

**9. Are new tools required to specifically deal with advisers accessing the experience pathway whose future conduct amounts to misconduct? Why/why not?**

The FPA recommends that use of the experience pathway be recorded on the FAR. The FSCP should then consider whether future misconduct amounts to a loss of access to the pathway and sets an education pathway for the financial planner to complete within an appropriate time frame.

**Other**

**10. For existing advisers not eligible for the experienced pathway but who have a foreign qualification at AQF 7 level or above, is it practical and appropriate for education providers or licensees to assess how these qualifications meet the education standard and what additional study may be required, rather than the Minister? Why/why not?**

The FPA recommends that the recognised independent authority assess international qualifications on a cost recovery basis and provide a documented education pathway for the individual to complete. This should be documented on the FAR and provided to the licensee for verification against the education completed. Given the low number of students undertaking approved degrees, it is critical that viable pathways to bring foreign qualified financial planners into the Australian profession in an efficient and appropriate manner.

**11. How many existing advisers do you expect to access the experienced pathway? How many of those have already started to undertake formal education to align with the current existing adviser requirements?**

As noted above, based on the research conducted by the FPA for this submission, 79% of those who responded to the FPA's survey would be eligible for the proposed experience pathway. Of these, 50% have already completed the education requirements. A further 27.5% are in the process of completing their education.

**12. What else may be required to ensure an appropriate level of consumer protection is maintained and any potential harm is minimised?**

Consumer protection comes from being able to recognise professionals who operate in the interest of the consumer, rather than conflict or fraud. There is clear evidence of significantly worse consumer detriment occurring through unregistered promoters of property and MIS schemes provided under general advice and information only schemes. Consumers are protected from knowing that they can trust professional financial planners who have undertaken university level qualifications, quality ongoing education, are able to demonstrate ethical and professional competence, and must comply with and adhere to a professional code of ethics. The biggest concern of the FPA is that the professional standards framework will be watered down to the detriment of consumers. Again we support education standards which allow professionals to demonstrate competence rather than



completing education to tick a box, but removing important consumer protections and indicators of trusted professionalism doesn't help protect consumers from misconduct and harm.

**13. Would any further requirements be necessary for the experienced pathway to ensure the professionalisation of the industry is maintained?**

The FPA has responded to this in the above.

**Questions – Formal education and exam**

**14. Are the proposed core knowledge areas appropriate for the financial advice profession? If not, what is missing and why is that area important?**

The FPA recommends that for the core areas, a competency framework covering 4 areas can be developed which covers:

1. an Ethics Unit;
2. a legal and regulatory unit;
3. a tax and commercial law unit; and
4. a financial strategies, products and markets unit.

**15. Are there any specific areas under each core knowledge area that should be prioritised or emphasised? For example, a particular element of taxation or commercial law?**

The FPA would note the Government has legislated that financial planners are no longer required to register and be regulated by the TPB in acknowledgement that the tax services provided by financial planners are incidental to their clients and are not relied upon by clients for the purpose of meeting their tax obligations. From this perspective, it is unclear to the FPA of the need for tax and commercial law to be included as core knowledge areas, however the focus of these areas of study should focus on the tax implications of financial advice strategies, classes of products and estate planning tax implications.

**16. Would proposed changes to core knowledge areas necessitate changes to the exam content? Why/why not?**

The FPA does not support a change to the competencies required to be tested through the current "exam", however the FPA recommends the format of the exam be amended to better test competence of a professional. This could include the use of assignments, case studies, in viva assessment, or other assessment form designed to assess the competence of a professional.

**17. Is it practical and appropriate to allow education providers to self-declare that their degrees teach the core knowledge areas? Why/why not?**

The FPA does not support education providers self-declaring their degrees meet either core or elective knowledge areas.

The units and learning outcomes for each unit should be set and approved by a recognised independent authority which can assist universities to design units, approve units, and maintain a list of approved units. The approved independent authority should be a not for profit organisation that includes representatives from academia and professional associations which meet the criteria of point 5b. above, financial advisers and licensees. The authority should only charge on a cost recovery basis for the approval of courses and operate for the benefit of the profession, with all representatives providing their time on a voluntary basis.

The FPA does not support self-declaration and recommends a list of approved units be maintained. It is important to note that many of the issues experienced by financial planners over the years were created by ASIC not maintaining the list of approved courses as part of RG 146 and moving to a self accreditation pathway for training providers. The experience of many FPA members was that as they changed licensees, many had a different interpretation of RG 146, which led to planners being required to undertake additional study. The ability for licensees to check education against a historical list or database of approved units of study is critical to the ability for planners to move around employers and licensees and is critical to the sustainability of the profession going forward.

**18. What form should education providers' assurance to Government take?**

The FPA does not support education providers self-declaring.

**19. If self-declaration is not appropriate, what alternatives could be adopted to streamline the degree approval process?**

The FPA does not support education providers self-declaring their degrees meet either core or elective knowledge areas.

The units and learning outcomes for each unit should be set and approved by a recognised independent authority which can assist universities to design units, approve units, and maintain a list of approved units. The approved independent authority should be a not for profit organisation that includes representatives from academia and professional associations which meet the criteria of point 5b. above, financial advisers and licensees. The authority should only charge on a cost recovery basis for the approval of courses and operate for the benefit of the profession, with all representatives providing their time on a voluntary basis.

**20. Is it practical and appropriate for education providers or licensees to evaluate a new entrants' completed tertiary courses against the new core knowledge areas to assess whether they have met the education standard or what additional study may be required? Why/why not? What oversight of education providers or licensees making this assessment, if any, is necessary?**

Given the only way at present for information to be updated on the financial adviser register is through licensees, there is no other current mechanism for assessment to be undertaken. The FPA ultimately believes that as part of initial authorisation, the regulator of financial advice should directly authorise and register the individual as meeting the entry requirements, and that an annual attestation requirement be introduced to affirm ongoing professional standards obligations are being met. This is the model used by the TPB and through most professions.

**21. Is it practical and appropriate for education providers or licensees to also evaluate foreign qualifications against the new core knowledge areas and assess what additional study may be required, rather than the Minister? Why/why not?**

The FPA recommends that the recognised independent authority assess international qualifications on a cost recovery basis and provide a documented education pathway for the individual to complete. This should be documented on the FAR and provided to the licensee for verification against the education completed. Given the low number of students undertaking approved degrees, it is critical that viable pathways to bring foreign qualified financial planners into the Australian profession in an efficient and appropriate manner.

**22. Should new entrants whose existing qualifications don't fully meet the education standard be able to 'top-up' their qualification by completing individual units, rather than a full qualification? Why/why not?**

Yes, the FPA supports the ability for new entrants to “top-up” their qualifications. The FPA does not support education being repeated where the new entrant is able to demonstrate competence through either completed education or competence assessment by a university.

**23. What other changes should be made to the education requirements for new entrants? How do your proposed changes support the professionalisation of the financial advice industry and ensure consumer protection?**

The FPA has responded to this question in the section above.